

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

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

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

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Case No.: 81470

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

**RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S
APPENDIX, VOLUME 22**

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

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

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

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

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

Dated this 14th day of June, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 22** was filed electronically with the Nevada Supreme Court on the 14th day of June, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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1 A. Yes.

2 MR. SPENCER: And then Exhibit 465, your
3 Honor.

4 THE COURT: Any objection.

5 MR. LATTIN: No objection.

6 MR. ROBISON: No objection.

7 THE COURT: It is admitted.

8 THE CLERK: Thank you.

9 (Exhibit 465 admitted.)

10 BY MR. SPENCER:

11 Q. This is a letter from Maupin, Cox, LeGoy to
12 Sam and Todd -- that's your Dad and you, right --
13 dated June 17th, 2010?

14 A. Okay.

15 Q. And at the top the first sentence "Recently
16 we prepared a memorandum addressing the details of a
17 qualified personal residence trust, QPRT, and
18 possibly alternatives to a QPRT."

19 A. Okay.

20 Q. As an aside, do you know what a QPRT is?

21 A. I don't.

22 Q. Okay. There was some discussion about a
23 qualified personal residence trust and then down
24 below there's some discussion about the revenue

1 ruling at the bottom, the last paragraph "provides
2 that if an individual grants a child an option to
3 buy property at a specified price at sometime in the
4 future, the grant is an immediate gift regardless of
5 whether the option is ever exercised, if under state
6 law the option is binding and enforceable on the
7 date of transfer."

8 Do you remember receiving that advice?

9 A. I don't.

10 Q. Next page, page two of Exhibit 465, middle
11 of the first paragraph, the amount of the gift,
12 middle of the first paragraph at the top. "The
13 amount of the gift is the difference between the
14 fair market value of the option on the date it was
15 given to be and the consideration." So in this case
16 the fair market value appraisal was 6.5 and the
17 option was above that at 7.2, right?

18 A. Yes.

19 Q. Then the first sentence of the next
20 paragraph, "Given revenue ruling 80-186, a
21 fundamental question is how to value an option,
22 knowing that granting an option may likely result in
23 a taxable gift."

24 Skipping down to the last sentence of that

1 paragraph, "Thus, there's a strong risk that the IRS
2 could claim that the grant of the option was a gift
3 of substantial value by Sam at the time the option
4 was granted."

5 So he's conveying that there's a big risk
6 here of making a gift, right, in relation to the
7 option agreement?

8 A. I'd have to defer to Bob -- did Bob write
9 that -- Mr. LeGoy. I'm sorry.

10 Q. Yes, sir, Mr. LeGoy wrote this?

11 A. I'd probably have to defer to Mr. LeGoy
12 because I was not familiar with this particular
13 letter.

14 Q. And then on the next page, Exhibit 465,
15 down at the bottom -- let's see. The bottom of the
16 middle paragraph, "Accordingly" -- it says, "the
17 factors may lead to an option being favorable to
18 Todd. May also increase the taxable gift value of
19 the option from Sam. 2703-A appears to give the IRS
20 new rights to disregard the option entirely.

21 "The IRS would be most likely to take that
22 position if Sam died before the option was
23 exercised. It does not appear the IRS can do that
24 if Todd exercises option while Sam was still alive

1 but the conclusion is not clear."

2 And, then, this is the second-to-last
3 paragraph, "If the option were not exercised during
4 Sam's lifetime, unless the 2703(b) Exclusion Test
5 were met, which we believe would be very unlikely in
6 light of the facts and circumstances associated with
7 this option. The fair market value of the residence
8 would be included in Sam's estate. The option and
9 any effect it would have on market value would be
10 ignored."

11 And then the last sentence of that page --
12 well, that paragraph -- "We cannot find any cases"
13 -- in that last paragraph -- "for rulings addressing
14 the estate and gift tax consequences of option given
15 by one family member to another. They make the
16 estate tax consequences difficult to determine and
17 effectuating these arrangements very risky."

18 Do you see that?

19 A. Yes.

20 Q. And so Exhibit 23.4, Mr. Hascheff advises
21 that it's risky because you're going to trigger the
22 due-on-sale clause and it's a breach of the
23 agreement with B of A.

24 Then Mr. LeGoy sends a June 17th letter a

1 little over a month later saying, This is very
2 risky, using the option. It's very risky because it
3 could be considered a gift and it could be
4 considered -- or included in Sam's estate tax or
5 taxable estate. The option was done anyway.

6 Is that right?

7 A. Yes.

8 Q. In the face of those -- of the advice that
9 this is a very risky transaction.

10 A. With their continued guidance, it was the
11 option -- we decided to move forward with the option
12 with their continued guidance. I don't know whether
13 this letter when it says "Todd" maybe when they put
14 into Incline TSS was different, I'm not sure, but
15 Bob and Pierre would both be able to answer those
16 questions.

17 Q. And the reward that outweighed the risk was
18 to avoid the net investment in income tax that was
19 going to gonna into effect in 2013 of 3.8 percent,
20 right?

21 A. One of them.

22 Q. And to get the house out of the estate.

23 A. That would be No. 2, which would save
24 potentially, millions of dollars in the loss of the

1 house.

2 Q. Of course, Mr. LeGoy just advised that that
3 was probably not gonna -- he didn't think it was
4 going to happen and it was probably risky to even go
5 there because it would be included.

6 MR. ROBISON: Objection, your Honor.
7 What's included is the value of the option, not the
8 house, and that's a misstatement of the evidence.

9 THE COURT: I don't know how to rule on an
10 evidentiary objection because I don't know --

11 MR. ROBISON: I'll cover it in redirect,
12 your Honor.

13 THE COURT: Thank you.

14 BY MR. SPENCER:

15 Q. The letter speaks for itself, but the
16 information was that it was very risky because it
17 might be included in Sam's estate, the option might
18 be included in Sam's estate.

19 He says the full fair market value of the
20 residence would be included in Sam's estate, not the
21 option. And so removal of the house from the estate
22 was what Mr. LeGoy advised directly might not --
23 more than likely would not happen.

24 A. Yes. I'm not familiar with that letter.

1 You can ask Bob. I know that all the negative
2 things you're saying could happen in that letter
3 didn't happen. So I don't know whether there was
4 additional analysis and they figured out another way
5 to get around it, but it did not happen.

6 Q. Well, one thing that happened was the
7 capital gains tax that was a concern was triggered
8 into 2012, that there was a capital gain on the --
9 once the option was exercised.

10 A. Yes, it was preferred -- a preferred route
11 for Dad to pick the capital gains being paid at a
12 lower rate as opposed to what it could be subject to
13 in 2013. That was one of the factors.

14 Q. So there was an immediate tax that was
15 owed, immediate capital gains tax that was owed
16 instead of an estate tax that may have been owed
17 somewhere down the road.

18 A. That was all analyzed by Pierre --

19 Q. Okay.

20 A. -- Kevin Riley, the accountant, and Dad.
21 And I believe Dad had taken all that into
22 consideration and felt he could offset the tax that
23 was due.

1 MR. SPENCER: I want to offer Exhibits 542
2 and 544.

3 MR. ROBISON: May I have a moment?

4 THE COURT: Yes, please.

5 (Sotto voce discussion between counsel.)

6 MR. ROBISON: No objection, your Honor.
7 They're business records from Ticor Title.

8 THE COURT: 542 and 544 are admitted,
9 Ms. Clerk.

10 THE CLERK: Thank you.

11 (Exhibits 542 and 544 admitted.)

12 BY MR. SPENCER:

13 Q. First we're going to pull up 544.

14 THE COURT: So, Counsel, the deputy is
15 trying to get my attention and I'm not sure why.
16 He's got a pack of materials from somewhere.

17 BY MR. SPENCER:

18 Q. So this is an email -- as emails sometimes
19 go, you start from the bottom and read up to get the
20 context, right?

21 A. Okay.

22 Q. So the email at the bottom of Exhibit 544,
23 which is Ticor Title's 42, it's from Pierre to
24 Jessica and Todd Jaksick, subject "Incline TSS

1 Limited." You were copied. It was to Rabecca Rich,
2 right?

3 A. Yes, I see that.

4 Q. And then up above that was December 27th,
5 2012, at 1:44 p.m. And then up above there's an
6 email from Rabecca Rich. She's at Ticor Title,
7 right?

8 A. Yes.

9 Q. And it's dated December 27th, 2012, at 2:23
10 p.m. forwarding some attachments to Shelly Saltz.
11 It says "Formation docs attached." Do you see that?

12 A. Yes.

13 Q. So December 27th, 2012, was after the
14 December 21st option was exercised, correct?

15 A. That sounds correct.

16 Q. And then December 28th was when the
17 promissory note and the documents related to the
18 transfer were done, the deed?

19 A. Did you say "the 28th"?

20 Q. Yes.

21 A. That sounds about right.

22 Q. You saw the deed December 28th and the
23 unsecured promissory note December 28th, right?

24 A. Sounds about right, yeah.

1 Q. So looking at, now, Exhibit 542, this
2 appears to be the real estate option agreement,
3 correct?

4 A. At least that part of it looks like it,
5 yes.

6 Q. November 1, 2010, by Samuel Jaksick, Jr.,
7 Seller, to Incline TSS Limited.

8 A. Okay.

9 Q. And November 1st of 2010 is the date
10 that's on there, right?

11 A. Okay.

12 Q. And it appears to have the recitals and
13 then down at the bottom a \$50,000 option payment.
14 We've seen all this in the previous version, 23.5
15 and the purchase price is \$7.25 million, correct?

16 A. Yes.

17 Q. Okay. Now, flipping to the next page,
18 which is Ticor 52, at the top the first -- the very
19 top paragraph says, "Paid by delivery to Seller of
20 an unsecured note. Within ten days of the exercise
21 of the option subject to Seller's and Lender's
22 approval and Buyer's note, the Seller will be
23 reduced by the amount of the Lender's debt assumed
24 by the Buyer." And then it says "The note will

1 include a five-year maturity date, interest-only
2 payments at 6 percent per anum."

3 A. Okay.

4 Q. And "Copy of the unsecured note is attached
5 as Exhibit A." Flip to Exhibit A, Keith.

6 Ticor page 57. So there's the promissory
7 note with blanks filled in, right?

8 A. With what?

9 Q. Blanks where the date is and where the
10 principal amount is and the maturity date.

11 A. Okay. I see that.

12 Q. So this document was sent to Ticor Title as
13 being -- and was represented as being the real
14 estate option agreement, right?

15 A. Okay.

16 Q. And the terms of it were a five-year
17 maturity at 6 percent interest, not a 10-year
18 maturity at 2.25 percent interest.

19 A. Okay.

20 Q. Do you see that?

21 A. I do.

22 Q. Okay.

23 THE COURT: Be seated, if you would,
24 please. Counsel, you may continue.

1 MR. SPENCER: Thank you, your Honor.

2 BY MR. SPENCER:

3 Q. So in Exhibit 542 Ticor page 55 there's
4 that signature page again that we saw earlier.
5 We're going to compare it but we know it's the same
6 because at the bottom the page number has the "5"
7 written over it --

8 A. Okay.

9 Q. -- right?

10 A. Yes, I see that.

11 Q. So this option agreement was sent to Ticor
12 Title and represented as being the option agreement
13 after the option was exercised on December 21st.

14 A. Yeah. And you just have to ask Pierre that
15 question.

16 Q. Well, in relation -- you're the one
17 exercising the option, you on behalf of Incline TSS.

18 A. Yes.

19 Q. And you've represented and testified that
20 the terms were the 7.1 million, 10-year maturity,
21 2.5 percent interest, and interest only.

22 A. Correct.

23 Q. And this option agreement is completely
24 different -- is the same except the option agreement

1 itself, Exhibit 542, is the same except the terms
2 are changed on page two to five years at 6 percent
3 interest.

4 A. Yes. It could be a mistake by Pierre. I'm
5 not too sure. The original option was the one that
6 we recorded back in the first part of 2011, would
7 have been the option that was the controlling
8 option.

9 Q. And so how would the signature page -- the
10 same signature page get attached to two different
11 option agreements?

12 A. You'd have to ask Pierre. I'm not sure.
13 We've always gone off the one that was the -- the
14 one that was recorded in the first part of the 2011.
15 I have not seen that before and it looks like it
16 wasn't a fully -- could have been a draft version
17 that was sent in error.

18 Because like you showed on that one
19 section, the blanks that were still on there, maybe
20 his secretary or somebody sent a draft over. I'm
21 not sure, but he should be able to answer that for
22 you.

23 Q. Well, no. The option agreement itself was
24 signed, the one that Mr. Hascheff -- you keep saying

1 we need to ask Mr. Hascheff. He sent a signed
2 version to Ticor that has 5 percent at 6 percent
3 interest.

4 A. I can't answer why there's that mistake
5 there.

6 Q. Well, the mistake is that this page was
7 changed. This was the document, the real estate
8 option agreement, and this page was changed to more
9 favorable terms for Incline TSS, wasn't it?

10 A. No. That -- I don't know where that came
11 from. This is -- the \$7,250,000 at 2.25 percent is
12 the original option, so I've never seen that before.
13 I've never seen the blank pages either.

14 Q. You were copied on the email to Ticor,
15 weren't you?

16 A. It looks like I was but I don't recall
17 seeing that email.

18 Q. Exhibit 544, you received the attachments
19 that were sent to Ticor, didn't you?

20 A. If it went to my email, I would have
21 received it in my email. It doesn't mean that I
22 looked at it or saw it. It doesn't ring a bell to
23 me at all.

24 Q. Well, surely, you're more diligent than

1 that, right, in your business dealings?

2 A. Pierre was helping us handle the close and
3 Kevin Riley as well as Ticor Title and that's the
4 first time I've ever seen that document.

5 Q. This would indicate the option agreement
6 you operated under and the promissory note that was
7 -- that contained the terms that you operated under
8 were prepared sometime after this option agreement
9 in Exhibit 542, right?

10 A. Could you maybe say that again --

11 Q. Yeah. I would indicate that --

12 A. -- please.

13 Q. -- the real estate option agreement was
14 changed -- the promissory note and real estate
15 option agreement that you operate under was changed
16 from this one --

17 A. Which one are you looking at?

18 Q. I'm sorry. Thank you.

19 Exhibit 542, which is five years, 6 percent
20 interest, was changed to more favorable terms to
21 Incline TSS which were 10 years and 2.25 percent
22 interest.

23 A. All I can tell you is that the option
24 that's up there with the 2.25 percent and 10 percent

1 is the option agreement that we had and signed on
2 November of 2010 and we recorded that document.

3 Q. And you had indicated that you -- or the
4 email, Exhibit 544, indicates you received this
5 email and its attachments. And what was the reason
6 that you did not produce this in this litigation?

7 A. I'm not sure.

8 Q. What do you mean you're not sure? Did you
9 not go and find it or did you have it and lost it,
10 or what was the reason?

11 A. I'm not sure. I don't recall seeing that
12 email and we gave it -- all the emails, access to
13 our email account to our attorney and they were --
14 had access to get all of our emails.

15 Q. And the reason that you didn't produce this
16 is because these terms are not as favorable and you
17 didn't want the beneficiaries to know about it,
18 correct?

19 A. Absolutely, that is not the case.

20 Q. Well, you don't know whether this Exhibit
21 542 and 544 were produced by you in this litigation
22 at all, do you?

23 A. It's possible. I don't know who produced
24 that.

1 Q. Ticor Title produced it --

2 A. Okay.

3 Q. -- as part of their business record.

4 A. Okay.

5 Q. My question is, You don't know whether you
6 produced it at any time, do you?

7 A. I'm not sure.

8 Q. And --

9 A. I don't recall seeing that before.

10 Q. And you don't have -- you do not have any
11 explanation for why the same signature page is
12 included on the option agreement that you rely on
13 and the option agreement that Mr. Hascheff
14 represented to Ticor Title as binding.

15 A. I don't.

16 MR. SPENCER: Your Honor, Exhibit 23.6.
17 It's not admitted yet.

18 THE COURT: 23.6 is admitted, Ms. Clerk.

19 MR. ROBISON: Your Honor, again, I've
20 stipulated in evidence all of the 23-point series.

21 THE COURT: Right. My clerk needs to
22 checkmark every time an exhibit is referenced.

23 BY MR. SPENCER:

24 Q. So Exhibit 23.6, Memorandum of Agreement

1 and Option, is that what you were referring to was
2 filed earlier?

3 MR. ROBISON: Objection.

4 THE COURT: I'm sorry?

5 BY MR. SPENCER:

6 Q. I'm sorry. Let me start over.

7 Exhibit 23.6, is this the document that you
8 said was recorded earlier?

9 MR. ROBISON: Objection, how can he see
10 unless he sees the recordation stamp, which is on
11 the first page.

12 THE COURT: On this particular issue if
13 you'll just approach the witness and show him the
14 witness binder and let him look, please.

15 MR. SPENCER: May I approach?

16 THE COURT: And, Counsel, please use your
17 discretion. I know that you're presenting evidence
18 as efficiently as possible. But on some of these
19 documents that the witness might not expect to be
20 presented it's helpful to let the witness have a
21 moment to look at it and to reflect upon it in its
22 entirety.

23 MR. SPENCER: Appreciate it, your Honor.

24 I'll do that. May I approach?

1 THE COURT: Yes, please.

2 BY MR. SPENCER:

3 Q. There's the original record copy of Exhibit
4 23.6.

5 A. Okay.

6 Q. Take a moment to review that.

7 (Witness reviewing document.)

8 THE WITNESS: Yes. This is what I was
9 thinking that we did record a memorandum of the
10 option.

11 BY MR. SPENCER:

12 Q. Okay. And so looking at this Exhibit 23.6,
13 nowhere in that document does it reference the terms
14 or attach the option agreement, does it?

15 A. I'm not sure. Have to ask Pierre that one.
16 I don't see that option itself attached here.

17 Q. All right. So the terms we've been talking
18 about are not included in what was recorded back in
19 -- on February 15th, 2011, correct?

20 A. I don't see them in there. I thought they
21 were probably in here.

22 Q. All right. So we go back to this issue
23 regarding the real estate option agreements and the
24 question becomes, We have two separate versions with

1 the exact same signature page attached to them,
2 Exhibit 542 and 23.20, and they have different
3 terms, right?

4 A. From what you showed me, yes, it looked
5 like they did.

6 Q. And the five-year maturity date
7 interest-only payments at 6 percent or the 10-year
8 maturity interest-only payments at 2.25 percent per
9 anum, which one of those do you believe -- if you
10 know, which one of those do you believe your dad
11 thought applied?

12 A. I know which one he thought applied.

13 Q. Which one?

14 A. The 2.25 percent and the 10 years, because
15 he was trying to give us all the flexibilities to
16 make this opportunity viable so that we could afford
17 to get the debt paid down and keep the Tahoe house.

18 Q. Well, the debt gets paid down a lot quicker
19 if you have a shorter maturity with a higher
20 interest rate, doesn't it?

21 A. He was giving us every opportunity he could
22 on the 10 years interest only so that we had enough
23 time to facilitate some of the transactions that he
24 had orchestrated along with the Tahoe transaction to

1 materialize so we had opportunities to pay that debt
2 down.

3 Q. You don't have anything in writing from
4 your father that indicates that other than these two
5 real estate option agreements, do you?

6 A. Pierre Hascheff would be aware of that.

7 Q. What about you?

8 A. And what was the question?

9 Q. You don't have anything in writing that
10 indicates what you said about your father knowing
11 which of these agreements applied, 23.5 or 542.

12 A. Like I said, until you put that up there
13 today, that was the first time I'd ever seen the
14 6 percent and the 5 years. So I've never seen that
15 in the last 10 years, so that would be something
16 that you'd have to ask Pierre why he sent that to
17 Ticor Title. I have no idea.

18 Q. Did you do anything to say, Hey, wait.
19 This is the wrong agreement or you sent -- Mr.
20 Hascheff, you sent Ticor Title the wrong agreement
21 or do anything that indicated that you objected to
22 it?

23 A. I did not. I don't recall seeing that at
24 all.

1 Q. Okay. Well, you would certainly agree,
2 though, that Exhibit 23.5 and Exhibit 23.20, which
3 is the 10 years at 2.25 percent interest only, is a
4 much better deal for Incline TSS than Exhibit 542,
5 which is 5 years at 6 percent.

6 A. Yes, absolutely.

7 Q. It would have been very easy just to change
8 those terms and switch out the page there, right?

9 A. Not -- we wouldn't do anything like that.

10 Q. Well, we talked about the page five at the
11 end, so there's some irregularities with this option
12 agreement, wouldn't you agree?

13 A. It's possible on that page with the
14 6 percent and the 5-year balloon that I've never
15 seen that before.

16 Q. So the signature pages being the same, do
17 you know when -- does that help you recall when that
18 signature page was signed on the two option
19 agreements?

20 A. I thought we still -- are we talking about
21 November 1, 2010?

22 Q. Yes.

23 A. Yes. I was looking at the recorded
24 memorandum of option. It also has a date of

1 November 1st, 2010, but it wasn't recorded for a
2 few months, but it was -- a signature was on the
3 first as well so we probably signed the memorandum
4 option on the exact same day we signed the option.

5 Q. You're talking about 23.6?

6 A. 23.6, yeah, is -- the date written in there
7 is the 1st of November. So that's pretty typical
8 where we would sign the option and then the
9 memorandum of the option.

10 Q. Any reason why you would not have attached
11 the option agreement to the memorandum that was
12 recorded?

13 A. Sorry to keep deferring to Pierre, but you
14 have to ask Pierre why he doesn't attach the option
15 to the document that he records. I'm not exactly
16 sure.

17 Q. So if you don't know those kinds of things
18 and you have a duty of disclosure to your
19 beneficiaries in the family trust --

20 MR. ROBISON: Objection. This was not a
21 fiduciary duty. Sam had not died. Sam is the
22 trustee at this period of time, not Mr. Jaksick.

23 THE COURT: Sustained.
24

1 BY MR. SPENCER:

2 Q. All right. So let's move to that, then.
3 After your father's tragic death, the SSJ's Issue
4 Trust, you mentioned earlier, received the \$6
5 million in life insurance proceeds.

6 A. Correct.

7 Q. And how long after your father's death were
8 you making a claim on those proceeds?

9 A. I would say relatively quickly because of
10 the fact that there was a payment that I believe we
11 were late on and so we had contacted our -- the
12 insurance agent pretty quickly to let him know the
13 circumstance.

14 He's also somebody we know as, not
15 necessarily a family friend, but somebody that we
16 know and letting him know that we wanted to invite
17 him to Dad's service and stuff when it was coming
18 up. So I would say it could have been in the next
19 few days or so, wanted to make sure that the
20 payments were current.

21 Because, like I said, there was a period of
22 time there where some of those payments were late
23 making monthly payments on that.

24 Q. What payment was due?

1 A. A payment on the life insurance.

2 Q. A premium payment on the life insurance was
3 due?

4 A. Yes, yes.

5 Q. Okay. And so you rushed to make a claim to
6 get the life insurance proceeds because there was a
7 life insurance premium due?

8 A. No. Because we -- there was a payment that
9 was -- I kinda remember something along the line of
10 this: There was something to do with maybe one of
11 the payments being late. That's just what I recall
12 right now, is why I think we got in touch with Jeff
13 pretty quickly.

14 Q. Jeff Grenert?

15 A. Yes.

16 Q. So the payments you're referring to are
17 life insurance premium payments.

18 A. Yes.

19 MR. SPENCER: Your Honor, offer Exhibit
20 417.

21 MR. ROBISON: No objection, your Honor.

22 THE COURT: 417 is admitted, Ms. Clerk.

23 (Exhibit 417 admitted.)
24

1 BY MR. SPENCER:

2 Q. So this is a letter from Pacific Life dated
3 April 23rd, 2013, from Michele Nguyen, Claims
4 Administration, to Kathy Grenert, right?

5 A. Yes, it looks like it. Kathy Grenert, yes.

6 Q. Two days after your father's death there's
7 already been a claim submitted and a response
8 received in relation to getting those proceeds,
9 right?

10 A. I believe that Kathy is Jeff's Grenert's
11 Mom and so she could have produced that from their
12 office right there, here in Reno.

13 Q. My question was about the timing. Two days
14 after your dad's death on April 21st, 2013,
15 there's already been a claim submitted and a
16 response received back, right?

17 A. It would have been probably just a phone
18 call letting Jeff know. Obviously, yes, that's
19 close to Dad's passing away but we wanted to follow
20 through and make sure that Jeff was aware of the
21 circumstances.

22 Q. So you were in a hurry to get those
23 proceeds, weren't you?

24 A. We wanted to make sure that they knew about

1 them.

2 Q. We wanted --

3 A. Wanted to make sure they knew Dad had
4 passed away.

5 Q. Okay. So this is a letter asking for
6 information to process the claim for benefits. It
7 says "Our records indicate the beneficiary of the
8 policy is the Issue Trust dated 2/21/07. In order
9 to process a claim for benefits, we will need to
10 receive the following."

11 So the claim wasn't presented already but
12 they had been notified already. That's what I
13 should have said.

14 A. My understanding what had happened was I
15 would have been talking to Jeff just about Dad
16 passing away as a family friend. And Jeff had just
17 talked to Dad on the day before Dad passed away at
18 the baseball field and Jeff -- I kinda recall him
19 hearing about it and contacting me or I contacted
20 him. I don't remember how it happened.

21 So this is Jeff Grenert has knowledge as to
22 Dad passing away and then this is his mom writing a
23 letter to Pacific Life.

24 Q. Receiving a letter from Pacific Life.

1 Shows the recipient at the top. It's from Michele
2 Nguyen, Claims Administration.

3 A. Okay.

4 Q. So there was emergency in getting these
5 funds because there were some premium payments due,
6 right?

7 A. My understanding is there was a payment
8 that was due that was possibly late on -- because we
9 were making the payments monthly at that point in
10 time. And I kinda remember there being a
11 possibility of a payment being late and that was
12 part of the discussions with Jeff. I don't remember
13 all the details. That's just kinda what is jumping
14 out at me right now.

15 Q. And then plans were already being made for
16 the use of those \$6 million proceeds, correct?

17 A. Not -- I don't believe so. No plans were
18 being made for the use of those at this point in
19 time.

20 Q. A few weeks later.

21 A. Dad had always talked about in the event
22 that something did happen to him and he had the
23 insurance still in full force and effect that some
24 of those funds could be used to pay down towards the

1 Tahoe house.

2 Q. Uh-huh. And so by the first part of the
3 June plans were being made for the use of those
4 funds, \$6 million.

5 A. Yeah. I'd say about the -- towards the end
6 of May, the first part of June Kevin Riley, the
7 family accountant, had kinda come up with an idea
8 that he thought made a lot of sense to be able to
9 utilize a good portion of these funds to put into
10 Incline TSS, whereby the money would get into
11 Incline TSS and then the funds could then land over
12 into the Family Trust, who didn't have any money at
13 that point in time, to help fund the Family Trust.
14 That's kinda how things got started, is how I
15 recall.

16 Q. The Issue Trust would give money to the
17 Family Trust?

18 A. The Issue Trust would give money to Incline
19 TSS and Incline TSS would give money to the Family
20 Trust to help fund the Family Trust because the
21 Family Trust didn't really have funds at all.

22 Q. Some of the \$6 million was used to fund the
23 operating expenses of the Family Trust and then
24 later in March of 2014 approximately \$5 million of

1 the funds were used to pay down the Bank of America
2 debt.

3 A. Yeah. I'd say the way that Kevin kinda had
4 it orchestrated that about \$600,000 of the life
5 insurance proceeds went into or from SSJ's Issue
6 Trust into Incline TSS, from Incline TSS into SSJ
7 LLC, and then would land into the Family Trust. And
8 that's how the Family Trust got funded, I would say,
9 from July-August range for -- until March or so.

10 Q. All right. And then the -- one of the
11 things mentioned earlier, in order to move the \$6
12 million or have the opportunity to move the \$6
13 million out of the Issue Trust, you wanted to get
14 some of the issue, Stan and Wendy and others,
15 involved with that decision. Is that right?

16 A. So the funds could be used to buy into
17 Tahoe?

18 Q. Yes.

19 A. Yes.

20 Q. And so you contacted Maupin, Cox, LeGoy
21 about the issue and the Agreement and Consent to
22 Proposed Action -- the first Agreement and Consent
23 to Proposed Action was created. Is that right?

24 A. Correct.

1 Q. And you may use it, the other attorneys may
2 use it, but the Agreement and Consent to Proposed
3 Action, if we call that the "ACPA" --

4 A. Okay.

5 Q. -- would you understand that that's an
6 Agreement and Consent to Proposed Action?

7 A. Yes, sir.

8 MR. SPENCER: Okay. And so, your Honor,
9 I'll offer Exhibit 414.

10 MR. ROBISON: Stipulated.

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

12 (Exhibit 414 admitted.)

13 BY MR. SPENCER:

14 Q. This was the Agreement and Consent to
15 Proposed Action in relation to the transaction we
16 just mentioned. And what do you understand about
17 the purpose of an ACPA, if you know?

18 A. Basically, what it says is we're getting
19 the consent of the other beneficiaries that they're
20 in agreement with moving forward with a transaction
21 that's described in the ACPA.

22 Q. Okay. And in order to get that consent,
23 what do you believe as a fiduciary you need to
24 convey in the way of information to fully inform a

1 beneficiary about whether to sign the document?

2 A. Well, No. 1 is when I first mentioned that
3 -- to Bob LeGoy, who was -- who is and was the
4 attorney for the Family Trust and the Issue Trust, I
5 had mentioned to him, Is there something that we
6 should utilize to document this transaction?

7 And Bob LeGoy says, You don't need anything
8 to document the transaction. You with the powers
9 that you have as the trustee of the Issue Trust have
10 the right to do this on your own without involving
11 the beneficiaries. And I said, Well, I want to make
12 sure that everybody's in agreement with it and how
13 do you think we should document that?

14 So Brian McQuaid, who is an attorney at
15 Maupin, Cox, LeGoy, and Bob LeGoy came up with this
16 concept. This is the first Agreement and Consent to
17 Proposed Action I've ever seen or heard of at this
18 point in time.

19 Q. And flip to the last page of Exhibit 414.
20 That's the signature page on this ACPA, right?

21 A. Yes, that looks right.

22 Q. June 5th, 2013.

23 A. Yes.

24 Q. And do you believe that to be -- to have

1 been around the time it was signed?

2 A. I believe that to be the day it was signed.

3 Q. Okay. And that was 14 days after your
4 dad's death, right?

5 MR. ROBISON: Objection, your Honor. Bad
6 math.

7 THE COURT: It was not -- maybe I missed
8 it.

9 MR. SPENCER: I miscalculated.

10 THE COURT: So, sustained as to
11 miscalculation.

12 MR. SPENCER: I apologize. Let me redo
13 that.

14 BY MR. SPENCER:

15 Q. A month and 14 days after your father's
16 death.

17 A. Yes.

18 Q. Sorry. Jumped the gun here.

19 MR. SPENCER: Thank you for that.

20 BY MR. SPENCER:

21 Q. And so that's -- again, you signed as
22 trustee of SSJ's Issue Trust, the primary
23 beneficiaries of the -- doesn't say -- and then
24 Incline TSS Limited. You signed as manager, member,

1 and -- member and trustee of the two entities you
2 mentioned earlier.

3 A. Okay.

4 Q. SSJ's Issue Trust, who were the primary
5 beneficiaries. It was everybody, wasn't it?

6 A. Primary beneficiaries of the Issue Trust
7 are right there, "Todd, Stan, and Wendy," was my
8 understanding.

9 Q. Well, it's not your understanding. You're
10 the trustee. Who did you believe the primary
11 beneficiaries to be?

12 A. At that point in time the primary
13 beneficiaries, based off what Bob LeGoy had
14 indicated and Brian McQuaid indicated. They were
15 the ones that prepared the signature page and they
16 were the ones that felt that those were the primary
17 beneficiaries. I didn't dispute what the attorneys
18 prepared.

19 Q. So you didn't as trustee know who your
20 beneficiaries were?

21 A. I knew that the primary beneficiaries were
22 right there, Todd, Stan and Wendy. And then it was
23 later determined that there was some more issue
24 associated with each one of us individually. It

1 branched out.

2 Q. The trust had been in existence for six
3 years by this time.

4 A. Correct.

5 Q. And so for six years you didn't know who
6 all the beneficiaries of the Issue Trust were and
7 you were the trustee, right?

8 A. Yes, that is the case. Dad had always
9 explained it to me that the primary beneficiaries
10 were Todd, Stan and Wendy, and that's what we always
11 kind of based everything off of, was Todd, Stan and
12 Wendy were the primary beneficiaries of the Issue
13 Trust.

14 Q. Well, and as trustee do you ever take
15 responsibility for these things yourself as opposed
16 to blaming them on Dad or the trust team?

17 MR. ROBISON: Objection, argumentative.

18 THE COURT: Overruled. And with that --
19 hold your answer -- ladies and gentlemen, we'll take
20 our afternoon recess.

21 (Whereupon, jurors were
22 admonished and excused.)

23 THE COURT: Ladies and gentlemen, we have a
24 hard stop at 4:30. I wanted you to leave the

1 building and beat the traffic.

2 With that, counsel, you may continue.

3 BY MR. SPENCER:

4 Q. So we were talking about the Exhibit 14,
5 the ACPA, Lake Tahoe ACPA -- life insurance proceeds
6 ACPA, I should say.

7 A. Okay.

8 Q. We were looking at the last page, TJ 0076.
9 I left a question pending.

10 Do you want me to ask it again?

11 A. Yes. I don't know what it was. I'm sorry.

12 Q. My question was, Do you ever take
13 responsibility for any of this stuff as trustee?
14 You talk about Dad wanted this and that or you've
15 had this trial team. I'm talking about you as a
16 trustee taking responsibility for any of this.

17 MR. ROBISON: Objection, foundation, your
18 Honor.

19 THE COURT: Overruled.

20 THE WITNESS: I would ask are we talking
21 about the signature lines, or something?

22 BY MR. SPENCER:

23 Q. Okay. Well, I'll ask that question again
24 as it comes up, so let me just move on.

1 So this is June 5th, 2013. It came up
2 when we were talking about the primary
3 beneficiaries. We talked earlier about this SSJ's
4 Issue Trust being different than the Family Trust in
5 that every time an issue, a descendant of Sam, was
6 born, there would be a new division or a new branch
7 that would be part of the beneficiaries of that
8 trust. Do you remember that?

9 A. I do.

10 Q. Okay. And so this particular trust, the
11 SSJ's Issue Trust, did not have primary
12 beneficiaries the way the Family Trust had them, did
13 it?

14 A. This document was prepared by Maupin, Cox,
15 LeGoy, the guys who actually drafted the SSJ's Issue
16 Trust, so I felt that they knew what they were doing
17 when they called those primary beneficiaries "Todd,
18 Stan and Wendy."

19 Q. And they weren't even sure who owned
20 Incline TSS at this time, were they?

21 A. Incline TSS. I believe they were aware of
22 who the owners were of Incline TSS.

23 Q. Were or were not?

24 A. I think they were aware of it when we

1 signed the signature page because Brian McQuaid
2 prepared -- the attorney at Maupin, Cox, LeGoy --
3 prepared this signature page. And so he must have
4 known who the owners of Incline TSS were because he
5 had the signature blocks down there.

6 Q. I said "around this time." So this was
7 June 5th, 2013. I'm talking June 1st,
8 June 2nd. Maupin, Cox, LeGoy did not even know
9 who the owners of Incline TSS were, did they?

10 A. I can't say that for sure, whether they
11 knew. But I do recall discussions that they wanted
12 to confirm who the owners were at about this time.

13 MR. SPENCER: Your Honor, I offer 471.

14 MR. LATTIN: Stipulate.

15 THE COURT: 471 is admitted.

16 (Exhibit 471 admitted.)

17 BY MR. SPENCER:

18 Q. We'll start, as this is an e-mail thread,
19 with the last page of the document. You see, Mr.
20 Jaksick, this is an email from Bob LeGoy to you and
21 Jessica Clayton of May 24th, 2013?

22 A. Okay.

23 Q. "Todd and Jess, is this the company that
24 owns your house at Incline and owes Sam's Family

1 Trust \$7.2 million," and the subject line "Incline
2 TSS Limited." Then it says, "If so, it looks like
3 Todd is the sole manager of it. Who are the members
4 and in what percentages?"

5 So, Mr. LeGoy didn't know who the members
6 of the Incline TSS or their percentages at this
7 time, May 24th, did he, according to that?

8 A. According to the email he may not have
9 known.

10 Q. Okay. And then the next page up, page two,
11 Jessica responds to Mr. LeGoy's email, "Morning,
12 Bob. Todd wanted to set up a meeting with Stan and
13 Wendy regarding the Tahoe house. Wondered what's
14 your estimated time frame on getting him the letter
15 stating his intent?"

16 A. Okay.

17 Q. All right. So Ms. Clayton was working for
18 you, correct?

19 A. And she was working for the family. She
20 worked for me at this time. She worked for Stan at
21 this time. She was helping out just about anywhere
22 she could because she was Dad's longtime secretary.

23 Q. And yours, right?

24 A. Pretty much worked for a bunch of entities.

1 She worked for myself, she worked for some of Stan's
2 companies, she worked for all of Dad's companies,
3 she worked for some of the partner companies. She
4 worked for quite a few different entities.

5 Q. Okay. And so she's inquiring about this
6 letter stating Stan and Wendy's intent.

7 Were you aware of that inquiry?

8 A. Yeah. I would have been standing with her
9 and I would have told her what to email, that Stan
10 and Wendy and I were having discussions on how we
11 wanted to move forward with the Tahoe transactions.
12 And so we basically said, you know, how should we
13 document this with a letter of intent or how should
14 we do that.

15 And that's when Brian McQuaid came back
16 with he thought the ACPA would be the appropriate
17 venue, which we had never heard of before.

18 Q. And did you on occasion have a habit of
19 dictating emails to Jessica that she would type and
20 send?

21 A. Yes.

22 Q. And she also received all your father's
23 emails, didn't she?

24 A. Jess was Dad's primary secretary and Dad

1 didn't have an email account that he used. And so
2 everybody sent -- he would call Jessica his command
3 post and everybody sent things to Jessica and she
4 would distribute them out from there.

5 Q. So anything Sam's attorneys sent to him,
6 flowed through Jessica's email.

7 A. Yes.

8 Q. Unless it was sent by mail or some --

9 A. Or Dad would have got it when he was at
10 their office, you know, or things like that.

11 Q. Let me restate the question. Any email
12 that your dad would have received would have flowed
13 through Jessica Clayton's email.

14 A. That sounds accurate, yes.

15 Q. All right. And then above that on the
16 second page of Exhibit 471 it talks about the draft,
17 "getting the draft next Tuesday" and then, "Asks do
18 you have an operating agreement for the LLC? If
19 not, we probably should prepare one not long after
20 you all sign the initial agreement. Todd will be
21 the only necessary signature. Probably will want
22 Stan and Wendy to also sign."

23 Did Incline TSS have an operating
24 agreement?

1 A. Yes.

2 Q. And prior to May 30th 2013, I guess, is
3 more specific.

4 A. Yes.

5 Q. And Mr. LeGoy, obviously, at that point in
6 time did not have a copy of it so who would have
7 prepared it?

8 A. Mr. Pierre Hascheff.

9 Q. Okay. And then onto the first page of
10 Exhibit 471, Mr. McQuaid then sends an email to
11 Jessica copying Mr. LeGoy and you on June 1st,
12 2013, and indicates that "you have a desire to make
13 the agreement as binding as possible on all
14 interested persons and their family." Do you see
15 that sentence there at the end of the first
16 paragraph? It starts with "This is especially
17 important."

18 A. Yes.

19 Q. "In light of Todd's understandable desire
20 to make sure the agreement is as binding as possible
21 on all interested parties and their families."

22 A. I see where it says that.

23 Q. And why was it that that was a motivation
24 of yours?

1 A. I don't really recall that. We just wanted
2 a binding agreement like we were sending a letter of
3 intent or regular document but we wanted it to be
4 binding so that in any event we could try to avoid
5 being here at some point in the future.

6 Q. And to be clear, at the top this is
7 regarding drafting. In the first sentence to Jess,
8 "In reviewing the materials in preparation for
9 drafting the agreement regarding the use of the life
10 insurance proceeds by SSJ's Issue Trust."

11 Do you see that?

12 A. Yes, I see that.

13 Q. So that statement about wanting to make
14 this as binding as possible on all interested
15 parties and their families related to the interested
16 parties in the Issue Trust, correct?

17 A. It certainly is possible.

18 Q. And there were adult beneficiaries of the
19 Issue Trust besides you, Stan and Wendy, wasn't
20 there? And I'm talking about as of June 1st,
21 2013.

22 A. Yes.

23 Q. And those --

24 A. There was one.

1 Q. Lexi?

2 A. Yes.

3 Q. Lexi was an adult and she did not sign this
4 Exhibit 14 ACPA, did she?

5 A. No.

6 Q. And then Exhibit 471, Mr. McQuaid outlines
7 the steps of the transaction where Issue Trust --
8 and I'm summarizing but correct me if I misread --
9 "Issue Trust will use life insurance proceeds on
10 Sam's life to make a capital investment in Incline
11 TSS." Do you see that?

12 A. Okay.

13 Q. "Incline will then use the new capital to
14 pay off approximately \$7 million note due to SSJ
15 LLC."

16 A. For the membership interest to be
17 determined, yes, I see that.

18 Q. "SSJ LLC will then use the funds received
19 from Incline to pay off approximately \$6.3 million
20 Bank of America mortgage on the Tahoe house either
21 directly or distributing the funds to the Family
22 Trust to be used to pay it off."

23 A. Okay.

24 Q. The basic structure?

1 A. That's pretty much what I recall, yes.

2 Q. All right. And then you mentioned in
3 paragraph one "in exchange for a to-be-determined
4 membership interest in Incline TSS."

5 A. Correct. Because we were gonna get an
6 appraisal to determine the value of it.

7 Q. Okay. And in relation to this transaction
8 as it's laid out here, you were the trustee of the
9 Issue Trust, co-trustee of the Family Trust, manager
10 of the Incline TSS, manager of SSJ LLC, right?

11 A. Yes.

12 Q. So all -- you were in control of all those
13 entities that were involved in this whole
14 transaction.

15 A. That sounds accurate.

16 Q. And so the ACPA, which is Exhibit 14, was
17 intended -- or the desire was to get Stan and Wendy
18 involved in making the decision to use the \$6
19 million in proceeds -- life insurance proceeds.

20 A. Correct.

21 Q. And then Mr. McQuaid, two sentences below
22 the yellow, he's there again asking for the current
23 operating agreement for both Incline TSS and SSJ
24 LLC.

1 A. Okay.

2 Q. Who prepared the operating agreement for
3 SSJ LLC? Do you know?

4 A. I do.

5 Q. Who's that?

6 A. Pierre Hascheff.

7 Q. All right. So Mr. Hascheff had those
8 documents relating to the operating agreement, those
9 entities.

10 A. Yeah. And we would have had -- I would
11 have had them also.

12 Q. Yeah. And you also would have had in your
13 possession at this time, June of 2013, all of the
14 file boxes that Mr. Hascheff had on the Jaksick
15 family businesses, right?

16 A. No.

17 Q. When did he turn over all of his files
18 after he stopped practicing to you?

19 A. I'd say it kinda rings a bell late 2014 or
20 2015 range.

21 Q. Okay. And that was 33 or 34 boxes of
22 documents, wasn't it?

23 A. Yes.

24 Q. And what did you do with those boxes of

1 documents?

2 A. We had them in storage.

3 Q. Where?

4 A. At the office when we got them we -- Pierre
5 was selling his office so he had to get rid of the
6 files out of there. He said he could put them into
7 storage but that there was going to be fees
8 associated with it and after a period of time they
9 would get destroyed.

10 And he recommended that we come pick them
11 up, so I remember I brought them back to our Damonte
12 Ranch office and stored a bunch of them there in our
13 Damonte Ranch office. I remember giving -- putting
14 some in Stan's office, entities associated with
15 Stan. That's pretty much what I recall, is they
16 went to our Damonte office.

17 Q. All right. So Mr. Hascheff is in
18 possession of these documents regarding the entities
19 and the reason you did not hire him to prepare an
20 ACPA or letter of intent, or whatever you thought it
21 was at the time, was because he had closed his
22 office. Is that right?

23 A. He became a judge.

24 Q. January -- justice of the peace?

1 A. I guess. A judge.

2 Q. And that was in January 1, 2013, when he
3 took the bench?

4 A. Pretty close to there. I'm not sure the
5 exact date but I'd say the first part of 2013.

6 Q. All right. Then you had to go back to
7 Maupin, Cox, LeGoy regarding this legal work and
8 they did not have these documents Mr. Hascheff had.

9 A. Go back to Maupin, Cox, LeGoy. Can you say
10 that --

11 Q. Go back to Maupin, Cox, LeGoy to prepare
12 these -- the ACPA and they did not have the
13 documents Mr. Hascheff had.

14 A. That sounds correct, yes.

15 Q. And your testimony is you did not get Mr.
16 Hascheff's boxes until '14 -- 2014 or 2015.

17 A. That sounds about right, yes.

18 Q. Okay. But you had copied yourself what you
19 provided to Maupin, Cox, LeGoy.

20 A. I must have.

21 Q. And going back to Exhibit 14, last page
22 again, you see there that has a document with a "3"
23 at the bottom?

24 A. Yes.

1 Q. And then other than that, there's no
2 identifying information at all. There's no footer
3 or anything stating what it would otherwise be
4 attached to, is there?

5 A. I don't necessarily see anything.

6 Q. It's an orphan signature page. It could be
7 attached to anything, couldn't it?

8 A. I don't believe so, because, I mean, it
9 shows who the parties are, the Issue Trust, the
10 primary beneficiaries, Incline TSS, those tied to
11 the first page of who the parties are.

12 Q. Well, but we know that doesn't encompass
13 all of the primary beneficiaries, though, don't we?

14 A. Like I said, the document was prepared by
15 the gentleman that actually prepared the Issue Trust
16 original document.

17 So we relied on them to be able to prepare
18 this document for us with the ACPA and my
19 understanding is that Todd, Stan, and Wendy at the
20 time were the primary beneficiaries.

21 Q. And that was your understanding at the time
22 as the trustee of the Issue Trust.

23 A. At the time, yes.

24 Q. Did you ever talk to Lexi Smrt about this

1 SSJ's Issue Trust that you recall?

2 A. What do you mean by that?

3 Q. You're the trustee of the Issue Trust.

4 Did you ever talk to Lexi about it?

5 A. Yes.

6 Q. Okay. On how many occasions?

7 A. Several. We had a couple meetings early on
8 in 2013. Then when we prepared the accountings for
9 the Issue Trust, we had a meeting at our office in
10 Reno and Kevin Riley, the family accountant, came up
11 to town as well as Wendy, Lexi, and Stan came to the
12 meetings. And we went through the documents, the
13 trusts and other information and quite a few other
14 times but I just can't think of them right off the
15 top of my head.

16 Q. Looking at page one of Exhibit 14, A, B, C,
17 D, and E, those are recitals. A identifies the \$6
18 million in life insurance proceeds you received.
19 Reference subparagraph K.2, article Roman 4 of the
20 Issue Trust permits the trustee to invest and
21 attribute trust assets and all forms of legal
22 entities, including LLCs on terms and conditions
23 approved by the trustee in the trustee's
24 discretion." Right?

1 A. Yes.

2 Q. And then C says that "the company" that
3 would be up above, Incline TSS Limited, right? It's
4 the first paragraph. See where it says "Company"
5 there in parentheses?

6 A. I do, yes.

7 Q. Incline TSS Limited is the company.

8 A. Yes.

9 Q. So down on C the company is the owner of
10 Jaksick Family real property. Do you see that?

11 A. I do.

12 Q. Okay. And the company is the owner, that
13 means that you through your trust was the owner --
14 the owners of the company, right?

15 A. At that time yes, I was the -- through the
16 trust. The trust were the owner of Incline TSS.

17 Q. Nowhere in Exhibit 14 does it identify and
18 disclose to the beneficiaries of the Issue Trust who
19 the owners of the company Incline TSS are, does it?

20 A. Not that I'm aware of.

21 Q. And that would be something that a trustee,
22 if you're trying to get an Agreement and Consent to
23 Proposed Action would want to tell the beneficiaries
24 so they would know who it is that they're investing

1 with, correct?

2 A. They did know who we were investing it.

3 Q. Can you answer my question, sir?

4 A. We had discussions about that.

5 Q. My question was, That would be something
6 that the beneficiaries would need to know in order
7 to be fully informed about whether to sign this
8 ACPA, right?

9 A. I'm not sure. I'd have to defer to Brian
10 McQuaid and Bob LeGoy, who prepared it knowing what
11 the intended purpose of the document was. I didn't
12 make any changes or comments to the document. They
13 just prepared it and they thought it was
14 satisfactory so, I mean, I don't know the answer to
15 that.

16 Q. So you as trustee of the Issue Trust have
17 no idea what you needed to disclose to the
18 beneficiaries to inform them about signing this
19 ACPA, Exhibit 14.

20 A. My understanding was, as you read in a
21 previous email, that Bob LeGoy had stated that we
22 didn't even need to do the ACPA. And if there was
23 gonna be a signature on it, it would have to be
24 myself because the trustee powers that Dad had given

1 me allowed me to make that investment.

2 But I wanted to involve Stan and Wendy in
3 the decision-making process and so that's why we
4 prepared the ACPA the way we did.

5 Q. Is there a reason you don't want to answer
6 that question?

7 A. If you could ask it again, I thought I did.

8 Q. My question was, As the trustee of the
9 SSJ's Issue Trust --

10 A. Okay.

11 Q. -- you didn't have any idea what it was
12 that you needed to disclose to your beneficiaries in
13 order to inform them about whether to sign this
14 ACPA, Exhibit 14, did you?

15 A. I relied on our counsel to prepare the
16 document to put in there what they thought we needed
17 to put in there.

18 Q. Which means you didn't know yourself.

19 A. I didn't know exactly what needed to be
20 disclosed. That's why I relied on them to do so.

21 Q. Well, certainly something as simple as who
22 owns the company you're about to invest money into
23 would be something you'd want to tell the
24 beneficiaries, right?

1 A. I previously had discussions with them
2 surrounding that and they knew who the owners were.

3 Q. Okay. And you had discussions with Stan
4 about it but you did not have any with Wendy, did
5 you?

6 A. Yes, I did.

7 Q. When did that happen?

8 A. I would say a month or so before this or
9 two weeks before this, or something like that.

10 Q. So you don't really know.

11 A. I don't know the exact meeting time but I
12 do absolutely recall the circumstances of the
13 meeting at the office indicating to Wendy that I was
14 the owner of -- the trusts were the owner of the
15 Incline property at that time.

16 And we fulfilled all of Dad's goals that
17 Dad wanted to accomplish in 2012 and basically
18 because of the transfers that Dad had set forth,
19 there wasn't gonna be any estate tax that was going
20 to be due on this transaction.

21 And that per our discussions and stuff with
22 Kevin Riley that we analyzed utilizing some of the
23 life insurance proceeds to be able to buy into
24 Incline TSS, so she was aware of the circumstances.

1 Q. Where is anything in writing that says,
2 Wendy, my beneficiary, I'm hereby telling you
3 Incline TSS is owned by me and my entities
4 100 percent? You don't have a single thing, do you?

5 A. Just something jumped out at me was another
6 ACPA that we used for Stan's buy-in that got more
7 descriptive and said exactly who the owners were
8 that Wendy signed.

9 Q. Well, this was the first ACPA, Exhibit 14,
10 so it wouldn't have been before this one.

11 A. That's correct. It would have been after
12 that.

13 Q. And so you had told Wendy about who owned
14 Incline TSS after Exhibit 14 was signed.

15 A. No. Like I just testified to earlier, I
16 verbally told her who the owner was prior to her
17 signing that document.

18 Q. Nothing documented, though, that shows
19 that.

20 A. Not that I recall.

21 Q. All right. And it says in C the company is
22 the owner of the Jaksick family real property.

23 Where is that defined anywhere?

24 A. I apologize to keep deferring to counsel

1 but I didn't -- Brian McQuaid put that in there, so
2 I'm not sure why he did that.

3 Q. That's a good segue to my question.

4 What is it that you as trustee take
5 responsibility for instead of someone you're going
6 to defer to?

7 A. Would you be more specific?

8 Q. Just right here, there's some -- there's a
9 disclosure about the company that's not in here.
10 There's a statement "Jaksick family real property"
11 that's not defined and you're blaming that on other
12 people. When are you going to take responsibility
13 for these types of things as trustee?

14 A. Well, like I mentioned earlier, Bob LeGoy
15 had previously said that we didn't even need to do
16 this document and so I felt that they were drafting
17 it according to -- they knew all the terms, they had
18 the discussions with Kevin Riley and myself,
19 everybody on the phone.

20 And I felt the document covered everything
21 that it needed to cover at the time. I just don't
22 know why he used the words "Jaksick family real
23 property." Maybe that's what he was familiar with.

24 Q. And if you didn't really need to do Exhibit

1 14, then it really doesn't have any meaning or
2 effect, does it?

3 A. I think that --

4 MR. ROBISON: Objection, calls for legal
5 conclusion, your Honor.

6 THE COURT: Overruled, only because of the
7 prior testimony. Just if you know, Mr. Jaksick, you
8 can answer the question.

9 THE WITNESS: Okay. Could you ask it
10 again, please?

11 BY MR. SPENCER:

12 Q. Yeah. You've testified it really -- that
13 you were told you really didn't need to do this
14 particular Exhibit 14 ACPA, and if you didn't need
15 to do it, then it really doesn't have any meaning or
16 effect, does it?

17 A. I guess you could look at it one of a
18 couple of ways. That's one potential outcome or
19 that we discussed it, we all looked at it, we
20 reviewed what we were gonna do with the life
21 insurance proceeds, and went to the length of
22 preparing the document and everybody signed it to
23 approve utilizing those funds to purchase into
24 Tahoe.

1 Q. Okay. And you wanted to make it as binding
2 as possible, right?

3 A. I don't recall ever using those words.

4 Q. But that's a discussion you and Mr. McQuaid
5 had, correct?

6 A. I don't recall that.

7 Q. Exhibit 471, we just read it.

8 A. I saw where Brian McQuaid put that in and I
9 just don't remember using those words to him.

10 Q. And then in the next part of Exhibit 14,
11 paragraph C, "Jaksick family real property, commonly
12 known as 1011 Lakeshore Boulevard, Incline Village,
13 the Tahoe residence, and is currently in the process
14 of restructuring and refinancing certain obligations
15 relating to the company's ownership of the Tahoe
16 residence."

17 A. Yes, I see that.

18 Q. Where in this document does it disclose and
19 indicate what the debt was and what was being
20 refinanced and restructured?

21 A. Everybody knew what the debt was. That was
22 very common, the \$6.3 million. And it was just
23 common knowledge that we were working with Bank of
24 America to restructure and refinance the loan

1 obligations.

2 Q. First of all, I asked you where in this
3 document does it say anything like that? It
4 doesn't, does it, Exhibit 14?

5 A. I'm not sure. We might have to look
6 further down.

7 MR. ROBISON: Can he have a hard copy?

8 THE COURT: Yes. That is appropriate based
9 on the colloquy. Take a minute and hand a hard copy
10 to him before he testifies as to its entire
11 contents.

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

13 THE COURT: Yes, please.

14 BY MR. SPENCER:

15 Q. Flip through that and you can confirm
16 nothing in this Exhibit 14, ACPA, indicates with any
17 specificity the debt and restructuring and
18 refinancing certain obligations, does it?

19 A. Number B on page two talks about the face
20 amount of the note of the \$7,103,255.

21 Q. Is that the one you were referring to in
22 paragraph C of Exhibit 14?

23 A. I saw it on paragraph B on page two of
24 Exhibit 14.

1 Q. All right. And so that relates to the
2 option exercised in the unsecured promissory note as
3 opposed to the B of A mortgage that was on the
4 property, correct?

5 A. Yes. But I think that this is what we were
6 talking about restructuring, was this note of the
7 \$7.1 million.

8 Q. Okay. That clarifies it. And so in
9 paragraph D on page one of Exhibit 14, "The trustee
10 and primary beneficiaries of the Issue Trust and the
11 company have all agreed it's in the best interest of
12 the Issue Trust and all beneficiaries to utilize the
13 life insurance funds to invest and restructure the
14 company in order to protect and preserve the use and
15 enjoyment of the Tahoe residence for future
16 generations of the Jaksick Family."

17 Did I read that right?

18 A. I believe so, yes.

19 Q. And were there discussions regarding that
20 being in the best interest of the beneficiaries?

21 A. Yes.

22 Q. And that was in one of those meetings that
23 you mentioned before?

24 A. Yes.

1 Q. As opposed to something that you put in
2 writing to the beneficiaries about it?

3 A. I don't recall anything else in writing.

4 Q. I thought the \$6 million was going to be
5 used or was needed immediately to pay insurance
6 premiums. Is that right?

7 A. No. You have me confused now.

8 Q. The \$6 million was needed, I thought, so
9 urgently was because there were outstanding
10 insurance premiums that needed to be paid or behind.

11 A. The payments -- we didn't need the \$6
12 million to make those payments, just the payments on
13 the actual life insurance were what I recall was
14 late. But we weren't trying to get the \$6 million
15 to cash it in so we could use it for that payment,
16 no.

17 Q. What did you tell Lexi about this ACPA, its
18 contents and it being signed?

19 A. I don't recall having very many discussions
20 with Lexi about this particular ACPA.

21 Q. Do you know whether you would need all the
22 adult beneficiaries to agree to sign off on an ACPA
23 like this?

24 A. Like I said, I would just rely on the

1 drafters who prepared the document.

2 Q. Uh-huh. And so down at the bottom of page
3 one of the Agreement and Consent to Proposed Action
4 "Beneficiaries, trustee of the Issue Trust, the
5 primary beneficiaries, the company agree to the
6 transactions described in the recitals, including
7 but not limited to."

8 Then we flip to page two, subparagraph A,
9 "The consent for the trustee of the Issue Trust to
10 utilize some or all of the life insurance funds
11 being received by the Issue Trust in exchange for a
12 membership interest in the company."

13 First of all, that does not describe how
14 the money is going to be spent, does it, the \$6
15 million worth of life insurance proceeds?

16 A. It sounds like, you know, to utilize some
17 or all of the life insurance funds being received by
18 the Issue Trust to invest in company in exchange for
19 a membership interest in the company. I kinda see
20 that as how we are going to utilize the funds.

21 Q. "Some or all" is as vague as it gets as far
22 as the beneficiaries knowing how the money that's
23 going be used -- the \$6 million is going to be used,
24 is it?

1 A. I think it just gave us the ability to use
2 up to the full amount of the \$6 million and when we
3 analyzed it further as time went on, we decided to
4 use about 4.9 or \$5 million of the \$6 million.

5 Q. And the beneficiaries didn't know that, did
6 they?

7 A. Yes.

8 Q. Oh, they did?

9 A. Yes.

10 Q. Where is that in here, in Exhibit 14?

11 A. That was determined when we went down the
12 road a bit and found out more information.

13 Q. So at the time Exhibit 14 was signed, the
14 beneficiaries had no idea how you as the manager of
15 Incline TSS would use the \$6 million, did they?

16 A. Yeah, they -- we were going to utilize the
17 \$6 million to invest into Incline TSS and we were
18 going to determine that value based off an appraised
19 value.

20 Q. How much were you going to invest in
21 Incline TSS? It doesn't say, does it?

22 A. That's why we had the flexibility to have
23 the flexibility whether it was going to be two,
24 four, five, or all of it. We could have used all of

1 it. But it was discussed later to use about five of
2 it and keep about \$1 million in reserve.

3 Q. You did that as the manager of Incline TSS.

4 A. Yes.

5 Q. And the amount of the ownership was not
6 disclosed either, was it?

7 A. Because it needed to be determined by the
8 value of the property.

9 Q. Okay. And why couldn't the ACPA have
10 waited until after that, till after the value was
11 determined and the percentage amount was determined?

12 A. What I recall was we just didn't have as
13 much time as we would have liked at that point in
14 time. This kinda became, once Kevin and everybody
15 kind of started discussing this whole transaction
16 and how it would work and how money could flow from
17 Incline TSS or from SSJ's Issue Trust to Incline TSS
18 to SSJ LLC and then into the Family Trust, it was an
19 important consideration to make at this time and get
20 everything documented. Because, basically, the
21 Family Trust had no money at all to operate and we
22 weren't able to pay any of the bills.

23 So when the funds came in, we were
24 utilizing some of these funds quite quickly upon

1 receipt to flow some money into the Family Trust so
2 that the Family Trust could operate. Otherwise, we
3 would not have been able to do so.

4 Q. But you don't ever tell them, the
5 beneficiaries, that money is going to be used to
6 fund the Family Trust in this ACPA. You never tell
7 them that.

8 A. Well, it just, by effect, does do that
9 because the \$7.1 million note is owed to SSJ LLC,
10 which is the Family Trust. So they do know that the
11 funds are going to that note and they knew that the
12 note of \$7.1 million was an asset of the Family
13 Trust.

14 Q. But that would assume that the money went
15 from the SSJ's Issue Trust into Incline TSS and then
16 back out to the SSJ LLC, right?

17 A. Yes.

18 Q. But that's not how you used it. You put
19 some of the money into TSS and directed some other
20 money into the Family Trust, right?

21 A. I don't recall. You'd have to check with
22 Mr. Riley on that. What I recall is that it went
23 from SSJ's Issue Trust, who had the money, to
24 Incline TSS, Incline TSS to SSJ LLC and SSJ LLC was

1 able to get that money in the Family Trust for the
2 family to utilize those funds to operate the Family
3 Trust during a point in time when it had no funds.

4 Q. But you used some of the insurance money to
5 fund the Family Trust that had nothing to do with
6 paying off the note.

7 A. No. It had to do with paying off the note.
8 It was all part of this plan that the funds would go
9 in, and every time a payment was made it was
10 reducing the amount that was owed on the \$7.1
11 million in debt.

12 Q. The payments that were made on the B of A
13 mortgage?

14 A. The payments that were made to SSJ LLC were
15 reduced from the note of 7.1 million. Kevin Riley,
16 family accountant, did all the accounting on that,
17 tracked every payment.

18 Q. All right. The money from the SSJ LLC,
19 some or all of it could be used. The beneficiaries
20 were just basically saying use it however you want,
21 according to that document, right?

22 A. That's correct.

23 Q. Okay. So you were intentionally vague
24 about putting "some or all" in there so that you

1 could have access to the whole thing, correct?

2 A. I didn't put that language in there. Brian
3 McQuaid put it in there, "some or all."

4 Q. You didn't object to it, did you?

5 A. No. Because we didn't know exactly how
6 much it would be at that point in time.

7 Q. Okay.

8 MR. SPENCER: Your Honor, I'd offer 475.

9 MR. LATTIN: No objection.

10 THE COURT: 475 is admitted. Let's stand
11 for a minute, ladies and gentlemen.

12 (Exhibit 475 admitted.)

13 BY MR. SPENCER:

14 Q. Your Honor, I'll offer Exhibit 89?

15 MR. ROBISON: No objection.

16 THE COURT: 89 is admitted.

17 (Exhibit 89 admitted.)

18 BY MR. SPENCER:

19 Q. I want to go to this document first before
20 we move to the next one, because you just
21 mentioned -- Exhibit 89 -- paying down the mortgage
22 at Bank of America was payments towards the \$7.25
23 million note or \$7.1 million note that was
24 outstanding to SSJ LLC.

1 A. If I did say that, I don't -- I don't
2 believe that was accurate.

3 Q. All right. Well, this is an "Incline
4 TSS/SSJ LLC" -- at the top, Keith -- "Note
5 Receivable."

6 A. What was your question again? I'm sorry.

7 Q. And so this document reflects payments that
8 were made after the exercise of the option.

9 A. Okay.

10 Q. And so go down to the bottom below the
11 amortization schedule.

12 So in the first Section 1 through 4, that's
13 that \$146,744.68 that we talked about earlier,
14 right?

15 A. Yes, I see that.

16 Q. And that was the money that was contributed
17 by you or your trust towards the option exercise.

18 A. Okay.

19 Q. And then after that, starting
20 January 3rd, 2013, there were payments made
21 \$21,705.18. That's the mortgage payment, correct?

22 A. Yes. That does look like for the mortgage
23 payment, that's correct.

24 Q. So when those payments were made, that

1 would have been credited against the outstanding
2 principal balance due in that right column, "Balance
3 Due Principal." Do you see that?

4 A. Yes.

5 Q. And so those payments were being made along
6 the way using funds from SSJ's Issue Trust life
7 insurance proceeds, right?

8 A. When does it show they start?

9 Q. January 3rd of 2013. That would have
10 been before the ACPA -- I'm sorry. Number 11 would
11 be June 12th, 2013.

12 A. Yeah. I see those payments. It looks like
13 one's on 1/3/13, 1/24/13, 4/10/13 -- yeah, going
14 down there. That's the ones you're talking about?

15 Q. Yes. So once the June 5th, 2013, ACPA
16 was signed -- let me back up.

17 When was the money from the SSJ's Issue
18 Trust, the life insurance proceeds, transferred into
19 Incline TSS?

20 A. I don't recall exactly, but I think it was
21 more around the July time frame.

22 Q. After the ACPA, Exhibit 14?

23 A. After the ACPA. And I think you asked me
24 if the payments from the life insurance were making

1 those payments in January, February, March, and that
2 would not be the case.

3 Q. Yeah. January through July would have been
4 from some other source.

5 A. That's correct.

6 Q. And would that have been through Sam making
7 his lease payments.

8 A. Could very well be partially, yes.

9 Q. Well, could be. Do you know?

10 A. That sounds accurate because Dad was making
11 those payments as well as -- I don't think we got
12 any other rental income. So, yeah, it would have
13 been Dad making payments and if we would have put in
14 possibly capital call.

15 Q. So what you do know is that none of that
16 money -- after the initial investment, none of that
17 money was your money or your trust's money.

18 A. It would have been the company's money,
19 Incline TSS.

20 Q. Well, money that came into the company but
21 nothing that Todd Jaksick or TBJ SC Trust or TBJ
22 Issue Trust invested.

23 A. That's typically how you do it. Once you
24 make the initial investment and you exercise the

1 option, the property is then -- covers the expenses,
2 everything goes through Incline TSS.

3 Q. Started with no property other than the
4 option. You paid \$146,000 to exercise the option,
5 and then after that it was paid from some other
6 source, right?

7 A. Some of those monthly payments were paid
8 from another source.

9 Q. Well, they all were, because once the ACPA
10 was signed, you had money in the Incline TSS to pay
11 for the mortgage, right?

12 A. Say it again.

13 Q. Once the ACPA was signed, the money was
14 moved over in July of 2013, there was money in
15 Incline TSS to pay the mortgage, correct?

16 A. Starting around July or August the Issue
17 Trust started funding money into Incline TSS as part
18 of their buy-in.

19 Q. So you and your trust got 100 percent
20 ownership of the Lake Tahoe property worth millions
21 of dollars for \$146,744.68.

22 A. That sounds good, but we had to assume the
23 debt of the \$7,250,000 and the ongoing obligations
24 of paying interest due annually, obligations of

1 paying property taxes. There's a lot of other
2 expenses associated with that.

3 Q. And it didn't have the ability to pay any
4 of those absent these other income or cash
5 infusions, right?

6 A. I can't necessarily say that. We had those
7 other game plans in place, like where Dad had given
8 Stan lots or a Toiyabe interest where Stan was gonna
9 lots and Stan was going to buy in.

10 And we had three or four other transactions
11 we were working on at the same time to sell land
12 that we were gonna use to buy in as well as the --
13 then Dad passed away and it was the family's
14 decision to use the life insurance proceeds instead
15 of those other options.

16 Q. If the option agreement had triggered the
17 due-on-sale cause, Incline TSS wouldn't have had the
18 ability to pay \$6.3 million, would it? I'm talking
19 about in December of 2012.

20 A. If it would have triggered it in December
21 of 2012?

22 Q. When the option agreement was exercised, if
23 that had triggered the due-on-sale clause, then
24 Incline TSS would not have had the ability to pay

1 that money, would it?

2 A. It wouldn't have triggered the due-on-sale
3 clause.

4 Q. Sir, I'm asking about the money in the
5 company. It didn't have the money to pay that
6 mortgage, did it?

7 A. I'm saying that's why we got Bank of
8 America's approval at that point in time.

9 Q. Can you answer the question, sir?
10 It didn't have the money to pay that
11 mortgage, did it?

12 A. Did not have \$6.3 million in cash sitting
13 there.

14 Q. All right. So looking back at Exhibit 475,
15 it's an email thread. I just want to look at page
16 two, which is MCL 2613, right in the middle of the
17 page.

18 MR. ROBISON: Your Honor, can he see the
19 document?

20 THE COURT: Yes. That's appropriate.
21 Please make sure the witness has the actual
22 document, the entire email in front of him, please.

23 MR. SPENCER: May I approach?

24 THE COURT: Please.

1 BY MR. SPENCER:

2 Q. Do you have it there?

3 A. Yes.

4 Q. This will make it a little more efficient.
5 Looking at page two, MCL 2613, middle of the page
6 there an email from you to Brian McQuaid, June 4th,
7 2013. You're asking Brian to add a sentence in the
8 agreement that "the parties further agree in advance
9 that it's okay to sell any of SSJ's Issue Trust land
10 highlighted in green or yellow or enter into a
11 conservation easement on any land to generate cash
12 flow or a block of cash or to pay the remaining
13 balance on the Tahoe house, not to exceed \$1.8
14 million."

15 You, obviously, asked Brian McQuaid to
16 include that in Exhibit 14, right?

17 A. That email looks like it came from my email
18 address, yes.

19 Q. Okay. And so you wanted to -- since you
20 were getting an ACPA signed, you wanted to add some
21 things to it, right?

22 A. Yeah. I wanted to bring up the fact of the
23 highlight, which we saw in the map earlier, which
24 was the green land or the yellow land. But it was

1 later discussed that there was no need to add that
2 additional language in there because of the fact
3 that the trust documents already allowed it to do
4 that.

5 Q. And so let's look at page one of Exhibit
6 475 at the top. Mr. McQuaid's writing to Bob LeGoy
7 on June 4th, 2013, 3:24 p.m. asking Bob to see your
8 email below and then he says, "I'm not sure I'm
9 100 percent comfortable trying to slip this into the
10 agreement regarding the investment of the life
11 insurance proceeds in Incline TSS, especially
12 considering the language of the SSJ's Issue Trust
13 prohibiting certain sales and encumbrances."

14 So the advice you received was don't try
15 and overreach or get more than what you're focused
16 on getting, right?

17 A. I don't recall hearing back from them on
18 that. I just remember us having a discussion about
19 the document already allows for the sale of the
20 green land and yellow lands, so you don't need to do
21 that.

22 And conservation easements was something
23 Dad and I were working on prior to Dad passing away
24 and we -- I didn't know how that would be affected

1 by this. And we were actually actively working on
2 those as, not only on some of the Eagleville and 49
3 Mountain property, but we were working on it on five
4 or six other entities. And that's where it was
5 mentioned the other day that we got a big chunk of
6 the income to pay off a lot of this debt.

7 Q. You were trying to slip something into the
8 ACPA, Exhibit 14, that didn't need to be there,
9 right?

10 A. I wasn't trying to slip anything in.

11 Q. You were trying to slip something into
12 Exhibit 14 that would have paid off Lake Tahoe in
13 its entirety so that you would own it outright,
14 correct?

15 A. I don't see how it would -- you'd get to
16 that.

17 Q. Well, up to \$1.8 million is what you said
18 to pay a remaining balance on the Tahoe house not to
19 exceed \$1.8 million. That would have given you the
20 Lake Tahoe house almost completely paid off, right?

21 A. This would have given the -- we knew we
22 would have about \$2.4 million in debt. The \$1.8
23 million would have been more ownership being
24 purchased by the Issue Trust. So the Issue Trust

1 would have even gotten a bigger ownership, which
2 would have actually diluted me further and I
3 wouldn't have gotten as much, so it's actually the
4 opposite of what you're saying.

5 Q. You would have been in control of Lake
6 Tahoe either as the trustee of the Issue Trust or
7 the manager of Incline TSS, and it would have been
8 almost completely paid off with that transaction,
9 right?

10 A. If we could have sold some of these lands
11 and had the Issue Trust buy in for more, the Issue
12 Trust would have been able to buy in for more. But
13 they would have gotten a bigger ownership and I
14 would have gotten diluted further.

15 Q. And your house would have been almost paid
16 off.

17 A. I don't know what you mean by my house.

18 Q. You had total control, total discretion to
19 determine if any issue gets to use Lake Tahoe
20 through its interest in it and you own the rest of
21 the other part. So that house is, essentially,
22 yours for all practical purposes, right, Lake Tahoe?

23 A. No, sir. We've never, ever looked at it
24 that way.

1 Q. Well, but that's the fact, isn't it?

2 MR. ROBISON: Your Honor, may he be
3 permitted to answer the question in entirety?

4 THE COURT: Yes.

5 MR. SPENCER: My apologies.

6 THE WITNESS: No, sir. Never, ever looked
7 at it that way. Wendy and Stan have got to utilize
8 the property and Lexi when they wanted to utilize
9 the property except for when it's being rented and
10 we have accommodated their needs. Wendy's had an
11 ability to use the property more than anybody,
12 probably close to 200 days.

13 BY MR. SPENCER:

14 Q. My question was simple. It was simply that
15 you had total and absolute discretion to determine
16 who or when any of the issue that were beneficiaries
17 of the Issue Trust used Lake Tahoe after that
18 transaction.

19 A. By the wording that my dad put in the SSJ's
20 Issue Trust, those were his -- that was his choice.

21 Q. And way back in this -- at the start of
22 this, it was in a trust that would have been owned
23 by everybody and by the end of it, it's all you or
24 your control, right?

1 A. I don't look at it -- when I say "the Issue
2 Trust," when it's in the Issue Trust, I see it as
3 being all of the issues' benefit at that point in
4 time.

5 I happen to be the trustee but, for
6 example, Wendy's the largest share of the Issue
7 Trust, Stan's the second. Wendy's the largest share
8 at 22 and a half percent, Stan at 18 percent, and
9 I'm at 13 and a half. So Wendy and Stan are getting
10 more of a family benefit and usage rate than I am.

11 Q. Okay. So that changes this primary
12 beneficiary's part of the signature line on Exhibit
13 14, doesn't it?

14 A. I don't understand the question.

15 Q. You can't have it both ways. Either
16 there's primary beneficiaries or there's a whole
17 bunch of beneficiaries and they actually have more
18 than you. Which is it?

19 A. On that signature page I relied on counsel
20 to be able to prepare the document for who they
21 thought the primary beneficiaries were. Later at
22 some point in time -- I don't recall when it was --
23 that the analysis that Dad had previously described
24 and the law firm of Maupin, Cox, LeGoy had

1 previously described who the primary beneficiaries
2 were.

3 They took it out to the next level and took
4 it out to all of the lineal descendants, who at that
5 point in time the only one that was not -- there was
6 Wendy's daughter, Lexi, was the only other person
7 that was over 18. All the other lineal descendants
8 are minors.

9 Q. Let's look at Exhibit 476.

10 MR. SPENCER: I'm sorry. I'll offer 476
11 first.

12 MR. ROBISON: No objection.

13 THE COURT: 476 is admitted.

14 (Exhibit 476 admitted.)

15 BY MR. SPENCER:

16 Q. And this is an email from Mr. McQuaid to
17 you copying Bob LeGoy. Do you see that?

18 A. Yes.

19 Q. And subject is "Draft agreement regarding
20 life insurance" and encloses on the pages behind the
21 draft agreement, right?

22 MR. ROBISON: Your Honor, may he see the
23 document?

24 THE COURT: Yes.

1 BY MR. SPENCER:

2 Q. Do you have it, sir?

3 A. Yes, sir, I do have it. Exhibit 476,
4 correct?

5 Q. Yes, sir. You see behind that first page
6 there's a draft of the Exhibit 14?

7 A. Quickly looking at it, yeah, it looks like
8 that.

9 Q. And end of the first paragraph it says,
10 "First thing tomorrow morning we should be able to
11 email you the final draft to take to your meeting
12 with Stan and Wendy tomorrow afternoon."

13 And then the next paragraph, "With regard
14 to your earlier email about whether we could add a
15 sentence consenting to future sales of the SSJ's
16 Issue Trust property, we don't think that would
17 necessarily be appropriate at this time."

18 So you did hear back from them regarding
19 your inquiry, didn't you?

20 A. I must have. I just didn't recall this
21 email.

22 Q. "Any such sales would comply with very
23 specific terms of the Issue Trust and should
24 seriously be documented, justified in much more

1 detail than this initial agreement here.

2 "One thing to keep in mind, the less detail
3 and vague these agreements are the less protection
4 they afford you down the road should someone have a
5 change of heart."

6 Do you remember getting that advice?

7 A. I don't but I, obviously, did.

8 Q. Would you agree with that advice?

9 A. Would you mind if I read it one more time?

10 Q. Sure.

11 (Witness reviewing document.)

12 THE WITNESS: Okay. I would respect what
13 Brian McQuaid's saying.

14 BY MR. SPENCER:

15 Q. And so in the Exhibit 14 the ACPA saying
16 what the -- who owns the company, saying how much --
17 how the money is going to be sent, saying how -- on
18 what percentage is gonna be received based on the
19 investment, all of that would provide more detail
20 that would have offered more protection, right?

21 A. It certainly is possible. You know, the
22 guy who -- Mr. McQuaid, who drafted that sentence,
23 is the one who prepared the document, so I would
24 think he thought he put enough detail in this

1 document for it to be satisfactory.

2 Q. The "some or all," you would agree with me
3 is not as specific as, We are going to spend \$1
4 million here and we're going to put \$5 million over
5 here, right?

6 A. We just didn't know that at the time we
7 signed this.

8 Q. I'm just asking if you would agree that
9 that's accurate, that "some or all" is not as
10 specific as saying, We're going to spend the money,
11 \$1 million of the money here and spend \$5 million of
12 the money there.

13 A. Correct.

14 MR. SPENCER: All right. Your Honor, I
15 offer Exhibit 474.

16 MR. ROBISON: No objection, your Honor.

17 THE COURT: 474 is admitted.

18 (Exhibit 474 admitted.)

19 BY MR. SPENCER:

20 Q. Down at the bottom of the first page of
21 Exhibit 474 Brian McQuaid is answering -- you can
22 see he's answering questions that have been posed to
23 him regarding the Incline transaction.

24 (Witness reviewing document.)

1 THE WITNESS: Either Brian's answering or
2 I'm answering or vice versa. I'm not totally sure.

3 BY MR. SPENCER:

4 Q. I'm sorry. You're right.

5 Those are your answers, correct?

6 A. Yes. It looks like No. 1 --

7 Q. I apologize.

8 A. -- that's Brian asking a question and
9 then--

10 Q. On the next page, page two of 474 --

11 A. Yes, towards the top and, like, No. 1.

12 Q. And underneath No. 1 it says, "Correct.
13 Kevin will help confirm structure," that's you
14 responding.

15 A. Yes.

16 Q. And the next one below No. 2, "Correct,
17 Kevin to confirm."

18 A. Yes.

19 Q. And then below No. 3 where it starts,
20 "Correct," that's you responding, right?

21 A. Yes.

22 Q. All right. And that's your answer to SS --
23 the question was "SSJ will then use the funds
24 received from Incline to pay off approximately 6.3

1 million of Bank of America mortgage on the Tahoe
2 house either directly or by distributing funds to
3 the trust to be used to pay down B of A."

4 And you say, "Correct" and then you go
5 through a little bit. And on the second line there
6 you say, "Let's build some flexibility into the
7 document for an approximate number."

8 Do you see that?

9 A. Okay.

10 Q. So it was your idea to put flexibility into
11 the ACPA, wasn't it?

12 A. It very well could be here, yes.

13 Q. And what money -- or approximate percent --
14 I guess that's a percentage or number, "and what
15 money will be used, for example. After running
16 through above channels, pay \$5 million leaving loan
17 with B of A of 1.3 million plus loan fees, etc. We
18 will re-fi loan in the name of TSS for 1.3 plus.

19 "The remaining \$1 million insurance money
20 will partly pay down the \$800,000 note, for example,
21 400,000, so money can flow back to the estate to pay
22 some bills and may also use some money to release
23 1,600 acres of Buckhorn land, approximately 500,000
24 pay TBJSC loan back for recent monthly payment of

1 \$54,000." Do you see all that?

2 A. Yes.

3 Q. And those are transactions that involve you
4 or companies you're interested in, correct?

5 A. The family is interested in. We all are in
6 Buckhorn, for example. But we didn't do any of this
7 stuff that I can recall. Maybe we did pay back some
8 of the loans but we didn't do, like, the 1,600 acres
9 of Buckhorn land, for example.

10 Q. All right. But the TBJSC loan, that was
11 your entity that you wanted the flexibility to put
12 money back into the Family Trust so you could get
13 repaid that money, right?

14 A. Yes. And I put for Kevin there to take a
15 look at.

16 Q. Okay. So the idea of being intentionally
17 vague in the ACPA and having flexibility to use the
18 money to pay your loans, that was your idea, wasn't
19 it?

20 A. I don't really see it that way but I do see
21 how we had -- wanted to keep some flexibility here
22 with the amounts.

23 Q. So I want to get to Stan, his buy-in. You
24 mentioned that a few times today. This would be the

1 third set of transactions regarding the Lake Tahoe
2 property, right? The initial one was exercising the
3 option agreement and then we have the Incline TSS
4 investment and then there was the attempt by Stan to
5 invest in Incline TSS.

6 A. Yes.

7 Q. And the idea was that Stan would receive
8 some lots, property around one of the golf courses,
9 and which one was it? Montreux?

10 A. Yes.

11 Q. -- around Montreux. And then after his
12 divorce would have property that he could sell to
13 then invest in Incline TSS and get some interest.

14 A. Correct.

15 Q. And you did an ACPA in relation to that
16 transaction too, didn't you?

17 A. Yes, we did.

18 MR. SPENCER: Your Honor, I'll offer
19 Exhibit 23.

20 MR. ROBISON: No objections.

21 THE COURT: 23 is admitted.

22 (Exhibit 23 admitted.)

23 BY MR. SPENCER:

24 Q. And so this ACPA was designed to attempt to

1 get an agreement regarding this transaction with
2 Stan buying back in, right?

3 A. Mr. Spencer, did you have a copy of that
4 one?

5 Q. Oh, yes, sir. I'm sorry.

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

7 THE COURT: Yes, but walk very slowly. It
8 seems to me we're changing subjects from the first
9 to the second, from Todd's choices to Stan's
10 involvement, just roughly summarizing, not adding my
11 own voice to the evidence. And this is a great time
12 to end our trial day, because you have four minutes,
13 anyway.

14 MR. SPENCER: Thank you, your Honor.

15 THE COURT: Ladies and gentlemen of the
16 jury, that's it for today.

17 (Whereupon, jury was admonished
18 and released.)

19 (End of proceedings at 4:25
20 p.m.)

21 -o0o-

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

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 Wednesday,
9 February 19, 2019, at the hour of 8:58 a.m. of said
10 day, and I then and there took verbatim stenotype
11 notes of the proceedings had and testimony given
12 therein in the Matter of the Administration of the
13 SSJ's Trust and Samuel K. Jaksick Family Trust, Case
14 Nos. PR17-00445 and PR17-00446.

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

21 DATED: At Reno, Nevada, 6th day of May 2019.
22

23 /S/ Christina Marie Amundson, CCR #641
24

Christina Marie Amundson, CCR #641

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
S. Jaksick Jr. Family
Trust, and as Trustee of
the SSJ's Issue Trust;
et al.,

:

Case No. PR17-00446

:

Dept. No. 15

:

Respondents.

:

=====

PARTIAL TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

TESTIMONY OF TODD B. JAKSICK

THURSDAY, FEBRUARY 21ST, 2019

Reno, Nevada

Reported By:

ERIN T. FERRETTO, RPR, CCR #281

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I N D E X

WITNESSES FOR THE PETITIONER	PAGE
JAKSICK, Todd B.	
Direct Examination by Mr. Spencer (Resumed)	5
Cross-Examination by Mr. Robison	202

EXHIBIT	DESCRIPTION	PAGE
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2 RENO, NEVADA, THURSDAY, FEBRUARY 21ST, 2019, 10:00 A.M.

3 -o0o-

4

5

6 (Hearing held outside presence of the jury
7 not included.)

8 (Jury in.)

9 THE COURT: Good morning, please be seated.

10 Counsel, you may continue your direct examination.

11 MR. SPENCER: Your Honor, we have original of the
12 Indemnification Agreement which I would like to mark as
13 an exhibit. It's in the box that we put --

14 THE COURT: It will be marked as next in order.

15 MR. JOHNSON: May I?

16 THE COURT: Please.

17 THE CLERK: Exhibit 548 marked for identification.
18 (Exhibit 548 was marked.)

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

20 THE COURT: Yes.

21 / / / /

22 / / / /

23 / / / /

24 / / / /

1 +++ DIRECT EXAMINATION +++

2 (Resumed)

3 BY MR. SPENCER:

4 Q Mr. Jaksick, I'm handing you what is marked as
5 Exhibit 548, and that was the original Indemnification
6 Agreement that was sent to Mr. Green, the handwriting
7 expert; is that correct?

8 A I believe so.

9 Q Okay. And what I'd like you to do is take it out
10 of that little plastic sleeve there --

11 A Okay.

12 Q -- and I would ask you to take a look at that
13 document, the signature page is on top currently but it
14 would be on the back obviously; right? And put that on
15 the back and take a look at the document and tell me, do
16 you see some differences in the pages that are above the
17 signature page as compared to the signature page itself?

18 A Okay. Sorry, I'm just getting them in order.

19 Q That's fine. Can you see that the pages that are
20 non-signature pages are copies as opposed to original
21 pages?

22 A Yes, that looks to be the case.

23 Q They also have three-hole punches in the left-hand
24 margin; don't they?

1 A Yes, I see that.

2 Q And the signature page doesn't have that; does it?

3 A It does not.

4 Q The copies also do not have any staple holes in
5 them; do they?

6 A They do not.

7 Q But the signature page has staple holes; doesn't
8 it?

9 A Yes, it looks like it does.

10 Q Okay. And so this is the original document, the
11 original Indemnification Agreement that you've been
12 operating under; right?

13 A I believe so. I'm not -- I know that this is the
14 signature page but I haven't looked at this particular
15 document here yet.

16 Q Well, that's what your counsel sent to Mr. Green
17 to be examined as the original Indemnification Agreement;
18 right?

19 A I thought they were just sending him the signature
20 page so I'm not sure about the document.

21 Q Where is the rest of the document?

22 A What do you mean by that?

23 Q Well --

24 MR. SPENCER: Your Honor, may I get Mr. Johnson to

1 pull the binder?

2 BY MR. SPENCER:

3 Q Can you see this binder, the front of that binder?

4 A Yes.

5 Q And it says, "Questioned Original Documents Signed
6 by Sam Jaksick, Jr."?

7 A Okay. Yes.

8 Q And that's what was sent to Mr. Green; right?

9 A I would presume so.

10 Q It come out of Mr. Green's box, and so these are
11 the original documents sent to him. It says, "Original
12 documents signed by Sam Jaksick."

13 A Okay.

14 Q And that's the documents that he received.

15 A Okay.

16 Q And every page of that document is a copy with
17 holes in it that don't match the signature page and the
18 staple holes that don't match the signature page, and so
19 that's the original agreement; isn't it?

20 A I don't know that to be the case. I know that is
21 the original signature page.

22 Q So did you send Mr. Green a document and say that
23 this is the original when it wasn't?

24 A My understanding was they were just trying to get

1 the original signature page for him to evaluate the
2 signature page, not the document. He doesn't evaluate
3 the document, he was just evaluating the signatures.

4 Q Okay. And so where is the rest of the document?

5 A I'm not sure. There's quite a few copies of it
6 obviously around.

7 Q We've asked to see the full original of the
8 Indemnification Agreement and that's was what was
9 transferred or delivered to Mr. Green.

10 MR. ROBISON: Objection; that request was never
11 made. We have produced copy after copy, and that's what
12 we've done in discovery.

13 THE COURT: Noted. You may continue with your
14 questions.

15 BY MR. SPENCER:

16 Q Do you have the original somewhere then?

17 A I'm not sure. I gave counsel what I had. There
18 was numerous copies of this particular document, but this
19 was the main thing, was my understanding, they were
20 trying to get Mr. Green was the signature page for the
21 indemnity --

22 Q Mr. Green testified it was the original, so was
23 there another original somewhere else?

24 A This is the original.

1 Q The signature page is the original?

2 A Correct.

3 Q Is there an original document somewhere else; do
4 you know that or not?

5 A I don't.

6 Q And so what we have right now is that document
7 with the copies attached to the original signature page?

8 A It looks like that could be the case.

9 Q Okay.

10 MR. SPENCER: Your Honor, I'll offer the document
11 marked as Exhibit 549.

12 THE COURT: Next in order please.

13 MR. ROBISON: Your Honor, we should put on the
14 record now that that -- that the box received from
15 Mr. Green has been breached. We have stipulated to the
16 chain of custody of the documents in that box.

17 THE COURT: Thank you.

18 MR. SPENCER: Agreed.

19 THE COURT: Thank you.

20 THE CLERK: Exhibit 549 marked for identification.
21 (Exhibit 549 was marked.)

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

23 THE COURT: Yes.

24 / / / /

1 BY MR. SPENCER:

2 Q Exhibit 549 --

3 A Okay.

4 Q -- is that the original signature page of the
5 older version that we looked at?

6 A I believe that to be the case, yes.

7 Q Okay. And is that document the original document,
8 or do you know?

9 A I don't know if it's the original document. I
10 just know that it's the original signature page. I'm not
11 sure if these are copies or the original.

12 Q Okay. And do you know where the original is?

13 A Of the actual papers themselves?

14 Q Yes.

15 A The front part, I'm not sure; they could be it. I
16 don't know.

17 Q Okay. Put that back in the sleeve, if you don't
18 mind, so that we can preserve the original.

19 A Okay.

20 Q And why would the -- go ahead and finish that.

21 A Okay. I'm ready. Go ahead.

22 Q Do you know why the original signature page would
23 ever be removed from the original document?

24 A I don't.

1 Q Okay. And that's -- the original signature page
2 presumably would remain with the original documents,
3 certainly if it's stapled it would remain there; right?

4 A I'm not sure.

5 Q And because there are issues with if you have a
6 floating signature page out there somewhere, what it
7 might be attached to at some point; right?

8 A I really -- I'm not sure.

9 Q You don't know -- just logically speaking, if you
10 have a signature page that's not attached to the original
11 document and it gets -- it's out there, it gets mixed in
12 with something else and then you try to find the original
13 pages it's going to be attached to, doesn't it make sense
14 that that probably could create issues?

15 A I guess any circumstance is possible.

16 MR. SPENCER: Your Honor, I offer Exhibit 32,
17 which is stipulated.

18 THE COURT: 32 is admitted, Ms. Clerk.

19 THE CLERK: Thank you.

20 (Exhibit 32 was admitted.)

21 MR. SPENCER: Just to be sure, your Honor,
22 Exhibits 548 and 549 were admitted?

23 THE COURT: They were marked for admission, you
24 used them; I didn't hear the request that they be

1 admitted.

2 MR. SPENCER: That's why asked. So I offer
3 Exhibits 548 and 549.

4 MR. ROBISON: No objections.

5 THE COURT: They are admitted, Ms. Clerk.

6 THE CLERK: Thank you.

7 (Exhibits 548 and 549 were admitted.)

8 MR. JOHNSON: Your Honor, may I return this to the
9 box?

10 THE COURT: Yes, please.

11 BY MR. SPENCER:

12 Q Todd, you were aware that Stan did not know about
13 his Indemnification Agreement well after your father's
14 death; right?

15 A I do recall that, yes.

16 Q So this Exhibit 32 -- if you'll blow it up,
17 Keith -- is dated -- an e-mail from Stan dated July 28,
18 2017, to Brian McQuaid and others, and in the first
19 sentence he says:

20 Like I said before, I was never aware
21 of or heard of the Indemnification
22 Agreement until 2015.

23 And you had mentioned that he knew about that long
24 before that; right?

1 A Correct.

2 Q But here he's saying that he didn't know about it
3 as late as 2015, and that he received a call from Kevin
4 who was going to send a copy -- send his copy -- going to
5 send me a copy of Todd's Indemnification Agreement, and
6 he suggests that I have an attorney review it.

7 Do you see that?

8 A I do.

9 Q And then on down he says he worked closely with
10 his father and his dad never mentioned it. And then:

11 Even worse, Kevin Riley, my dad's
12 accountant for ten years, was unaware of
13 this agreement existing, which absolutely
14 causes me concerns over its validity.

15 Did you and Todd -- I'm sorry. Strike that.

16 Did you and Stan -- I apologize -- did you and
17 Stan discuss whether or not the Indemnity Agreement, your
18 Indemnity Agreement was valid?

19 A Yes, we did.

20 Q Did you discuss whether Stan's Indemnity Agreement
21 was valid?

22 A I continually told Stan that he had the identical
23 document that I had and he did not recall it.

24 Q Okay. And that identical document was the old

1 version that we saw earlier, not the later versions;
2 right?

3 A I guess I shouldn't say the identical document.
4 What I guess I should say is he had an Indemnification
5 Agreement similar to what dad had provided me.

6 Q And he had one that did not have an Exhibit A
7 attached to it; didn't he?

8 A It's possible. I just don't recall that.

9 Q So then he talks about in the next paragraph, the
10 ACPA, the consent to proposed actions that was signed on
11 July 24th, 2013, and he would never have signed it
12 without raising an issue or at least a question,
13 documents were being produced, a litany of trust-related
14 documents were produced to Maupin, Cox, LeGoy, he
15 basically signed it because it was put in front of him,
16 he was going back and forth. Then he says:

17 I had no idea that that was what I --
18 that what I was signing only benefitted
19 Todd.

20 And Stan was pretty upset about this; wasn't he?

21 A He was. And then there was some additional
22 clarification that took place at or about this time. I
23 recall I wasn't involved in them, in a meeting that the
24 other trustee had that one day, and they made a decision

1 to call Pierre Hascheff who had prepared the documents to
2 see, are these documents valid, did he really prepare
3 them, and did Stan have an extra copy?

4 And so they did do that. This was about the time
5 I believe they contacted Pierre Hascheff directly, and
6 Pierre Hascheff explained to them that dad prepared an
7 Indemnification Agreement for myself as well as Stan.

8 Q Uh-huh. And then he says:

9 I'm holding the funds in the subtrust
10 until this is figured out.

11 What funds was he talking about; do you know?

12 A Probably some of the Bronco Billy's sales
13 proceeds, is what my thought is right there.

14 Q That was --

15 A I want to read one other line real quick.

16 Q Sure.

17 A I'd like to clarify -- I guess I could wait until
18 later. I wouldn't mind clarifying where Stan said,
19 during the time frame they were preparing a litany of
20 documents and basically just signed and it was my fault.
21 I mean, you know, people can obviously make mistakes and
22 forget things, that happens. But on that particular
23 ACPA, it was e-mailed to Stan directly from the Maupin,
24 Cox, LeGoy law firm, so he had it on e-mail. And then

1 after he signed it, the ACPA, Jessica Clayton scanned it
2 and then e-mailed it back to Stan and the trust attorney,
3 so everybody had a copy of that.

4 Q And so the discussions about the ACPA happened
5 after it was signed; right?

6 A Could you be more specific? I'm not sure what --

7 Q What was the disclosures to the beneficiaries
8 prior to the signing of that ACPA?

9 A The main point of the ACPA was for the Ag Credit
10 and the Met Life fund, and certainly everybody was aware
11 of those outstanding obligations with Ag Credit and
12 MetLife and we had gone over those in detail to show what
13 the exposure to the trust was.

14 Q Okay. And just to be clear, that's the
15 Exhibit 16, the Ag Credit/MetLife loan is ACPA?

16 A That's what's being referred to here, yes.

17 Q Okay. Any idea how Mr. Riley was not aware of the
18 Indemnification Agreement in 2015 if he's the accountant
19 for your dad and for the Jaksick family for that long?

20 A Kevin Riley was aware of the Indemnification
21 Agreement in 2015.

22 Q Well, do you think Stan made that up?

23 A You'd have to ask Kevin Riley for clarification.

24 But, as you pointed out yesterday, Mr. Riley was provided

1 the Indemnification Agreement early on. He was also
2 provided the Indemnification Agreement on October 21st of
3 2013 as part of a creditor claims and Mr. Riley accounted
4 for the Indemnification Agreement in his original
5 accounting, so he did have a copy of it and he was aware
6 of it.

7 Q So you don't know where Stan got that information?

8 A I'm not sure. I don't -- I don't know.

9 Q Okay. I want to shift to a different topic now,
10 the Bronco Billy's sale, which was the Colorado casino.

11 A Yes, I'm familiar with that.

12 MR. SPENCER: The first thing I want to offer,
13 your Honor, is Exhibit 90, stipulated.

14 THE COURT: Ninety is admitted, Ms. Clerk.

15 THE CLERK: Thank you.

16 (Exhibit 90 was admitted.)

17 BY MR. SPENCER:

18 Q You remember this document; don't you -- the list
19 of Jaksick entities? I know it's small, but you recall
20 that?

21 A There is several versions of that but I do recall
22 that structure, so I'm not sure which one it is but do
23 recall seeing that.

24 Q I'm going to give you the hard copy so you'll have

1 that in hand.

2 A Okay. Did you want these originals back?

3 Q Yes. I'll give them to the clerk.

4 So this was a list that was created by Mr.
5 Hascheff; correct -- Exhibit 90?

6 A Okay. I would say probably his secretary.

7 Q And it was -- it says at the top, "Revised as of
8 February 13, 2013," that was a little over two months
9 before your father passed away?

10 A Yes.

11 Q So I want to flip to page four of that document,
12 which is SJ 1036, just note the -- 1063, I apologize --
13 right in the middle there's a big part of the table there
14 and that's Pioneer Group, that was the entity that owned
15 the casino; is that right?

16 A Yes, sir.

17 Q Okay. And it shows at the top Sam owned, at least
18 according to this list, 35.587 percent of that entity?

19 A I see that, yes. That sounds accurate.

20 Q His ownership was in that range, though; wasn't
21 it -- within a point or two?

22 A That's what I recall.

23 Q Okay. And so in relation to the Bronco Billy's
24 investment, there was the sale came up or was voted upon

1 and was unexpected; is that right -- somewhat?

2 A Somewhat, yes.

3 Q Somewhat unexpected, and so it required or the
4 rules of California -- Gaming Commission of California
5 require a certain amount of ownership in order to sell
6 the assets; is that right?

7 MR. ROBISON: Just to correct, counsel, it's
8 Colorado.

9 THE COURT: That is correct. Counsel, you said
10 "California," do you mean Colorado?

11 MR. SPENCER: I apologize. Let me restate that so
12 I it get right. Thank you for correcting me.

13 BY MR. SPENCER:

14 Q The rules of the Colorado Gaming Commission
15 requires a certain amount of ownership in order to sell a
16 casino and then accept the proceeds of the casino?

17 A That's my recollection, yes.

18 Q And is it your recollection that at six percent
19 was the required amount or somewhere in that range, five
20 or six percent?

21 A That sounds accurate.

22 Q And the idea was that you and Stan and Wendy, if
23 she could, would get Colorado gaming licenses, then could
24 participate in the sale of the casino and then receive

1 the proceeds?

2 A That sounds correct.

3 Q Then there were some issues with Wendy getting her
4 gaming license that needed to be cleaned up as far as tax
5 returns and other things, and so you and Stan move
6 forward with trying to get your gaming licenses?

7 A Correct.

8 Q And you needed six percent in order to do that;
9 correct?

10 A That sounds correct.

11 Q And six percent would have been of the entity, not
12 of what your father owned; correct?

13 A Correct.

14 Q All right.

15 MR. SPENCER: Your Honor, offer Exhibit 230, which
16 is stipulated.

17 THE COURT: 230 is admitted, Ms. Clerk.

18 THE CLERK: Thank you.

19 (Exhibit 230 was admitted.)

20 BY MR. SPENCER:

21 Q This is a letter May 2nd, 2013, from Nick Palmer,
22 written to CFO of Bronco Billy's, and it's forwarding --

23 Please be advised that Sam Jaksick, on
24 April 15 of 2013, gifted six percent of

1 his interest in Pioneer Group, Inc., to
2 each of his sons, Stanley, individually,
3 and Todd, as trustee of the Todd B.
4 Jaksick Family Trust.

5 Do you recall that?

6 A Yes.

7 Q And then attached to that letter are Declarations
8 of Gift dated April 15 of 2013 -- the next page, Keith,
9 RILEY 2894 -- and it says:

10 I, Sam Jaksick, individually and as
11 trustee, transfers, assigns and gifts all
12 of his right, title and interest, without
13 consideration, six percent of his stock
14 in Pioneer Group, Inc., dba Bronco
15 Billy's, to each Stan Jaksick and Todd B.
16 Jaksick.

17 A I see what you highlighted, yes.

18 Q Okay. So that was a transfer of his -- six
19 percent of his interest, which was around the 35 percent
20 range; right?

21 A I think that the wording that he had there, I
22 remember this being something that they were working on
23 showing his intent after the fact, that had to have been
24 six percent of the company so we could qualify, is what I

1 remember.

2 Q Right. And so this didn't do what he needed to be
3 done; did it?

4 A There was some interpretation that needed to say,
5 did Sam really mean six percent of his stock or six
6 percent -- six percent out of the 35 percent, which would
7 be the combination; the two would have been 12 percent
8 out of the 35.

9 Q So let's scroll down, Keith.

10 The remainder of that page, it was intentionally
11 left blank; do you see that?

12 A I do.

13 Q And then on the next page we have another orphan
14 signature page; right?

15 A Okay.

16 Q Nothing else on that page, nothing identifies what
17 it should be connected to. It says, "The foregoing
18 instrument"; do you see that? Right here below the date,
19 right under the date, it says, "Foregoing instrument"?

20 A Oh, yes. Down there, yes.

21 Q There's no identification of what this might have
22 been connected to based on the signature page, which
23 could have fit in that part that was intentionally left
24 blank; right?

1 A It looks like that small area could have been fit
2 there.

3 Q Do you know any reason why that would have
4 happened?

5 A I don't.

6 MR. SPENCER: Your Honor, I offer Exhibit 231,
7 stipulated.

8 THE COURT: 231 is admitted, Ms. Clerk.

9 THE CLERK: Thank you.

10 (Exhibit 231 was admitted.)

11 BY MR. SPENCER:

12 Q Okay. And then this an e-mail thread, and reading
13 it from the bottom up, in order to get context we'll go
14 to the second-to-the-last page -- Keith, MCL 1085 -- so
15 that -- that second paragraph -- or that first full
16 paragraph, Keith -- let me just identify.

17 This is an e-mail thread between Steven C. West,
18 the attorney for Pioneer Group, and Nick Palmer; do you
19 see that on the e-mail thread?

20 A Yes.

21 Q This is in May of 2013, so after your father's
22 death; right?

23 A Yes.

24 Q And so back to MCL 1085 in Exhibit 231, that first

1 full paragraph Mr. West writes:

2 As for the 2013 gifts to Stan
3 individually and Todd's trust, I'm having
4 trouble figuring out exactly what was
5 transferred. I had understood from you
6 and assumed the gift of was six percent
7 in Pioneer to each Stan and Todd's trust
8 which would have meant that each gift
9 exceeded the five percent limit requiring
10 approval by the Division of Gaming.
11 However, the declaration reads six
12 percent of his stock in Pioneer Group.

13 So that did cause a problem, didn't it, the way
14 the gift was -- the way the gift read?

15 A I remember something related to this, yes.

16 Q Sam's stock consisted of 299.05 shares in
17 outstanding shares and 1.79 percent of the total shares,
18 including treasury shares, both of which are considered
19 below the five percent required for approval. So the
20 gift transfers that were made on Exhibit 230 were -- did
21 not satisfy the requirements in order for you all to
22 participate in the sale; correct?

23 A I think it was just -- what I recall it was just
24 an error that it was six percent of his stock instead of

1 Pioneer stock, and so I think Pierre -- I think Pierre
2 had to do like a -- some type of a document, I don't
3 recall what it was, but it was saying what dad's intent
4 was, that it was six percent of the company, is what I
5 recall.

6 Q And then the next paragraph Mr. West suggests
7 putting -- or dealing with this in a trust.

8 It may be that the will or trust that
9 controls the distribution of Sam's assets
10 may be helpful in resolving both issues.

11 It would be good to consider that such
12 will or trust provides before worrying
13 too much about the incomplete assignment
14 back in 2006 or the six percent of his
15 stock issue.

16 Was there an assignment in '06 or is he referring
17 to the 13 and just misstated; do you know?

18 A I don't.

19 Q Anyway, suggested maybe -- you may be able to deal
20 with that in a will or a trust; right?

21 A It appears to be what his wording is there.

22 Q Next page up, Keith, MCL 1084 of Exhibit 231 -- it
23 looks like -- and here he's referencing, it looks like
24 you attached two copies of the 2013 Declaration of Gift,

1 but no copies of the '06 assignment of Sam's interest to
2 his trust.

3 That earlier assignment is a bit
4 troubling because it does not appear that
5 Pioneer was and the stock to this day
6 appears to be in Sam Jaksick's name
7 individually.

8 Did you realize that was a problem?

9 A I don't recall that. I do remember we had -- like
10 I was mentioning earlier, we had to go to a court
11 proceeding early on, shortly after dad passed away,
12 because there were some assets that were in his estate
13 and so -- but the trust documents, pourover-type of a
14 trust where anything that was outside of dad's trust
15 automatically gets pulled into his trust, is what I
16 recall.

17 Q The pourover will?

18 A That sounds familiar.

19 Q Okay. But do you know if that was ever corrected,
20 if Pioneer ever got word of any transfers to the family
21 trust?

22 A I'm not sure.

23 Q Then up above on that same page, it appears to be
24 an e-mail from Nick Palmer to you and it says:

1 Please see the response below for
2 Mr. West. You would need to own more
3 than five percent of the total amount of
4 stock issued in order to get the Colorado
5 gaming license. By receiving six percent
6 of Sam's stock, you only have a 1.79 per
7 interest in the company overall.

8 So with those declarations of gift, the transfer
9 was not -- was inadequate to be able to participate in
10 the sale; right?

11 A There was some confusion based off of his stock
12 being dad's stock versus the stock of the company.

13 Q Okay. And how was that -- how did you believe
14 that to be confusing when the Declaration of Gift itself
15 says six percent of his stock, was your dad confused or
16 did he not understand, or do you know?

17 A I think it was just -- I can't say exactly for
18 sure but I just think that it was dad's -- I know it was
19 dad's intent to make sure that Stan and I had enough
20 stock to both get licensed. So if he would have
21 interpreted that, it was dad's mind it was six percent of
22 what he owned, the 35 percent, which would each be six
23 percent total of the company so that we could get
24 licensed. That was his whole purpose. He wanted us to

1 get a gaming license -- at least one or both of us to get
2 a gaming license so that we can protect that stock in the
3 event something happened to dad in the future, because if
4 one of the family members wasn't -- wasn't a licensed
5 operator in Colorado, there was some really strict
6 buyback provisions within the company operating agreement
7 that meant the family would have got cents on the dollar.

8 Q And this was in May 2013 time frame; right?

9 A Which are we talking?

10 Q According to this correspondence we're looking at.

11 A Yes.

12 Q And you would agree, though, that the documents
13 control what actually was transferred versus what you
14 understood should have been transferred?

15 A Documents that usually absolutely do control
16 unless there was a mistake and the person who believes he
17 made the mistake says that it was a mistake.

18 Q Okay. And as far as the Declaration of Gift, you
19 don't know of any subsequent document that fixed or
20 corrected that issue; do you?

21 A I believe that Pierre -- I know that Pierre did a
22 declaration or something, maybe that wasn't what it
23 called, saying that he had discussed it with dad and that
24 he knew that it was enough for Stan and I each to get

1 licensed.

2 And then I remember another document that we had
3 with Wendy because Wendy was aware that Stan and I were
4 both to get six percent of the company so that we could
5 get licensed, and at one point in time Wendy signed an
6 affidavit that was prepared and saying that she had
7 talked to dad about this same six percent, and so that's
8 what we ended up moving forward with. It was quite a
9 lengthy discussion over several months, I remember.

10 **Q There was an ACPA signed about this later; right?**

11 A There was an ACPA signed about Bronco Billy's in
12 general, but I don't know that it really had to do with
13 whether six percent of his stock or six percent of the
14 company. I don't remember that being in there.

15 **Q All right. We'll get to that in just a second.**

16 **By 2013, Mr. Hascheff had stopped practicing law; right?**

17 A There was a point in time in there, you can
18 certainly check with him, but he -- there was kind of not
19 a grace period but he had requested to find out whether
20 he could finish up taking care of some of his clients,
21 and he did do a few things in there after the fact. But,
22 for the most part, he had shut down his law practice and
23 had Nick Palmer working on it.

24 **Q Okay. And then --**

1 MR. LATTIN: No objection.

2 MR. SPENCER: Your Honor, I offer Exhibit 470.

3 THE COURT: 470 is admitted, Ms. Clerk.

4 THE CLERK: Thank you.

5 (Exhibit 470 was marked.)

6 BY MR. SPENCER:

7 Q And then there was also Maupin, Cox, LeGoy got
8 involved with this to a degree as well; right?

9 A Yes, there was a -- yes, Maupin, Cox, LeGoy, as
10 well as a gaming attorney that we had hired out of
11 Colorado named Roger Morris.

12 Q All right. Down at the bottom of this there's an
13 e-mail from Jessica Clayton to Mr. LeGoy coping you, May
14 30, 2013 -- it's at the bottom -- I'm sorry, the second
15 page. So do you see right there, Jessica Clayton to Mr.
16 LeGoy, May 30th, copying you -- and I just want to point
17 out the sentence -- the first sentence.

18 Would you please help us analyze an
19 appropriate range of fees and is it
20 customary to pay trustees more or less
21 depending on their day-to-day
22 involvement?

23 Then on the next page, after the all caps there on
24 the next page:

1 Could you also please review sections

2 17 --

3 Do you see that?

4 -- since the roles and responsibilities
5 have greatly increased.

6 And the all caps, Mr. -- Mr. LeGoy's response
7 is -- it says there:

8 I'm sorry, but what is section 17? The
9 trust I drafted for Sam does not have a
10 section 17, and you have not yet sent us
11 the amendments Pierre drafted for Sam.
12 Do you see that?

13 A Okay.

14 Q Where were the amendments that Mr. Hascheff
15 drafted at that time, May of 2013?

16 A I'm not sure which amendments or what they're
17 talking about right there -- or Jess is, we are -- I
18 don't know what section 17 would be.

19 Q All right. So -- but what we do know we had this
20 discussions, the Declarations of Gift were not
21 sufficient, Mr. West noticed it, you needed more shares
22 to participate, that would be six percent of the total
23 company as opposed to what your dad owned, and this is in
24 the May of 2013 time frame?

1 A For the Bronco Billy's, yes.

2 Q Yes. And someone has the -- these amendments,
3 whatever they are, but it's not Mr. LeGoy according to
4 that response?

5 A Okay.

6 Q Right?

7 A It looks like that. I'm just not sure what he's
8 talking about, The trust I drafted for Sam I do not --
9 The trust I drafted for Sam do not have a section 17, and
10 you have not sent the amendments Pierre drafted for Sam.

11 Q Do you see that?

12 A I do, yes.

13 Q So do you have the amendments or did Mr. Hascheff?

14 A Mr. Hascheff did.

15 Q Okay. Keith, let's pull up Exhibit 13, which is
16 the Second Amendment.

17 This was a document that was -- looking at the
18 signature page, Keith -- that was supposedly signed on
19 December 10 of 2012?

20 A I recall this, yes.

21 Q Do you see that?

22 A I do.

23 Q So if we turn on page TJ 3, Exhibit 13, there's a
24 Specific Gifts paragraph up there at the top:

1 -- and on the death of the settlor,
2 prior to the trustee dividing up the
3 settlor's trust estate, as provided in
4 the restated family trust, the trust
5 estate shall be distributed as soon as
6 possible as a specific gift as follows.

7 There is a gift of percentage of Toiyabe to Stan,
8 but I want to focus on No. 2 which is related to what
9 we're talking about, the Pioneer Group. It says:

10 -- provided settlor is not previously
11 gifted at least six percent of the total
12 stock interest in Pioneer Group, Inc.,
13 dba Bronco Billy's, the company, to each
14 of his sons, settlor makes a specific
15 gift of such stock to each of his sons,
16 Stanley Jaksick and Todd Jaksick, in an
17 amount at least equal to six percent of
18 stock in the entire company.

19 Do you see that?

20 A I do.

21 Q So this was a document that was supposedly signed
22 December of 2012 that addressed an issue that no one on
23 your side of the ledger knew about until May of 2013;
24 right?

1 A I don't know if that's addressing an issue, I
2 think it's him transferring six percent of the stock.

3 Q Right. But it says six percent of stock in the
4 entire company; correct?

5 A I do see that, yes.

6 Q And the Declaration of Gift said six percent of
7 his stock, which was insufficient, we saw that earlier;
8 right?

9 A Yes.

10 Q All right. And so this solves the problem that
11 Mr. West raised in May of 2013; correct?

12 A I'm not sure.

13 Q Well, doesn't it?

14 A The wording looks like it would have.

15 Q Okay. So you mentioned that you needed to six
16 percent of the entire company not six percent of your
17 dad's interest; correct?

18 A Yes, you needed six percent of the company to be
19 able to qualify for a gaming license.

20 Q Okay. And so Mr. West says you don't have enough
21 with this Declaration of Gift with the six percent of his
22 stock. We can look at the will and trust of your dad to
23 see if that takes care of it. And, lo and behold, a
24 document signed before all this issue came up in December

1 of 2012, solves the very issue that Mr. West raised.

2 How did that happen?

3 A I'm not sure.

4 Q The only way it could have been happened is for it
5 to have been signed or at least prepared sometime after
6 Mr. West raised the issue; right?

7 A I don't believe that to be the case. I remember
8 my dad signing it on December 10.

9 Q Okay. But that wasn't it on December 10, was
10 it -- December 10 of 2012? By that I mean the specific
11 gift of the six percent stock in the entire company; was
12 it?

13 A You'd have to have ask Pierre, I'm not sure. I
14 imagine it would have been.

15 Q It's seems pretty curious the timing all this, the
16 discussion about needing the six percent of the entire
17 stock comes out, is revealed five or six months -- well,
18 five months later, five months after the Second Amendment
19 is signed; doesn't it?

20 A You just have to ask Pierre that. I don't know
21 the answer, I'm not sure.

22 Q Again, that's one of the orphan signature page
23 situations; right?

24 Let's go to the back page, Keith.

1 Do you see there, it's an orphan signature page?

2 It does reference the Second Amendment, I want to make
3 sure to note that; right?

4 A Yes, I do see that on the top line.

5 Q But no page number on the signature page and while
6 there is page numbers on the other pages; right?

7 A I'm not sure.

8 Q Can you scroll down, Keith, below that, and then
9 flip to some of the other ones that have page numbers.

10 So there are page numbers on all the pages except
11 the signature page; right?

12 A I thought I saw something down -- oh. What is
13 that on the bottom left? A footer. What does that
14 footer say?

15 Q Blow it up, Keith. 4656.007 slash Second
16 Amendment to the Samuel S. Jaksick Jr. Family Trust.

17 A It looks like there's a footer for that amendment
18 to the Samuel S. Jaksick Family Trust.

19 Q That appears on all the other pages but the page
20 number does not appear on the signature page; right?

21 A Okay. Yes, I think you just have to ask the
22 preparer of the document what his purpose is there. I'm
23 not sure.

24 Q Well, you find -- you do see the timing issues

1 **there; don't you?**

2 A Not necessarily. I mean, I understand that
3 there's concerns in May, what you're talking about.

4 Q If your dad had already transferred six percent of
5 the entire stock in the family trust, then why would he
6 have been signing Declarations of Gift in -- later in
7 2013 -- let me make sure I have my dates right --
8 April 15 of 2013, a week before he passed away or six
9 days before he passed away, if he had already given the
10 stock in the Second Amendment back in December of '12?

11 A Well, he hadn't given stock in the Second
12 Amendment.

13 Q It says upon his death, so he had taken care of
14 it, and Mr. West referenced that but it was already
15 covered in the amendment?

16 A Those provisions in the Second Amendment don't
17 kick in unless dad passed away --

18 Q Right.

19 A -- but dad superseded what he had here because he
20 wanted us to move forward with the gaming licenses in
21 April, but if he would have passed away a week ago, these
22 provisions wouldn't have kicked in until a week ago.

23 Q That's right. But if we deal with what the facts
24 are, your died on April 21st, 2013, and these discussions

1 are occurring in May of 2013, so at that time Mr. West
2 was looking to a trust or a will that might have done
3 what needed to be done to get to your percentage; right?

4 A It's certainly possible. I mean, there's a bunch
5 of group of people working on that.

6 Q Okay.

7 MR. SPENCER: So let's look at Exhibit 202,
8 stipulated, your Honor.

9 THE COURT: 202 is admitted Ms. Clerk.

10 THE CLERK: Thank you.

11 (Exhibit 202 was admitted.)

12 BY MR. SPENCER:

13 Q So this is an e-mail from Jessica Clayton to
14 Mr. Hascheff and you, December 18 of 2012; do you see
15 that?

16 A Yes, I do.

17 Q And the front page is -- blow up it, Keith -- the
18 front page is essentially blank but the other e-mail is
19 Jaksickoffice@gmail to Jessica Clayton, Subject: Second
20 Amendment -- the subject is Second Amendment Trust; do
21 you see that?

22 A I do.

23 Q So that December 18 of 2012 would have been after
24 the signature page we just saw, which was December 10 of

1 '12; right?

2 A Yes, one week later, and -- yeah, about the day
3 dad was headed to have his surgery -- no, he went the
4 night before.

5 Q December 17?

6 A Yeah. I went down on the 18th.

7 Q All right. And so -- next page, Keith, just the
8 full picture -- there's a signature page there dated --
9 the undersigned executes this document in Reno, Nevada,
10 on December 17, 2012, and it's got a date filled in in
11 the jurat, which is down here where the notary signs.
12 And then Jessica Clayton has signed that. No idea what
13 that goes to; do you -- or do you?

14 A I do not.

15 Q And attached to that is that signature page we
16 just looked at with the footer and no page number; right?

17 A Yes.

18 Q And it's -- at the top it says, "Second Amendment
19 the Family Trust, December 10 of 2012"?

20 A I see that, yes.

21 Q So Jessica Clayton is sending these orphan
22 signature pages to Mr. Hascheff; isn't she?

23 A I'm not sure, but that looks like the same
24 signature page for the Second Amendment.

1 Q Yeah. And so then -- next page, Keith -- we have
2 the orphan signature page here again. There's -- go down
3 below -- there's a footer and no page number; do you see
4 that? It's that footer we saw.

5 A Okay.

6 Q All right. Then go back up, Keith. But this
7 one -- this one says, again, the undersign executed the
8 Second Amendment to the Samuel S. Jaksick Jr. Family
9 Trust on April 27 of 2012; do you see that?

10 A I do.

11 Q And so now we have two signature pages, orphan
12 signature pages, one in April and one in December of
13 2012; right?

14 A I see the e-mail, yes.

15 Q And notarized by Jessica Clayton, who was working
16 for you; correct?

17 A No. She was working for dad, she was dad's
18 primary secretary and she worked for a bunch -- she
19 worked for pretty much all of us.

20 Q You're going to testify she didn't work for you at
21 all?

22 A She worked for our entities and she worked for
23 myself, but she worked -- she was -- dad was her primary
24 boss.

1 Q I asked if she worked for you, you denied that;
2 why would you do that?

3 A I didn't. I just -- I wanted to make sure that
4 you were aware that she also worked for dad. Dad was her
5 primary boss.

6 Q All right. So any idea how we have a signature
7 page from April of '12 and then a signature page from
8 December of '12 to the same document?

9 A Yes, I do recall that.

10 Q Okay. What is the explanation for that?

11 A Dad was continually working on his estate planning
12 and so this was a prior document that he had worked on
13 back in April and back in 2011 and 2010, and I just
14 remember that subsequently after this he continuously
15 kept making changes to the December 10 document, is what
16 I recall.

17 Q And so he's signing signature pages just to put on
18 a document that gets finalized later?

19 A I don't believe that to be the case, no.

20 Q Let's look at Exhibit 155 real quick and we'll
21 come back to that 302 -- yes, it's in. It's admitted.

22 This is that Fifth Amendment that we talked about
23 the first day and how it had hadn't been superseded; do
24 you know that generally?

1 A I do.

2 Q Let's flip to the signature of that, and that's
3 another orphan signature page, the footer down at the
4 bottom -- let's go to that first, Keith -- is that
5 48656.007 but this time it says Fifth Amendment to the
6 Family Trust, no page number. Then at the top, the same
7 format of signature line or signature page there, and
8 this one says, undersigned executed the Fifth Amendment
9 to the family trust on April 27 of 2012; do you see that?

10 A I do.

11 Q You said your dad didn't remember or didn't know
12 this Fifth Amendment was in place, didn't you?

13 A I don't believe so. I said dad was working on
14 estate planning with Pierre, that was between Pierre and
15 dad. What I said with regard to the Fifth Amendment was
16 that you were alluding to the fact the other day that we
17 should have been relying off of the Fifth Amendment and
18 us as trustees should have known about the Fifth
19 Amendment, and isn't there a potential language in here
20 as trustees that we should be aware of and should be
21 relying on, and my understanding was is what happened was
22 when dad passed away, in discussions with Pierre, that he
23 said that the only controlling documents were the 2006
24 document that Bob LeGoy prepared and Maupin, Cox, LeGoy

1 and the December 10, 2012, document, and any of these
2 other amendments in here or prior trust documents weren't
3 the controlling documents and the only controlling
4 documents were the 2006 and the December 10, 2012.

5 Q That's a sort of a long answer to correcting my
6 mistake. I guess what I meant to say was, you were not
7 aware of the Fifth Amendment, and I said your dad wasn't.

8 A I see.

9 Q I apologize.

10 A Yes. I do not really recall being aware of the
11 Fifth.

12 Q All right. Why would your dad sign a Fifth
13 Amendment to a trust and a Second Amendment to a trust on
14 the same day; do you know?

15 A I don't.

16 Q That doesn't make sense; does it?

17 A I don't know.

18 Q Was your dad confused about what he wanted to do
19 with his estate plan, or was there just a bunch of --
20 signing a bunch of signature pages to use whenever you
21 needed them?

22 A You'd have to ask Pierre.

23 Q I just want to know what your knowledge about that
24 was?

1 A Was dad confused?

2 Q Well, was he confused about the Fifth Amendment or
3 the Second Amendment on April 27 of 2012?

4 A I have no knowledge of that.

5 Q Okay. And going back to the Exhibit 202, Keith,
6 so let's go to the last page of that document, TJ 2571 of
7 Exhibit 202.

8 At the top of that page, you can see there this is
9 a page -- we'll show you the footer in a second but the
10 footer is that Second Amendment footer, and it shows that
11 your dad had made an adjustment to the percentages in
12 that particular document; do you see that?

13 A I do, yes.

14 Q Any reason to believe that's not your dad's
15 writing or his initials?

16 A No, that looks like dad's writing and -- his
17 initials. Excuse me.

18 Q All right. And the crossed out part of the
19 typewritten portion would be 80 percent -- you can see
20 it's written there next to the parenthetical -- 80
21 percent to Luke Jaksick and 20 percent to Alexi Smrk; do
22 you see that?

23 A Yes, I do.

24 Q And then strikes through the 80 and 20 and puts

1 75/25?

2 A Okay.

3 Q And I also want to note at the bottom of the page,
4 paragraph 3.3 -- let's look at that, the last sentence --
5 you don't have to read the whole thing, I just want to
6 make note, it says:

7 Jaksick's share and Stanley S.

8 Jaksick -- Jaksick's share of the
9 settlor's trust estate, as provided in
10 the restated family trust --

11 Do you see that?

12 A I do.

13 Q And you see how the family trust wraps over and at
14 the bottom it's just family trust, period, and then it
15 stops?

16 A Yes.

17 Q That's on this Exhibit 202 form that your dad had
18 written into?

19 A Okay.

20 Q So now let's go to Exhibit 13, which is the Second
21 Amendment, we'll look at that same paragraph. This will
22 be on page five, TJ 5 of Exhibit 13. So --

23 A Yes. It's a different section that you're looking
24 for, because I remember dad changed it to 70/30.

1 Q Okay. We'll look at that first. Okay.

2 Your dad changed it on that other form to 75/25;

3 do you remember that? Do you see need to see that again?

4 A And then he changed it again to 70/30.

5 Q That's paragraph 3.22 on page four -- TJ 4 of

6 Exhibit 13. So your recollection was that instead of the

7 80/20 that it started with and the strikethrough to

8 75/25, it ended up being 70/30 Luke to Alexi?

9 A Yes.

10 Q And that's what ended up in the Second Amendment

11 that is Exhibit 13, which is the Second Amendment --

12 A Okay.

13 Q -- right?

14 A Yes.

15 THE COURT: Excuse me.

16 Ladies and gentlemen, during this morning break

17 please do discuss the case among yourselves. Please do

18 not form or express any opinion on this matter until it

19 has been submitted to you.

20 THE BAILIFF: All rise for the jury.

21 (Recess.)

22 THE COURT: Thank you, Deputy. The jury, please.

23 Please be seated.

24 Counsel, you may continue. We'll have a hard stop

1 for our noon recess at 12:15.

2 BY MR. SPENCER:

3 Q So, Todd, just to go back to where we were, we
4 were talking about the percentages changing and the
5 handwritten initial amounts from 80 to 75/25, then you
6 said 70/30 is what it ended up being?

7 A Yes.

8 Q Okay.

9 A That I recall, yes.

10 Q And then there was that other portion, 3.3 --
11 let's go to Exhibit 202 first, Keith -- there it is.

12 Now, 3.3 it says, "Todd B. Jaksick and Stanley B.
13 Jaksick," and then it says with respect to Todd and
14 Stanley, Stanley's share of settlor's trust estate,
15 et cetera. Then skipping down to the end, I want to note
16 what this paragraph reads at the end. We talked about
17 that sentence. It says, "as provided in the restated
18 family trust" at the very end; do you see that?

19 A Yes.

20 Q All right. So now let's flip over to Exhibit 13,
21 I wanted to show that again. Now, the title of this
22 document -- of this paragraph 3.3 is a little bit
23 different. Instead of Todd and Stan, it says "TBJSC
24 Trust, Todd B. Jaksick and, Stanley B. Jaksick," the

1 TBJSC trust was added; do you see that?

2 A Okay. Yes.

3 Q All right. And the reason for that is, if we go
4 down to the bottom, that third-to-the-last line it starts
5 with "Jaksick's share":

6 Todd B. Jaksick's share and Stanley S.
7 Jaksick's share of the settlor's trust
8 estate as provided in the restated family
9 trust --

10 That's what we saw in that other draft -- or that
11 other form we saw; right?

12 A It could be.

13 Q It ended with the restated family trust --

14 A Okay.

15 Q -- and then there was nothing after it, remember?

16 A Okay.

17 Q And I can show it to you again if you want to see
18 it, but now the reason the title at the top was changed
19 is because there's been a sentence added.

20 Settlor also gifts the unpaid balance
21 of his note receivable from TBJSC Trust
22 to TBJSC Trust to be offset against Todd
23 B. Jaksick's one third share.

24 A I see that, yes.

1 Q So in that other form where we saw your dad's
2 slashing through the percentages and initialing, nothing
3 at that -- in that paragraph 3.3 in that document, was
4 there, about forgiving that debt?

5 A Okay. Are you talking about one of those like the
6 85 --

7 Q So here's the one we were looking at. There's no
8 sentence there about TBSJC Trust, there's no TBSJC Trust
9 in the title; right?

10 A But was this the one that was 85/85 that dad --

11 Q Keith, blow it up. Do you see that?

12 A Yes. So this was obviously an earlier version.

13 Q Earlier version. And then we go to the one
14 that -- Exhibit 13, that ended up being the document
15 you're relying on, and there's an added benefit to you of
16 forgiveness of a debt which would be added to one third
17 share of any distribution; right?

18 A We didn't read it that way. It was that dad was
19 basically making me pay it out of my share, so I get
20 deducted.

21 Q It's what you would receive as part of your share
22 the value of that debt; right?

23 A It -- so instead of -- he's making me pay the
24 debt.

1 Q He's crediting it against your interest in the
2 trust?

3 A Yes. I'm basically paying the debt.

4 Q Instead of you having to write a check for it,
5 it's being gifted to you?

6 A It's the same thing. I mean, if I was -- if I was
7 getting to \$200,000 from the trust, I'd get \$100,000
8 less.

9 Q Well, the point is that there is a benefit in that
10 paragraph to you that does not have any corresponding
11 benefit to Stan or Wendy, it's only to you; right?

12 A I've never reviewed it or had it interpreted that
13 way before. It was my understanding that dad put it in
14 there. Previously, prior to this, dad had actually
15 gifted the note in full, he gifted it, and then in here
16 he put it where he was actually taking it off of my share
17 of the estate.

18 Q Not anything that he noted in that other document
19 where he wrote some draft comments; right?

20 A I didn't see any other notes in there about this
21 particular sentence, no.

22 MR. SPENCER: Now let's look at Exhibit 164,
23 stipulated. I offer Exhibit 164.

24 THE COURT: Thank you. 164 is admitted,

1 Ms. Clerk.

2 THE CLERK: Thank you.

3 (Exhibit 164 was admitted.)

4 BY MR. SPENCER:

5 Q So this is an e-mail dated February 19, 2013, you
6 see there it's written to the right, where Mr. Hascheff
7 to Ms. Clayton, subject is the Second Amendment to Sam's
8 trust, and then he writes to Jessica:

9 Please have Sam sign the attached
10 amendment and return the original. The
11 date is already on the notary. I believe
12 it was sent in December but I don't think
13 it was ever signed. Thank you and have a
14 wonderful week.

15 Do you see that?

16 A I do.

17 Q And so in February, two months after this Second
18 Amendment was supposed to have been signed, Mr. Hascheff
19 is sending the Second Amendment with the note -- with the
20 date already filled in and asking that it be signed; is
21 that right?

22 A I'm not sure exactly what was meant by that, but I
23 think you showed in an earlier slide that on December 18
24 the document had already been signed and already sent to

1 Pierre.

2 Q That's the e-mail with all the signature pages
3 attached to it?

4 A I believe -- I don't know if there was more than
5 one or just that one but --

6 Q Okay. That's not the question. The question is
7 Mr. Hascheff is e-mailing and sending a version of the
8 Second Amendment but he's already put the date into it
9 and asking that it be signed, that's in February of 2013,
10 two months after the Second Amendment was signed on
11 December 10 of 2012; right?

12 A Yes. You just have to ask Mr. Hascheff but I
13 think what you were saying -- what they were saying is it
14 hadn't ever been signed. I think it's a follow-up, it
15 hadn't ever been signed. And I was just pointing out to
16 you it was signed and you had a copy of it on
17 December 18, that the document was sent to Pierre's
18 office.

19 Q He clearly doesn't have a signed version of it.
20 He may have had a signature page but he didn't have a
21 signed version of it, according to this e-mail; right --
22 Exhibit 164?

23 A I'm not sure. This is -- I'm not sure. You'd
24 have to just ask him. I was just telling you that the

1 signature page was sent on the 18th, is what I recall.

2 Q Well, we can infer that from what he's writing
3 that he doesn't have a signed copy; right -- fully signed
4 copy?

5 A The way I read that, I don't know.

6 Q If he put a date on the signature page in February
7 of 2013, it wouldn't have been December 12 -- 10th of
8 2012; would it?

9 A I don't believe so.

10 Q Then the handwriting on that document, the
11 asterisk there, that's your handwriting; isn't it?

12 A It is.

13 Q

14 Dad already signed the one that was
15 changed, Luke, 70, Lexi 30.

16 And that's what ended up in the final version.

17 A Yes, as I recall, that 70/30 is in the final
18 version of what has dad allocated to Luke versus Lexi.

19 Q So the evidence we have from you father came
20 directly from your father, is he wanted -- he wanted it
21 to be a 75/25 split, and then you make a note that it
22 actually ended up 70/30; right?

23 A I may have. It looks like dad already signed the
24 one that I was changed, Luke 70, Lexi 30.

1 Q And Mr. Hascheff, who is your attorney and your
2 dad's attorney and other people's attorney, is sending
3 the trust over by e-mail to be signed, I guess, at some
4 point somehow somewhere instead of him being there to
5 organize and watch over it; right?

6 A I don't totally recall, but that sounds like
7 that's what he was doing right there.

8 Q He's the guy that is the last stop, the last
9 protection of your father to make sure that what goes in
10 your father's trust is what -- is actually what he
11 wanted; correct?

12 A That's -- they were working on that document
13 together.

14 Q As his attorney, he would be the one that needed
15 to be there to protect your dad, make sure his intentions
16 are properly set out in the document?

17 A Right.

18 Q And he's representing you at the same time and
19 changes are being made that benefit you; right?

20 A I don't see that change as a benefit to me because
21 it takes out of my share. But, regardless, as I had
22 testified to earlier, that dad told me before he went
23 down on December 17, that he wanted to make sure for his
24 surgery that he had finalized his trust documents, Second

1 Amendment. And, also, when I was down there at dinner
2 with him the night prior to his surgery and for his
3 surgery, he also reminded me again that his Second
4 Amendment was complete so...

5 Q Well, there were debts outstanding with Wendy and
6 Stan, too; weren't there?

7 A I don't understand that question.

8 Q Debts that could have been attributed to their
9 shares also?

10 A I'm not sure.

11 Q You don't know?

12 A I'm not sure what you mean by that.

13 Q Well, this debt you say was attributed to or
14 credited against your one third share, there were debts
15 that could have been attributed to Stan and Wendy's, too;
16 right?

17 A My understanding -- maybe I've been reading it
18 wrong for the last six years, maybe your interpretation
19 is correct, I don't know. All I'm telling you is that
20 what I was told about this is that dad was making me pay
21 that note that he had previously gifted, and it was going
22 to come out of my share, so -- I'm sorry, I'm not gasping
23 what you're alluding to.

24 Q Well, you know that there's this debt outstanding

1 that you would otherwise have to write a check for that
2 ended up being distributed to you and basically forgiven;
3 right?

4 A Could be the case, but I'm still paying for it.

5 Q It's part of your inheritance but it's being taken
6 care of so you don't have a current obligation anymore;
7 right -- once your dad dies?

8 A That particular trust doesn't have an obligation.
9 It wasn't necessarily myself, it was the TBJSC Trust.

10 Q All right. That's your trust; right?

11 A It was my trust that was set up for my kids that
12 my dad was gifting things to.

13 Q So that obligation went away; didn't it?

14 A No. It still hasn't gone away. It still will be
15 deducted from my share at some point.

16 Q It hasn't been yet?

17 A No.

18 Q That's because you have to wait until all the
19 debts are paid before you distribute?

20 A I believe that to be the case.

21 Q And that will be an asset -- would have been of
22 the trust but for the entry of that sentence into that
23 provision; right?

24 A I don't -- I'm not sure.

1 Q Well, you're the trustee, how do you not know
2 that? That would be an asset to claim that the trust
3 owns against the TBJSC Trust to be paid out of that
4 amount of money; right?

5 A Could have very well been. Like I said, dad had
6 previously just gifted the note, the balance of the note
7 outright so there wasn't going to be any obligation for
8 TBJSC to repay it at all, so it really was a benefit and
9 a gift. And then with this document it put it back where
10 it would come out of my share.

11 Q We understand that. That wasn't my question.

12 A Okay. Sorry.

13 Q In looking at the solvency of the trust, what the
14 trust owns and what it owes, what debts it needs to pay,
15 the debts that TBJSC Trust owed to the trust would be a
16 claim that the trust would own against that trust, the
17 family trust would own against the TBJSC Trust as an
18 asset; right?

19 A The way you explained it, yes.

20 Q Okay. And if you had written a check for the
21 amount of that loan, that would have been one third, one
22 third, one third, presuming that the estate was not
23 insolvent?

24 A Okay.

1 Q That money would have been there to pay off the
2 other debts, too; right?

3 A It's -- under that example, that sounds accurate.

4 Q All right. But instead, in this Second Amendment,
5 the percentages are changed which are different than what
6 Sam wrote down and this sentence is added that benefits
7 you and removes that as an asset; right?

8 A I see where I know he changed the 70/30 and I see
9 where he added the sentence, yes.

10 Q All right.

11 MR. SPENCER: Let's look at Exhibit -- I don't
12 think I've offered this one, your Honor. I want to make
13 sure. I offered Exhibit 15. I think it's stipulated.

14 THE COURT: 15 is admitted, Ms. Clerk.

15 THE CLERK: Thank you.

16 (Exhibit 15 was admitted.)

17 BY MR. SPENCER:

18 Q This is that ACPA that we mentioned briefly
19 earlier; right?

20 A Do you have an extra copy of that one or is it in
21 this binder?

22 Q I'll get it for you. What binder do you have
23 there?

24 A 88 through 125.

1 Q One second.

2 A What number is this, Mr. Spencer?

3 Q 15.

4 A I'm sorry? I didn't hear you.

5 Q I'm sorry. 15. Bending over.

6 A Okay. Got it.

7 Q Do you have it?

8 A I do.

9 Q And you recall this ACPA?

10 A I do.

11 Q It's dated July 16, 2013?

12 A Yes.

13 Q All right. And so I want to -- let's flip to the
14 signature pages again, start there. July 16, 2013.

15 When did Mr. Riley resign as the co-trustee; do
16 you recall?

17 A I'd say that July/August range, somewhere around
18 there. I'm not sure exactly.

19 Q Was it May, May 31st, or somewhere around there?

20 A I don't believe so. I think it was around July or
21 August.

22 Q We'll see that later, but it's signed by Todd,
23 Stan and Kevin Riley, as co-trustees. And then the next
24 page -- first back -- let's back up to TJ 79 -- up one

1 more. Okay, down.

2 There you and Todd have already signed this
3 document, Mr. Riley had not signed the document, and it
4 already had a date on it; right?

5 A Yes.

6 Q Then the next page Mr. Riley added his
7 signature -- get all that, down, page three -- and then
8 on the next page we have another orphan signature page,
9 primary beneficiaries, you, Stan and Wendy; correct?

10 A Yes.

11 Q So going back up to the first page of Exhibit 15,
12 Recital B, as in Boy, this says in April of 2013, before
13 his death, Sam gifted six percent of the issued and
14 outstanding stock in Pioneer Group to his son Stan and
15 another six percent to his son Todd, he did not gift any
16 stock of PG to his daughter Wendy?

17 A I see that.

18 Q That wasn't a true statement; was it?

19 A Yes, it is a true statement.

20 Q That does not -- that does not agree with the
21 Declaration of Gift that was signed in April 2013 before
22 his death; does it?

23 A The six percent talks about -- I don't know if you
24 want to go through all that again -- it says his stock,

1 there was some confusion there. The six percent after,
2 further discussions with the attorneys, the trustees,
3 Wendy, the only person that was going to be affected by
4 the fact that it was either six percent of his stock or
5 six percent of the company was determined to be Wendy.
6 And Wendy recalled discussions that she had with dad that
7 dad said that he was going to give us each six percent of
8 the company, enough to get a gaming license, and
9 therefore that's why Wendy signed an affidavit saying
10 that she was aware of those discussions with dad and that
11 she was in agreement with the 26 percent.

12 Q You believe the recitals to be true and correct?

13 A I do.

14 Q So go back to my question that you didn't answer.

15 April 2013, before his death -- that's what it says right
16 there; correct?

17 A Yes.

18 Q -- that references the Declaration of Gift which
19 was in April of 2013, which is April 15 of 2013; correct?

20 A Okay. Yes.

21 Q And then you say, you declare to Wendy, who is the
22 one who just said was affected by this, that Sam gifted
23 six percent of the issued and outstanding stock when you
24 knew that it only issued six percent of his stock; right?

1 A Well, first of all, I'd like to clarify. When
2 you're saying me, this is actually Stan, Kevin Riley,
3 myself, Bob LeGoy, Brian McQuaid, the gaming attorney,
4 Roger Morris, so it's a bunch of people and Wendy
5 involved in all these decisions, not just me.

6 Q So your whole team was involved in making this
7 misrepresentation to Wendy; right?

8 A We didn't believe it was a misrepresentation to
9 Wendy.

10 Q How do you reconcile saying that six percent of
11 all the stock in the company versus he got six percent of
12 his stock?

13 A Because the issue had been cleared up by this
14 point in time.

15 Q You didn't tell Wendy that?

16 A We did.

17 Q Not in this declaration?

18 A We told -- we told Wendy that, Wendy was aware of
19 that. There was an affidavit that Wendy signed somewhere
20 that she said that she was aware of it and understood it.

21 Q We're going to get to that in a second. I'm
22 asking about the ACPA.

23 A Okay.

24 Q So you certainly have to agree that the ACPA says

1 something different than the Declaration of Gift; don't
2 you?

3 A I'm not sure but I'll -- I guess it's possible.

4 Q The issue of outstanding stock is something
5 different than six percent of his, your dad's, stock;
6 right?

7 A Sam gifted six percent of the issued and
8 outstanding stock in Pioneer Group. It doesn't -- I'm
9 not trying to be argumentative, it doesn't say that's
10 exactly what the document of the gift said. This shows
11 that was gifting six percent and by this time everybody
12 had agreed that it was intended to be six percent of the
13 outstanding stock of the company so that we could get
14 licensed.

15 Q So you don't want to say that that language there
16 conflicts with the Declaration of Gift; is that right?

17 A I'm not trying to not say that, I'm just trying to
18 explain the circumstances.

19 Q Well, in order for the ACPA to have the effect we
20 saw earlier, the more vague it is the less it protects
21 you -- you remember that part; right -- Mr. McQuaid said
22 that in an e-mail?

23 A Okay.

24 Q If you're saying something in the recital that's

1 not true, when you look at the actual document itself,
2 that creates a flaw in the ACPA; doesn't it?

3 A May very well. I'm not sure. You'd have to talk
4 to counsel about that.

5 Q Okay. And so go through this ACPA and in
6 Recital B it references that Second Amendment to the
7 family trust by initially distributing all the family
8 trust remaining stock in PG equally to the two generation
9 skipping trusts to be formed by Stan and Todd under the
10 family trust agreement, Wendy is not included in that;
11 right?

12 A Wendy is not included in that language right there
13 but she is aware that we're distributing the stock to
14 Stan and I because we didn't believe Wendy could get
15 licensed, so this was our game plan.

16 And then further down in the ACPA we built in the
17 arrangement that Stan and Todd will start moving forward
18 with the licensing, and in the event -- we'll give Wendy
19 like five years to get her act together and get her taxes
20 paid and -- because she hadn't filed tax returns for like
21 five years and then if for some reason if she couldn't
22 get licensed, then Stan and I were going to figure out
23 how to equalize, which is what I recall this ACPA being
24 about.

1 Q Right. You're jumping ahead but that's fine.

2 That's what it says. The next sentence reads:

3 Two generation skipping trusts -- and
4 for the two generation skipping trusts to
5 sell equalizing amounts of that stock to
6 the generation skipping trust to be
7 formed for Wendy's benefit, if and when
8 she's licensed by the Colorado gaming
9 authorities.

10 A Okay. Yes, I do see that right there now.

11 Q To be beneficiary of the generation skipping trust
12 that owns that stock, that's what you were just alluding
13 to; right?

14 A Correct.

15 Q Then on the next page, subparagraph (2)(a), as in
16 Apple, consent for the co-trustees of the family trust to
17 distribute all the remaining stock in Pioneer Group, one
18 half to the generation skipping trust to be formed for
19 Stan and one half for Todd; right?

20 A Yes.

21 Q And then down below in (b), subparagraph (b), if
22 Wendy gets her gaming license, then co-trustees will
23 direct the generation skipping trust to purchase one
24 third of the PG stock from Todd's and Stan's generation

1 skipping trusts, fair market values?

2 A Okay. Yes, I see that.

3 Q Then Stan will each retain a six percent of the
4 issued and outstanding, not his stock, his share, but the
5 issued and outstanding PG stock that Sam gifted to each
6 of them in April 2013, another misstatement of the
7 Declaration of Gift; right?

8 A I'm not sure.

9 Q Okay. Then subparagraph (2)(c), if Wendy is not
10 issued a gaming license on or before the date in which
11 final distribution is made, then other assets with fair
12 market value equal to the fair market value of the PG
13 stock that is allocated and transferred to each of her
14 brothers' generation skipping trust will be allocated and
15 transferred to Wendy's generation skipping trust; do you
16 see that?

17 A I do, yes.

18 Q Wendy never got the Colorado gaming license; did
19 she?

20 A She did not.

21 Q And no other assets were sold that would have
22 equalized the value that your trust -- your generation
23 skipping trust got and Stan's got; right?

24 A Yes. The casino sold.

1 Q The casino sold and proceeds were received;
2 correct?

3 A Correct.

4 Q And --

5 MR. SPENCER: Your Honor, I offer Exhibit 76.

6 THE COURT: Is it part of the stipulated?

7 MR. SPENCER: I believe -- yes, it is.

8 THE COURT: 76 is admitted, Ms. Clerk.

9 THE CLERK: Thank you.

10 (Exhibit 76 was admitted.)

11 BY MR. SPENCER:

12 Q And so I just want to look right now -- we'll come
13 back to this exhibit, but down at the bottom, the amount
14 of Pioneer sales proceeds received by Stan and Todd
15 subtrust was \$5,694,600; does that sound right?

16 A I thought it was a little bit more.

17 Q Okay.

18 A Like in the six-something range.

19 Q I'm sorry, it's above. Let's look at No. 13, the
20 total amounts received from the Pioneer Group by Stan and
21 Todd's subtrust since Sam's death is \$6,201,912?

22 A Okay. That sounds more what I recall.

23 Q Okay. And that 5.6 million was after some taxes
24 were paid and et cetera?

1 A Yes, looks like that.

2 Q Okay. And let's go to Exhibit 73, which is
3 admitted. We'll go to page ten, which is SJS 1178, that
4 reflects a distribution of that six percent interest that
5 was referenced, doesn't it -- transfer -- down to the
6 last two entries, Keith.

7 A Yes, I see that.

8 Q Okay. So you and Todd got the six percent
9 interest at 551,000 -- so you, Todd, and Stan, received
10 the six percent representing 551,000 each?

11 A Yes.

12 Q On January 1st of 2015?

13 A That doesn't sound right to me, I'm not sure why.

14 Q It says -- at the end of both of those sentences
15 it says January 1st of 2015.

16 A Could be -- it probably was. It probably
17 was after we got licensed is now what I'm thinking.

18 Q Okay. This is the financial statements accounting
19 for the period April 1, 2014, through March 1st of --
20 March 31st of 2015?

21 A Okay.

22 Q And distributions were made and all the debts
23 haven't been paid yet; right?

24 A I believe that the distribution is what is meant

1 by here, is that the stock wasn't transferred to Stan and
2 my trust until we got licensed. And then when we got
3 licensed, then the stock transferred to us, but I don't
4 necessarily know -- I don't remember getting any kind of
5 money like that.

6 The only time we would have gotten a bigger check
7 like that would have been like once the casino sold, is
8 what I recall. So I don't know, maybe this is just Kevin
9 saying that's what the value of the six percent stock
10 was, but it was just the stock but I don't think that
11 that was cash, is what I recall.

12 Q My question was just were the shares transferred?

13 A Okay. I'm sorry. I was thinking you were
14 thinking about distributing assets before the debts were
15 paid, so I was making the assumption that you were
16 thinking that Stan and I each got \$551,000 in cash.

17 Q The shares were transferred; weren't they?

18 A Per the gift, but they couldn't be transferred
19 until the license was -- until we got licensed, is what I
20 recall.

21 Q And this is -- this is at the top, "Distributions
22 from Principal"; do you see that?

23 A Okay.

24 Q All right. And then the next page -- or I'm

1 sorry, page 13, JSK 1181 of Exhibit 73 -- and it will be
2 the fifth from the bottom, Keith?

3 So now we see here, transfer of 12.84 shares of
4 Pioneer Group to Todd and then another one to Stan; do
5 you see that?

6 A I do.

7 Q The value in the right-hand column
8 1.164 million -- \$1,164,377 each and that stock was
9 transferred also; wasn't it?

10 A Yes. It had to be per once we got the gaming
11 license, correct.

12 Q So the stock went into your -- the generation
13 skipping -- generation skipping transfer tax trust for
14 you and then the other went into Stan's GST trust?

15 A Once we got licensed, that's correct.

16 Q And you understand GST, when I use that, that's
17 generation skipping transfer?

18 A I've heard the terminology but I'm not exactly
19 sure the functionality of it.

20 Q But just that reference --

21 A I have heard that phrase before, yes.

22 Q And so this is distributions from income that is
23 in the same accounting; right? The top, Keith.

24 A They would be a good to Mr. Kevin Riley, because I

1 think this is just the value of the stock being
2 transferred but -- like Stan and I didn't receive that
3 1.164, this is just a function of tracking everything on
4 the accounting but we didn't receive the money.

5 Q That's not what I'm asking about.

6 A Okay. I'm sorry.

7 Q I was simply just getting you to confirm that the
8 stock shares were transferred to yours and Stan's GST
9 trust.

10 A Absolutely, because we got licensed.

11 Q And then the proceeds, once they came in, were
12 transferred to where the shares were, so the six percent
13 to each you and Stan, then the rest to each of your GST
14 trusts?

15 A Yeah. The funds from the Division of Colorado had
16 came from Department of Colorado -- from the casino and
17 they had to be put into the subtrust accounts that had
18 licensed individuals, that's correct.

19 MR. SPENCER: Your Honor, I offer Exhibit 505,
20 stipulated.

21 THE COURT: 505 is admitted, Ms. Clerk.

22 THE CLERK: Thank you.

23 (Exhibit 505 was admitted.)

24 / / / /

1 BY MR. SPENCER:

2 Q Keith, can we go back to that last page real
3 quick?

4 Down below those two transfers that we were
5 talking about, there's an entry for a payment to the
6 Colorado Department of Revenue on behalf of Wendy Jaksick
7 for \$3,473?

8 A Yes, I see that.

9 Q Okay. And then sixty-two seventy-two for each of
10 you and Stan as well?

11 A Okay.

12 Q All right. Now let's go to Exhibit 505. This is
13 an e-mail from Mr. McQuaid to Ken Riley, January 21st of
14 2015, and in the second paragraph he writes:

15 The distribution of stock to Todd and
16 Stan's subtrusts have already created a
17 problem in that it results in a
18 distribution having been made to some
19 beneficiaries to the exclusion of others.
20 Specifically, Wendy is entitled to a
21 distribution of equal value and the
22 specific distributions to the grandkids
23 set forth in the amended trust need to be
24 made.

1 Do you recall receiving this e-mail from

2 Mr. McQuaid?

3 A I don't. I see that my e-mail address is up
4 there, I just don't recall this particular e-mail.

5 Q Mr. LeGoy and you and Stan were copied on this
6 e-mail?

7 A It looks like it, yes.

8 Q And so he's alluding to a problem created by the
9 transfer -- the actual transfer before debts are paid to
10 the subtrusts; right?

11 A It looks like it, yes.

12 Q And he references the fact that making those
13 distributions would favor you and Stan over other
14 beneficiaries; right?

15 A That's what he's alluding to, yes.

16 Q You and Stan being also co-trustees of the trust;
17 right?

18 A Yes.

19 Q And then down below, the third -- well, the fourth
20 paragraph in the e-mail, Keith -- we won't get too much
21 into the tax part of that, but if you elect for Todd and
22 Stan subtrust to be QSST trusts -- do you know what that
23 is?

24 A I don't.

1 Q **It's qualified Subchapter S trust.**

2 A Okay.

3 Q

4 Then all future distributions from
5 Pioneer stock will be required to pass
6 through to Todd and Stan and will
7 therefore not be available to fund the
8 200,000 to 300,000 in distributions to
9 their kids as required by the trust
10 agreement. So this passthrough of
11 Pioneer distributions directly to Todd
12 and Stan, prior to the funding of the
13 200- to \$300,000 distributions to their
14 kids, would therefore violate the
15 specific terms of the trust.

16 Do you see that?

17 A I do.

18 Q **And so the transfers that were made --**
19 **remembering, the trust is the rule book and one of the**
20 **first rules is to follow the rule book; right?**

21 A Yes, sir.

22 Q **This is advice what was done by putting this money**
23 **from the Pioneer Group, transferring the stock and**
24 **receiving the proceeds, violated the rule book; didn't**

1 it?

2 A Looks like it violated the rule book per what he
3 was saying. I would just like to clarify the fact that
4 under that circumstance we had no choice. We had to get
5 licensed to be able to keep the stock ownership in
6 Colorado, and if we didn't get licensed, the stock would
7 have been purchased for cents on the dollar by the
8 company, so it was a major important situation that we
9 all had to make at the time.

10 Q And that benefitted your trust and Stan's trust as
11 a priority; right?

12 A We looked out for Wendy as well, as it's stated in
13 the ACPA.

14 Q Okay. We'll get to that, too, but let's finish
15 this e-mail. The last sentence of that paragraph:

16 To do all this without having the
17 funded that required 200- to \$300,000 to
18 the educational trusts, it would seem to
19 dig trustees into a deeper hole than they
20 are already in with the Pioneer stock
21 having been distributed to their
22 subtrusts.

23 And so did you understand that what had happened
24 not only was serious business but it was in violation of

1 **your duties as trustee?**

2 A We weren't certainly advised of this, this could
3 be an outcome when we did it originally, but I think
4 after time went on this is what Brian McQuaid started to
5 realize.

6 Q **Just so everybody can understand, the 200- to**
7 **\$300,000 numbers, they relate to funding separate trusts**
8 **for each of the grandkids, your kids, Stan's kids and**
9 **Wendy's kids; is that right?**

10 A Yes. There's a provision where dad has the
11 grandkids being funded for like college tuition-type
12 stuff. He didn't do that for Luke because he gave Luke
13 20 percent of what Wendy was going to have, so that would
14 be the only clarification I would give you, is that Luke
15 didn't have one of the educational trusts, he had
16 20 percent of what Wendy was supposed to get.

17 Q **Well, that was in the -- that Second Amendment**
18 **December 10 of 2012; right?**

19 A Yes.

20 Q **It wasn't in any of the prior ones; was it?**

21 A I think dad started segregating things out as
22 early as his 2003 documents for Lexi and Luke.

23 Q **After Wendy's death; right?**

24 A What was that now?

1 Q After Wendy's death, they would receive certain
2 percentages that would be in favor of Luke over Lexi?

3 A In the 2003 -- in the 2003 documents, no. What I
4 recall was Wendy was getting her share reduced by
5 \$2 million and then Luke and Lexi were each getting a
6 portion of Wendy's share directly.

7 Q I didn't ask you about the 2003. The Fifth
8 Amendment leaves everything to Wendy 100 percent; doesn't
9 it?

10 A I don't know.

11 Q Okay. We'll see that but, anyway, let's go to
12 Exhibit 76, and this was the one we looked at earlier,
13 the total proceeds were \$6.2 million from the sale of
14 Bronco Billy's and paid some taxes and the net amount
15 ended up being -- or adjusted amount ended up being 5.694
16 million.

17 Flip to the next page, Keith.

18 At the top of the page, this is summarized cash
19 activity through January 25th of 2017, and then there's a
20 column -- there's a totals, and then there's a column for
21 Todd and a column for Stan; do you see that?

22 A I do.

23 Q Then in the left column there's distributions that
24 Pioneer made in 2015; right -- do you see that?

1 A I do.

2 Q Todd received \$228,290 and Stan received \$228,290;
3 right?

4 A The subtrust accounts is what received the funds.

5 Q Okay. And then for Wendy to receive funds, that
6 was classified as a loan; right? It says, "Loan to
7 Wendy, subtrust to pay taxes."

8 A Yes. I recall early on there was a little bit of
9 a unique situation. When dad passed away, the Division
10 of Gaming immediately shut down receipt of funds, they
11 wouldn't send any money to the family. And so between
12 like 2013 and 2015 money had been generated upwards of
13 the fact that 6-, 7-, \$800,000, and those funds were
14 allowed by the Division of Gaming to go to the family --
15 we're allowed to the family trust. And then because of
16 that there was some payments that needed to be made on
17 Wendy's behalf associated with that, is what I recall.

18 Q The point is that you and Stan got your money
19 directly and Wendy had to -- if she received money for
20 taxes or whatever, had to take out a loan; right?

21 A We -- Stan and I just took funds out of the
22 subtrust to loan them to Wendy to cover those bills.

23 Q Right. You all didn't get loans, Wendy had to
24 take a loan; right?

1 A I guess it could be categorized that way, that's
2 possible. Wendy wasn't allowed to get money directly
3 from Colorado unless she was licensed. Had Wendy gotten
4 licensed, then there would have been a column right there
5 that said "Todd," "Stan" and "Wendy."

6 Q This isn't direct money from Colorado, this is
7 money that's hit the account, is sitting in the bank
8 account, and then it gets cashed and it's owned now by
9 the subtrust, and then any money that went out for Wendy
10 she had to take out as a loan rather than a distribution;
11 correct?

12 A Looks like temporarily Kevin accounted for it that
13 way.

14 Q Then 2016 activity, more of the same. There was
15 some receipts that came in and then Wendy had a loan for
16 taxes again; do you see that?

17 A I do.

18 Q Pioneer Sale Distribution No. 1, 5.326 million; do
19 you see that in the "Totals" column?

20 A I do.

21 Q That was divided equally between and you Stan.
22 And then -- at 2.663 million each. And then the 2016
23 Pioneer sale distribution No. 2 was \$367,802 divided
24 equally between you and Stan; right?

1 A I see that, yes.

2 Q Okay. And then down below there's four entries;
3 do you see those -- transferred to the Sam Jaksick Family
4 Trust?

5 A Yes.

6 Q And this was in '16, under 2016 activity, and
7 shows June 3rd, June 7th and July 21st of 2016, transfers
8 were made back to out of the subtrust of yours, under
9 your "Todd" column, to the family trust; right?

10 A Yes, I do recall this. So when we got -- I'm
11 sorry, I have to think this through a little bit.

12 When we got all that money above from the Division
13 of Colorado, it sat in the subtrust account. We paid
14 taxes out of there and then all the rest of the funds
15 that were left over were transferred back into the family
16 trust. That's what I'm seeing there. That's what I
17 recall.

18 Q This created an issue between you and Stan;
19 right -- because you put -- I total that to be \$1,973,998
20 back in the family trust, that's the total of those three
21 entries there, so 1.97 and then Todd -- I'm sorry -- Stan
22 only put back 1.387 million; right?

23 A At this time, I don't think that we had any issues
24 between us at this time. I think that those funds came

1 back in and I think there was more funds that were paid
2 out from Colorado in a third payment or something.

3 Q Okay. But you put back more money than Stan put
4 back into the family trust; right?

5 A I believe at one point in time that was accurate,
6 yes.

7 Q And that caused issues between you and Stan as
8 co-trustees; didn't it?

9 A We did have some disputes and some discussions
10 about that.

11 Q Real disputes that have now been resolved; right?

12 A We did -- we did resolve our outstanding issues so
13 that we could resolve them and sat down peacefully and
14 common sense so we didn't have to be here.

15 Q And you know the reason why Stan didn't distribute
16 or transfer back all of the money that he got like you
17 did?

18 A He had a couple of comments that I recall. One
19 of -- one of them was -- I think there was like \$434,000
20 that was transferred out of his accounts to pay back some
21 debts and obligations that one of the entities was
22 loaning the family trust some money because the family
23 trust didn't have any money to operate on. So one of the
24 other entities that Stan and I and others are associated

1 with was loaning money to the family trust, so I believe
2 \$434,000 of that went to repay that, and then Stan was
3 holding \$400,000.

4 Q And that was money that he was holding back for
5 Wendy; wasn't he?

6 A I didn't recall that being the case until recent
7 discussions, is what I recall that being the case for,
8 was Stan was holding it back early on because he was
9 concerned about the Indemnity Agreement. And then after
10 we had those discussions, there was a point in time where
11 Stan, Kevin Riley, Mike Kimmel and myself had agreed
12 where Stan would transfer that \$400,000 back, and then we
13 would fund the grandkids' trusts with that, is what I
14 recall.

15 Q He did not -- Stan did not want to put the money
16 back in the trust because he knew you would spend it to
17 pay down debts, including your indemnity; right?

18 A We had agreed that we were going to utilize those
19 funds to pay the grandkids' trusts.

20 Q That's what you agreed most recently but way
21 back --

22 A No. What was the discussion way back that we had
23 was that those funds, once -- it was part of an analysis
24 that Kevin had put together of what funds were going to

1 come in and how were we going to allocate certain
2 payments, and we were waiting for those 400 to come back
3 in so we could fully fund the grandkids' trusts.

4 **Q Why did you sue Stan to get it back?**

5 A Because we wanted to get it back in there so that
6 we could fully fund the grandkids' trusts because those
7 funds were supposed to be back in the family.

8 **Q I understand. But you said you all had agreed a**
9 **long time ago to do that, and you had to go file claims**
10 **against Stan to make it happen; right?**

11 A That was one of the disagreements that we did have
12 that we have resolved.

13 **Q So there wasn't an agreement back then?**

14 A It was a verbal agreement on a telephone
15 conversation between Stan, Mike Kimmel, Kevin Riley, and
16 myself that those \$400,000 were going to come in and we
17 would finish funding the grandkids' trusts, and they
18 never did come back.

19 **Q Okay. Have they come back yet?**

20 A Not yet.

21 **Q So Stan is still holding some of the money from**
22 **the Pioneer Group sale, the Bronco Billy's sale in his**
23 **subtrust; right?**

24 A Yes.

1 Q And that money should be in Wendy's subtrust;
2 shouldn't it?

3 A No.

4 Q Why not?

5 A Because we made an agreement that all of these
6 funds that were from the sale of the Bronco Billy's
7 Casino were going to come back to the family trust. And
8 once all these funds come back into the family trust,
9 it's the same thing as getting them to Wendy's portion,
10 so when they land back in the family trust then each
11 person who is a beneficiary in the family trust has the
12 funds in the trust now.

13 Q So once they're back in the family trust, they are
14 then subject to the debts of the family trust; right?

15 A And that's what we have done subject to debts,
16 yes, a lot of debts has been paid.

17 Q Let's look at -- let's shift gears now. We're
18 going to talk about Jackrabbit Properties.

19 Let's look at Exhibit 90 again, Keith, page two SJ
20 1061.

21 Second from the bottom, do you see the Jackrabbit
22 Properties, LLC?

23 A Yes.

24 Q Okay. That shows that Sam Jaksick, Roman numeral

1 I, LLC, owns 29.25 -- 242 percent of Jackrabbit
2 Properties, and then there is a breakdown of Todd J.,
3 Roman numeral I, LLC, 31.35, TBJ Investment Trust, 9.195;
4 do you see that?

5 A I do.

6 Q All those going down are Jaksick family entities
7 except for the Brown Trust; correct?

8 A Could you say that one more time? I'm sorry.

9 Q I want to make sure that the -- well, the SC Ranch
10 and the Brown Trust, are those Jaksick family entities?

11 A No.

12 Q The other ones are, though; correct?

13 A Yes.

14 Q And this is a very valuable asset of the trust
15 estate; isn't it?

16 A We believe it to be, yes.

17 Q And why is it so valuable?

18 A It's just a beautiful ranch. It's a 12,000-acre
19 ranch in northern Washoe County, and big, beautiful
20 reservoir, meadows, alfalfa fields, just -- you know,
21 scattered property around springs. It's just a really
22 nice, nice ranch.

23 Q And you mentioned the reservoir, it owns it, being
24 Jackrabbit Properties, LLC, owns quite a bit of very

1 **valuable water rights; doesn't it?**

2 A This particular ranch has a lot of water rights,
3 yes.

4 Q And that Sam Jaksick -- let's turn, Keith, to page
5 five, SJ 1064 -- Sam Jaksick, Roman numeral I, LLC --
6 it's second from the top -- do you see that -- right
7 there -- a hundred percent Sam owns 35.242 units of
8 Jackrabbit, so that's that entity we saw on page two;
9 right?

10 A Yeah. This sounds more accurate, and -- I mean,
11 there's -- I just need to clarify. There's different
12 time frames when we sold other interests to other
13 parties. We've got five or -- at least five different
14 partners in there. So when a partner comes in, the
15 company dilutes across the board equally so the
16 percentages do change from time to time.

17 Q So Exhibit 90 was back from February of 2015,
18 couple of months before your father's death, so that may
19 have been changed. But this is part of Exhibit 90,
20 you're saying that the amount that Sam owned was
21 different than on the first page?

22 A I'm not -- I'm not sure exactly of the frames
23 but --

24 Q All right.

1 A -- the ownership percentages change just by the
2 sheer fact of sales to other individuals which has
3 diluted the ownership.

4 Q But at this time you felt like the 35.242 units
5 was more accurate?

6 A I thought that number looked a little more
7 familiar to me.

8 Q Okay.

9 A What's your time frame you're kind of concerned
10 about?

11 Q Exhibit 90 is February 2013.

12 A Okay.

13 Q All right. And so then let's look at Exhibit 74,
14 page seven, JSK 1235, this is financial statements
15 accounting for closely held businesses, beginning of year
16 as of April 1, 2015, and it's listing the assets.

17 Then we see down at the bottom, Sam S. Jaksick Jr.
18 I -- Roman numeral I, LLC, 100 percent interest, and this
19 is a disclosure to the beneficiaries of what the trust
20 owns and the value attached there, acquisition and
21 estimated, is a hyphen; right?

22 A That is correct.

23 Q And it being a valuable asset, why was it not
24 reported to the beneficiaries what it was actually worth?

1 A Because the debt that was on the property was more
2 than the value of the land at the time of this, and we
3 did have meetings -- sit-down meetings, Kevin Riley would
4 come to Reno and we would go through each one of these
5 entities and do explanations as to how this transpired,
6 but that -- each one of those that you'll see down that
7 there that's a hyphen, it's what Kevin Riley said in
8 his -- has told us previously, that that's what the
9 purpose was because those debts outweighed the value of
10 the land so it shows like a zero value.

11 Q We're about to break for lunch but I want to ask
12 you before we do, wouldn't it be better as a trustee who
13 is accounting and disclosing to the beneficiaries to say
14 Jackrabbit Properties is worth X, and then in another
15 spot, but it has Y amount of debt against it that offsets
16 rather than just say hyphen?

17 A This is what the trust attorneys and the trust
18 accountant, how they presented it per state law, and then
19 we would have meetings to go over all of the details
20 because there were so many details that it couldn't just
21 be that simple, is my understanding, so this is the way
22 it was presented and then we would have the meetings.

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

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

3 We'll stand for our jury, reconvening at 1:30.

4 THE BAILIFF: All rise for the jury.

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2 RENO, NEVADA, THURSDAY, FEBRUARY 21ST, 2018, 1:30 P.M.

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7 THE COURT: Please be seated.

8 Counsel, continue your examination -- I'm sorry.

9 I've become so automated, I didn't count seats.

10 Now everyone be seated, please.

11 Counsel, you may continue your examination.

12

13 +++ DIRECT EXAMINATION +++

14 (Resumed)

15 BY MR. SPENCER:

16 Q Mr. Jaksick, I want to try and speed things up a
17 little bit, so as direct an answer as you can give would
18 be much appreciated so we can get through some documents
19 and hopefully wrap up.

20 A Okay.

21 Q You mentioned -- I want to go back -- before we
22 continue with the Jackrabbit issue, I want to go back and
23 ask you, you talked about -- you mentioned the affidavit
24 Wendy signed several times and I said we'd go to that and

1 I didn't do it, so I want to do that.

2 MR. SPENCER: Offer Exhibit 203, your Honor,
3 stipulated.

4 THE COURT: 203 is admitted, Ms. Clerk.

5 THE CLERK: Thank you.

6 (Exhibit 203 was admitted.)

7 BY MR. SPENCER:

8 Q This is that affidavit you mentioned where
9 Wendy -- or at least it purports to say that Wendy knew
10 about the issue between six percent of his stock versus
11 six percent of the total stock?

12 A I believe so. That's what it looks like, yes.

13 Q All right.

14 And flip over to the second page there, Keith,
15 543, Exhibit 203.

16 First of all, do you know who prepared this
17 affidavit?

18 A I believe that was either Bob LeGoy or Roger
19 Morris, the Colorado Division of Gaming attorney, or a
20 combination of both.

21 Q Any idea how Wendy would have seen it or gotten it
22 for the first time?

23 A She was in Reno at the time and so it probably
24 would have been delivered over to our office and then

1 Wendy would have come over to the office, I believe, to
2 sign this.

3 Q And you notice that this is dated August 26, 2013;
4 right?

5 A Yes.

6 Q And the ACPA regarding the Pioneer stock which
7 this pertains to was dated July 16 of 2013; right?

8 A I do recall you saying that, yes.

9 Q Well, do you recall that that's the date?

10 A It sounds like July. I don't remember.

11 Q Okay. Without flipping back to it, it was dated
12 July 16 of 2013, so that was before this August 26 of
13 2013 affidavit; right?

14 A Yes.

15 Q And what was the purpose of an affidavit --
16 sending an affidavit to Wendy if you already had the
17 ACPA; do you know?

18 A I don't remember. I just remember it had
19 something to do with counsel either in Colorado or Nevada
20 or something, but we were trying to make sure that --
21 something to do with the casino operators and
22 California -- or Colorado Division of Gaming, Roger
23 Morris -- I'm kind of speculating because I don't exactly
24 remember but part of that group needed an affidavit for

1 what was in the contents of this.

2 Q Why would you need that if the Second Amendment or
3 the Declaration of Gift, whichever one, already took care
4 of the issue?

5 A I don't recall. I wasn't really heavily involved
6 with this. I just recall it being done. It was more of
7 counsel was working on it.

8 Q Then scroll down, Keith, to the lower part of that
9 page -- actually, blow it up a little bit so we can see
10 both sets of language.

11 And you're aware that Jessica Clayton cut and
12 pasted the jurat, the notary part of that document,
13 herself; right?

14 A What do you mean by that? I don't quite
15 understand that.

16 Q Are you aware of that Jessica Clayton, the
17 affidavit was prepared and didn't have that darker
18 writing there, which is generally known as a jurat, it's
19 the notary statement.

20 A Just like the form, the type wording there?

21 Q Yes, sir.

22 A Okay. I'm sure that could be possible, sure.

23 Q It doesn't match the same writing as above; does
24 it?

1 A It doesn't look like it, no.

2 Q Okay. And so that affidavit was prepared and it
3 was prepared without a notary jurat; is that your
4 understanding?

5 A I don't -- I'm not sure.

6 Q Okay. You don't believe an attorney would prepare
7 an affidavit and leave the jury -- I mean, the notary
8 jurat off of it; do you?

9 A You'd have to ask Bob LeGoy how he handled that.
10 I know this document was not prepared by Jessica.

11 Q That wasn't my question. Jessica had to cut and
12 paste her notary jurat into that document, you don't
13 believe that an attorney would leave that part of an
14 affidavit off; do you?

15 A It's possible. I can't speak to what they did or
16 didn't do.

17 Q Okay. And -- but your testimony is you don't know
18 who prepared the affidavit part of the document?

19 A I recall either Bob LeGoy or Roger Morris.

20 Q So that's the best of your recollection?

21 A Yes.

22 Q All right. Let's go now -- let's go back to the
23 Jackrabbit issue -- or topic, I should say.

24 A Okay.

1 MR. LATTIN: No objection.

2 MR. SPENCER: Your Honor, I offer 513.

3 THE COURT: 513 is admitted.

4 THE CLERK: Thank you.

5 (Exhibit 513 was admitted.)

6 BY MR. SPENCER:

7 Q You can see this is a memo to file, and Maupin,
8 Cox, LeGoy firm, and it says:

9 It turns out --

10 It's regarding Jackrabbit, conference call with
11 Todd Jaksick and Kevin Riley regarding Jackrabbit.

12 It turns out that the proposed
13 assignment of Samuel S. Jaksick Jr. Roman
14 numeral I or I, LLC, 50 percent to Todd's
15 subtrust, 50 percent to Stan's subtrust
16 will not work. It turns out that this
17 would end up as Todd's sole holdings or
18 assets exceeding the limit set by the
19 government with respect to granting the
20 permanent easement so it will be
21 necessary to reduce the amount of
22 Jackrabbit that Todd owns and also
23 necessary to reduce the levels of
24 ownership to meet certain of the

1 government requirements as well.

2 And so granting you or transferring to you
3 50 percent of the trust's interest in Jackrabbit it will
4 put you over the limit to obtain a conservation easement;
5 is that your understanding?

6 A I don't recall this, but that's certainly what
7 Brian McQuaid is saying right there, if that is Brian
8 McQuaid.

9 Q Right. And do you recall whether the transfers to
10 your subtrust and Stan's subtrust had already been made
11 by November 25th of 2015?

12 A I don't recall. I can give you an explanation of
13 what this is about --

14 Q Well --

15 A -- if you like.

16 Q I want to keep it moving. So let me refer you to
17 the bottom of the page of Exhibit 513. There is a
18 discussion there about eliminating various levels of
19 ownership.

20 And while the direct transfer would
21 bypass Todd and Stan's subtrust, we will
22 just treat it as having been a
23 distribution from the family trust to the
24 subtrust and then from their subtrust to

1 them individually. The direct transfers
2 would simplify the mechanics and not
3 jeopardize the conservation easement.

4 And so that's sort of saying we're going to cut
5 out some steps in the middle; is that how you read that?

6 A I'm not sure. I remember there was a lot of
7 discussions relating to this particular issue.

8 Q Instead of transferring from the family trust to
9 the subtrust and out to you and Stan individually, it's
10 just going to go directly to you all individually?

11 A It's possible.

12 Q Okay. And then let me -- let me pull up
13 Exhibit 74, page 11, JSK 1239, and the top two paragraphs
14 address this issue and the first one is a transfer of
15 50 percent of the Samuel Jaksick Jr. I, LLC, created by
16 the family trust on June 4th, 2014, on November 11th of
17 2015, so that predated that Brian McQuaid memo we just
18 saw on November 25th of '15; right?

19 A I'm sorry, I don't remember the date of that.

20 Q Well, it's dated November 25th of '15, the one
21 that said that doesn't work because you're getting too
22 much of an interest by the government requirements?

23 A Okay.

24 Q And the transfers had already made November 11th

1 to Stanley, and then the second paragraph is to you -- or
2 to your subtrust, I'm sorry -- so 50/50 of the family
3 trust's interest in Samuel Jaksick Jr. I, LLC, which went
4 to you and Stan?

5 A In this particular transaction, what we were
6 working on, which was in the first paragraph that says we
7 were working at converting from a 30-year easement to a
8 permanent easement, we had asked Wendy to participate in
9 this transaction with us and we needed her to be able to
10 sign some of these documents so that we could try to
11 bring in a million dollars here to pay down debt on this
12 transaction and the White Pine transaction, and she
13 refused to sign the paperwork unless we gave her either
14 \$50,000 or \$100,000 immediately. So we decided not -- we
15 had to move forward with the distribution so that we
16 could try to benefit the family trust as a whole.

17 But the two 50 percents don't sound quite right to
18 me. What I remember it being was like two thirds to
19 Stan's subtrust and one third to mine.

20 Q Okay. And so if you were to look at the last
21 sentence of the first paragraph, I think that's what
22 you're referring to -- that's the third line up, Keith --
23 or fourth line up -- one third of the Jaksick Family Jr.
24 Trust agreement, one third of the holdings are being held

1 by Stanley Jaksick on behalf of Wendy Jaksick Trust
2 created by the family trust June 4th of 2014, and the
3 Samuel Jaksick Irrevocable Grandchild Trust No. 2 dated
4 June 30, 2012, so Stan was holding Wendy's portion of
5 that interest?

6 A That is correct.

7 Q And he was holding that in the Stanley Jaksick
8 Trust?

9 A I don't recall where it was being -- where it was
10 being held.

11 Q Well, that's what's it says at the top of the
12 paragraph that that's been transferred there?

13 A Okay.

14 Q And that would be the subtrust from the family
15 trust that belonged to Stan; right?

16 A I would imagine so, yes.

17 Q And then --

18 A Yes.

19 MR. SPENCER: Your Honor, I offer Exhibit 540,
20 stipulated.

21 THE COURT: 540 is admitted, Ms. Clerk.

22 THE CLERK: Thank you.

23 (Exhibit 540 was admitted.)

24 / / / /

1 BY MR. SPENCER:

2 Q So this is the Wendy Jaksick Trust under the
3 Samuel S. Jaksick Family Trust Agreement, it's a
4 financial statement accounting for January 1, '17,
5 through December 31, '17. Okay?

6 A Okay.

7 Q Flip over to page four, Keith, JSK 5067, the last
8 paragraph.

9 This is Receipts of Principal at the top, this
10 page is, and received by assignment from Stanley
11 Jaksick -- Stanley Jaksick Roman numeral II, LLC, on
12 October 11 of 2017, 943984 Class A units of Jackrabbit
13 Properties, then it continues on representing a
14 7.5187percent of the total Class A units of Jackrabbit.

15 So that's not Stan's subtrust anymore; is it?

16 A Sam II, LLC -- no, that's not his subtrust.

17 Q Okay. So the accounting that was received in
18 relation to the family trust for Exhibit 74 for the
19 period April 1, 2015, through March 31, 2016, said it was
20 being held in Stanley's subtrust, and then by the time it
21 gets delivered into Wendy's subtrust it's coming out of a
22 different entity altogether, which is Stan Jaksick II,
23 LLC, so it had to have come out of Stan's subtrust, into
24 that separate entity, and then into Wendy's subtrust;

1 **right?**

2 A I'm not sure, but it -- but if it was in Stan
3 Jaksick II, LLC, it had to be in there obviously to go
4 from there to Jaksick Family --

5 **Q Right. So --**

6 A -- Jackrabbit.

7 **Q Right. So while it's in Stan Jaksick II, LLC,**
8 **Wendy doesn't have any idea what is going on with her**
9 **interest; does she?**

10 A Yes, she knew very well, exactly what we did with
11 the interest, because it was a transaction that we were
12 working on very hard for a long period of time to try to
13 bring in a substantial amount of money, and she refused
14 to sign on not only this occasion but several other
15 occasions, and demanded 50 or \$100,000 to sign. And it
16 was problematic and we had no choice but to transfer it,
17 at one point, to try to make the government transaction
18 work. And then it was transferred back to the -- and
19 this is where the value of it lands into Wendy's
20 subtrust.

21 **Q So she didn't want to sign documents because she**
22 **didn't know what was going on with her interest; right?**

23 A No. She knew what was going on with her interest.

24 **Q Because you were verbally telling her about it; is**

1 **that right?**

2 A Yes. We had a meeting with Kevin Riley and Sam
3 and Wendy and Lexi on October 21st of 2015. This was a
4 very, very detailed, lengthy all day meeting that this
5 was one of the key topics that was very important.

6 Q **Where are the minutes from that meeting?**

7 A I don't know if we kept minutes or not.

8 Q **Of course you didn't. Of course you didn't**
9 **because everything that you're talking about disclosing**
10 **to Wendy is always verbal, there's no writing. And the**
11 **writings here only tell her where it landed and where it**
12 **came from and nothing in between; right?**

13 A It was our approach to have in-person meetings and
14 go through all these in details.

15 Q **It's all verbal, verbal communications that no one**
16 **can back up with minutes or anything in writing that**
17 **outlines what was discussed; right?**

18 A I don't know if we have any minutes. I'm sorry.

19 Q **Well, we don't know how much Stanley Jaksick II,**
20 **LLC, earned on Wendy's interest while it was in that**
21 **entity; do we?**

22 A Yes.

23 Q **Okay. Where is that in the accounting? I'm**
24 **looking --**

1 A Nothing was earned. It was zero.

2 Q Oh, it was zero? So where is that disclosed to
3 Wendy?

4 A Wendy knew. We told her that the transaction, the
5 easement didn't close because we didn't get the appraisal
6 value that we were hoping to get.

7 Q Uh-huh. And so those are not things that you
8 would deem important for her to know in the accountings
9 that you're providing to her regarding or interest?

10 A I'm just relying on our professional accountants
11 and attorneys to handle what they think is appropriate
12 for the state law as well the in-persons meetings that
13 our group would have with Wendy to explain all these.

14 Q Where does the buck stop with regard to that? It
15 stops with the co-trustees; doesn't it?

16 A I'm not sure.

17 Q You're always pointing at an accountant or an
18 attorney or someone else, but in actuality it's the
19 co-trustees that have to -- that have to be responsible
20 for all this; right?

21 A You know, I'm sorry, these are extremely
22 complicated matters and many different entities and I'm
23 not an accountant, nor is Stan. Stan is not an attorney
24 and I'm not an attorney. It's just very difficult to

1 keep track of all this so we have our accountant to help
2 us keep track of the number.

3 Q Maybe that means you're not suitable for serving
4 as trustee?

5 MR. ROBISON: Objection, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: I believe that dad put us in to be
8 trustees because he thought we would do a really good
9 job, but we hired the professionals that we thought were
10 the right guys at the right time to help us.

11 BY MR. SPENCER:

12 Q Really good job o moving Wendy's property around
13 to yours and Stan's various entities without admitting it
14 to Wendy until 2017 after you all have had it for several
15 years; is that right?

16 A There -- I guess.

17 Q You would agree that's not proper decision making
18 or good judgment on behalf of -- by a fiduciary on behalf
19 of beneficiary; right?

20 A I would just say that if Wendy would have been
21 helpful in participating with us we wouldn't have done
22 that.

23 Q You don't get the luxury of that, sir. You don't
24 get the luxury of blaming decisions that you as trustee

1 **should have to make. You understand that; right?**

2 A I'm not sure I understand your question. I'm
3 sorry.

4 Q You're co-trustee, and we've talked about all the
5 other fiduciary positions but you're a co-trustee and
6 it's your job to make sure that you follow the rule book,
7 that you keep track of all the property, that you
8 properly account to Wendy regarding all the property and
9 let her know what is going on, it's you that has to do
10 that, not Wendy; right?

11 A Yes. So what we would do is we would account
12 according the way that we did. Stan and I would have
13 meetings, we would bring Kevin Riley, the accountant, in
14 to have meetings with her. We also made Kevin Riley, the
15 accountant, available to Wendy if Wendy wanted to
16 directly correspond with Kevin so that she could get
17 answers to her questions. They were answered. And we
18 also made Bob LeGoy, the trust attorney, available so
19 that Wendy could correspond directly with Bob LeGoy. We
20 tried to make every avenue open so she was fully
21 informed.

22 Q And you've admitted that it's difficult for you to
23 understand all this, even more so for Wendy as a
24 beneficiary who is not involved in the management and

1 administration of everything; right?

2 A It is complicated, there's no doubt about it.

3 Q You would agree that that would actually
4 require -- in such a complex situation would require even
5 more disclosure and more documentation of things that are
6 going on so that Wendy will have a reference if she ever
7 has a question regarding this; right?

8 A That's why we made Kevin Riley available and Bob
9 LeGoy. And Wendy also told us she had an attorney and
10 accountant hired, that she was having them review her
11 personal stuff as well.

12 Q The documentation that we have regarding what
13 you've disclosed to Wendy is the accountings; right?

14 A That -- those were the accountings right there,
15 that is correct.

16 Q All right. Let's --

17 MR. SPENCER: Your Honor, I offer Exhibits 213 and
18 214, stipulated.

19 THE COURT: 213 and 214 are admitted.

20 THE CLERK: Thank you.

21 (Exhibits 213 and 214 were admitted.

22 BY MR. SPENCER:

23 Q So this is a Samuel S. Jaksick, Jr., Statement of
24 Financial Condition, October 15 of 2010, something that

1 Mr. Riley would have prepared; right?

2 A I'm not sure if it was -- if I could see the
3 document, I could probably tell you.

4 Q Of course. Sorry about that. I'll get it.

5 You didn't have any other accountants working for
6 you besides Mr. Riley; did you?

7 A We did have a couple of guys that were helping us,
8 give us advice early on.

9 Q I'm talking about in preparing financial
10 statements and accountings and so on, that was Mr. Riley;
11 right?

12 A Yes.

13 Q So this would have been Mr. Riley, too; correct?

14 A Yes. If you look on page two, it says it's from
15 his accounting firm.

16 Q Right. And so flipping over to page nine, RILEY
17 3617 of Exhibit 213, at the top we see -- just reminding
18 of the date, October 15, 2010, and then down right there
19 is that Sam Jaksick I, LLC --

20 MR. ROBISON: Excuse me, your Honor. May I?

21 THE COURT: Yes.

22 THE WITNESS: Thank you. Yes, I do.

23 MR. SPENCER: And -- do you need -- do you want to
24 keep going?

1 THE COURT: It's all right, counsel. Go ahead.

2 MR. SPENCER: All right.

3 BY MR. SPENCER:

4 Q So Jack Jaksick Jr., I, LLC, this is the -- that
5 Jack -- 35.242 percent interest in Jackrabbit and it
6 shows -- we talked about it being very valuable, the
7 assets of 23,624,000, and then liabilities leaving equity
8 of \$16,517,000. And so the estimated value of the
9 Jaksick I, LLC, in that entity was \$4,031,000; do you see
10 that?

11 A Yes, I do.

12 Q That's as of October of 2010.

13 Then we'll flip over to Exhibit 214, this is
14 financial condition -- Statement of Financial Condition
15 for Sam Jr., October 15 of '12. And we'll flip to page
16 eight, RILEY 3633. Sam Jaksick I, LLC, 35.242 percent,
17 so that's still the same number. Equity is 16,586,000,
18 shows Jaksick I, LLC, interest is valued 3,743,000.

19 So drop down a little bit from the four million
20 thirty-one in 2010 that's still a significant asset in
21 the Jaksick portfolio; right?

22 A As stated there, yes. I don't believe that the
23 value was that at the time.

24 Q Well, these are statements that were made --

1 financial statements made in 2010 and 2012, and then the
2 accountings that came out after that we saw were just
3 hyphens as far as the value went, so it actually --
4 unless it dropped dramatically over the next year or two
5 years, it was actually in the positive rather than in the
6 negative; right?

7 A We had a -- in 2013 we had a professional
8 appraiser appraise it so it was -- excuse me -- it was
9 appraised by a professional appraiser in 2013 and I think
10 these are just dad's statement of values.

11 Q Kevin Riley's computation of the value of your
12 dad's interest?

13 A I don't think -- I don't necessary -- Kevin Riley
14 would not necessarily know the actual appraised value but
15 he would know the computation based what dad's percentage
16 interest was, what his percentage share would be of that
17 value.

18 Q Okay. Then -- just as an aside, down where
19 Mr. Riley got the information on the accountings made it
20 look like it had no value and just a year earlier it was
21 in the \$4 million range?

22 A My thought process was that the valuation that was
23 determined here was back in like '06, and maybe it just
24 kept staying in there, but when it went through the

1 economy and the downturn maybe they didn't adjust those
2 numbers at that point in time. You probably have to look
3 back at an older financial statement to see what it
4 referenced, but when dad passed away, every asset had --
5 that I'm aware of that had value like this, an appraisal
6 was done by a certified professional appraiser. We had,
7 I'd say, four, maybe five different appraisers appraising
8 all these various different assets so we relied on their
9 appraisals.

10 **Q By 2012, the recovery from the crash was sort of**
11 **on the upswing; right?**

12 **A** In some aspects, but on some of these ranch
13 properties like this that -- it's just my opinion, I
14 apologize, maybe I shouldn't have brought it up, but I
15 just know that this valuation was from mid 2005, 2006,
16 2007 range, and maybe the value just stayed in dad's
17 financial statements as it went and he didn't adjust it
18 every year. I'm not sure.

19 **Q That's fine. But this was October of '12, so**
20 **that's about six months before your father's death, and**
21 **then all we get on the accountings is that it has no**
22 **value and there's evidence that it had substantial value,**
23 **any reason why that was?**

24 **A** We relied on the appraisers to be able to appraise

1 each individual asset to come up with values.

2 Q Did you ever provide Wendy with Exhibit 213 or 214
3 showing the value of the Jackrabbit interest?

4 A This exhibit here?

5 Q Yes, sir.

6 A This wouldn't have been anything that was in my
7 control. I mean, this was dad's personal information
8 while he's alive.

9 Q But I'm talking about after you were controlling
10 following your dad's death, this was never provided to
11 Wendy until after we got into this dispute?

12 A Yeah, I don't remember seeing this myself either.

13 Q Okay.

14 A Personally, I just know what we did was -- it was
15 directed to us by the attorneys that when dad passed
16 away, we needed to get appraisals on each individual
17 piece of property. Since there was a bunch of different
18 ranches and stuff all over the place, we hired three or
19 four different appraisers and sent them out to get
20 values.

21 Q And Mr. Riley was the co-trustee for a short
22 period of time after your father's death; right?

23 A Correct.

24 Q He did not provide these financial statements --

1 Statements of Financial Condition to you, Stan or Wendy
2 that you knew of?

3 A I'm not sure. That doesn't ring a bell that I
4 looked at this.

5 Q I'm talking about the time that he was serving as
6 a co-trustee.

7 A It's possible, I just don't recall right now.

8 Q Okay. Let's move on to Bright Holland, and I
9 think it was yesterday I asked you about some percentages
10 and you seemed a little confused. And you were talking
11 about Buckhorn, I was thinking about Bright Holland, and
12 so I apologize for that and thank you for clarifying it.

13 Now I'm talking about Bright Holland and I've got
14 it clear in my mind here. The Bright Holland interest,
15 it started out at 40 percent to you and 60 percent to
16 your dad; is that right?

17 A That sounds right.

18 Q And that was something that started way back right
19 out of college; correct -- when you were just out of
20 college?

21 A I think it was more like around 2001 range so that
22 was four or five -- four years or so after college.

23 Q A little bit after that. You don't recall or have
24 any information regarding any investment that you made to

1 **acquire the 40 percent; do you?**

2 A What I recall is -- I don't remember exact dollars
3 and cents-wise, but it was an estate that was owned by
4 the Casey estate, and it was this ranch that had
5 44,000 acres, 20 different ranches out by Gerlach, and
6 dad and I were looking at all these properties. The
7 purchase price for the ranch was \$5 million.

8 And we spent about a year doing different
9 research. It was a lot of fun. We enjoyed looking at
10 the properties and tried to analyze a lot of ways to
11 purchase them, but we didn't want to spend the
12 \$5 million.

13 So dad had me working on a year program going out
14 and trying to sell -- or get buyers that would be
15 interested in one of these various different ranches.
16 What we did was we took -- since we couldn't come up with
17 the \$5 million ourselves, we went to various different
18 other buyers and we basically made arrangements with them
19 to sell them one, two or three different ranches and we
20 simultaneously closed the purchase of the Casey property.

21 We had other people come up with about 2.5 or
22 \$6 million, and then we got a loan from American Ag
23 Credit in the neighborhood of about \$2.3 million, the
24 combination of both took down the property so that

1 property was more or less financed by others buying in
2 with us, as well as a loan we got from American Ag
3 Credit.

4 Q Okay. And so going all the way back to my
5 question, which was you don't have any documentation of
6 any money that belonged to you that you invested to get
7 that first 40 percent; do you?

8 A I don't recall anything right now.

9 Q All right. And then your dad had given you an
10 11 -- an option to purchase 11 percent more; is that
11 right?

12 A Correct.

13 Q And at some point you exercised that option?

14 A Yes.

15 Q And you don't recall what was invested or paid for
16 that option; do you?

17 A Dad actually gifted that over a period of time of
18 about \$50,000 a year, he gifted down that note. And then
19 he was going to gift the balance of that note and that's
20 the note that showed up on one of your earlier screens
21 today which is where he was charging that balance against
22 me in his Second Amendment.

23 Q That sentence that was added to that previous --

24 A Yes.

1 Q All right. And so that put you at 51 percent and
2 then there was another 39 percent that was divided three
3 ways between you, Stan and Wendy; is that right?

4 A Yes. In December of 2012 dad set up three trusts
5 and distributed 13 shares each into a trust for Stan,
6 trust for Wendy, and a trust for myself.

7 Q Okay.

8 MR. SPENCER: Your Honor, I offer Exhibit 541,
9 stipulated.

10 THE COURT: 541 is admitted.

11 THE CLERK: Thank you.

12 (Exhibit 541 was admitted.)

13 BY MR. SPENCER:

14 Q Since you mentioned it, I wanted to bring up
15 the -- a copy of Wendy's version of that trust or the
16 trust -- the BHC Family Trust for Wendy.

17 See at the top, it's "Declaration of Samuel
18 Jaksick, Jr., Wendy A. Jaksick 2012 BHC Family Trust"?

19 A Yes, I do see that.

20 Q That's what you were talking about; correct?

21 A Correct.

22 Q Keith, if you would flip over to page 17, which is
23 RILEY 1566, zoom in there at the top.

24 There's those 13 shares of Bright Holland company

1 stock?

2 A Yes.

3 Q So it would have been a similar version of this
4 for you and then another one for Stan; is that right?

5 A Yes. Then there's three other documents that go
6 with this, which are each indemnification agreements that
7 go with each one of these.

8 Q And -- all right. And so I just wanted to also
9 note that -- the page before that one, Keith, zoom in --
10 that looks a lot like that signature page we saw earlier,
11 the orphan signature page attached to Jessica Clayton's
12 e-mail; do you know if that was used on all three trusts
13 or not?

14 A I don't know.

15 Q But it's also a page that is not numbered while
16 the other ones are; do you know how that happened?

17 A I don't.

18 Q And then the 51 percent that you mentioned and
19 then the 39 percent of the three trusts, that calculates
20 to 90 percent, what happened to the other 10 percent?

21 A There was 10 percent they'd purchased from dad
22 earlier, I don't recall what year it was but it was
23 probably around maybe 2005 or so, something like that.

24 Q And you don't have any documentation of the

1 consideration or what you paid for that investment; do
2 you?

3 A I'm not sure.

4 Q Okay. You haven't seen anything; have you?

5 A Could be. I just don't know off the top of my
6 head.

7 Q So you ended up with 71 percent of Bright Holland
8 through 40 percent that there was -- 61 percent, sorry --
9 thank you, Mr. Robison -- you ended up with 61 percent of
10 Bright Holland yourself, the 40, plus the 11, plus the
11 10; right?

12 A Yes.

13 Q Then the other 39 were the three trusts?

14 A That sounds right.

15 Q Okay. And for all that 61 percent, you don't have
16 anything that shows that you paid anything for it; do
17 you?

18 A I just don't know of anything off the top of my
19 head right now. All the transactions that we did and
20 generated funds based on trade for everything we did.

21 Q And the Ag Credit loan you mentioned, that's part
22 of the loan that is still pending; correct?

23 A On the Bright Holland?

24 Q Is there a part of the Ag Credit loan that is

1 **still outstanding?**

2 A Yes.

3 Q **Okay. And the Ag Credit loan is being paid by the**
4 **family trust?**

5 A It was a separate Ag Credit loan.

6 Q **Is it being paid down by the family trust?**

7 A The second Ag Credit loan was paid down by the
8 family trust.

9 Q **What part?**

10 A This particular transaction -- this particular
11 entity that you're talking about, Bright Holland, had its
12 own individual loan, and this individual loan was paid
13 off through mostly land sales that we had with the
14 entity.

15 Q **So one of those land sales was what's -- we all**
16 **call the Fly Geyser property?**

17 A Yes.

18 Q **And that was a property that was sold to the**
19 **Burning Man festival; is that right?**

20 A Yeah. It was a non-profit that they set up to
21 purchase it.

22 Q **And --**

23 MR. SPENCER: Offer Exhibit 168, your Honor,
24 stipulated.

1 THE COURT: 168 is admitted.

2 THE CLERK: Thank you.

3 (Exhibit 168 was admitted.)

4 BY MR. SPENCER:

5 Q On the second page of that e-mail -- start at the
6 bottom just to get our context here -- it's Kevin Riley
7 is writing to Wendy, July 25th of 2016; do you see
8 that -- about right there -- and he's talking about
9 Bronco Billy's down below. But then on the next page,
10 regarding Fly Geyser at the top, he indicates that Bright
11 Holland sold property to the Burning Man group for
12 \$4.65 million, and that you have 13 percent interest in
13 Bright Holland through a trust, proceeds are being held
14 in escrow, proceeds of the sale are being held in escrow
15 for the potential purchase of replacement property from a
16 family entity called Jackrabbit.

17 Did that ever happened, did the Bright Holland
18 entity buy replacement property from a family entity
19 called Jackrabbit?

20 A No. It was a possibility we talked about but we
21 never did do that.

22 Q Okay. Then the proceeds would be used to pay down
23 debt that Bright Holland is guaranteed performance on,
24 the goal would be release Bright Holland from the debt

1 **guarantee, bring significant asset into the Bright**
2 **Holland, Todd has indicated there would not be any funds**
3 **distributed from this sale; is that true?**

4 A We did end up distributing -- I mean, this could
5 take an hour discussion but --

6 Q **Just tell me if it's true, that the funds were**
7 **being held?**

8 A We did put funds into a 1031 exchange account with
9 an exchanger with the possibility and the thought of
10 looking for replacement properties because of the fact
11 that we wanted to try to reinvest these funds.

12 Q **Trying to avoid tax?**

13 A Trying to -- yeah, if you do -- if you do a 1031
14 exchange, you can help reduce the tax and push the gains
15 that you're going to pay on those taxes down the road
16 further.

17 Q **Okay. Who were the trustees of the 3/20/12 BHC**
18 **Family Trust; do you know?**

19 A Dad put Kevin Riley, the family accountant, in as
20 trustee for Stan's, Wendy's, as well as mine.

21 Q **Has Kevin Riley ever -- as a trustee of any of the**
22 **BHC trusts ever request distribution or make demand for**
23 **distribution from Bright Holland?**

24 A I don't recall that.

1 Q All right. And Bright Holland is not an entity
2 that you would send an accounting out for; is it?

3 A We typically don't send accountings out for Bright
4 Holland, no.

5 Q So the trustee of the BHC trust would not have
6 information readily to provide accountings to his
7 beneficiaries about the value of its interest; would he?

8 A Yes.

9 Q How does he get that?

10 A Because Kevin does the accounting for the company
11 so he's familiar with all -- where all the funds are, all
12 the accounting, he does the annual accounting and then
13 he's available if Wendy or Stan or myself wanted to call
14 and talk to him about that.

15 Q As a -- Mr. Riley, as trustee of the three BHC
16 family trusts, would he have access to the books and
17 records of Bright Holland Company?

18 A He gets those annually, yes. He gets the
19 accountings annually and prepares the accounting
20 annually.

21 Q But he has to get permission from you as the
22 manager to disseminate that out to the beneficiaries;
23 doesn't he?

24 A We relied on Nick Palmer, the company attorney, to

1 give us a road map as to what needed to be done per
2 accountings and disclosures, et cetera, for that
3 particular company.

4 Q My question was, the trustee of the BHC trust has
5 to get permission from you as manager of Bright Holland
6 to distribute information that he may have about that
7 interest to the beneficiaries; correct?

8 A I'm not sure.

9 Q What is the status of the funds in Bright Holland
10 now?

11 A We initially wanted to initially do a 1031
12 exchange, we weren't able to but we did do a distribution
13 out of those funds to Wendy's subtrust, my subtrust,
14 Stan's subtrust, as well as the other owners' percentage
15 to pay everybody's taxes so that there wasn't a tax
16 income situation. I think each these subtrusts had a tax
17 alone of \$250,000, so we distributed enough to cover
18 everybody's taxes.

19 The balance of those funds were -- not the balance
20 of them but a big chunk of those funds were used to pay
21 down the Bright Holland debt obligation with American Ag
22 Credit, that they had a direct loan with. There was, I
23 believe, \$450,000 or so that was paid back to the family
24 trust on a note that was owed to dad. There's other

1 operating expenses in the company annually and there is
2 funds that are still left in there, probably in the
3 neighborhood about -- maybe, I'd like to say, a million
4 four, somewhere in that neighborhood.

5 Q Okay. And --

6 MR. SPENCER: Your Honor, let me offer
7 Exhibit 169, stipulated.

8 THE COURT: 169 is admitted.

9 THE CLERK: Thank you.

10 (Exhibit 169 was admitted.)

11 BY MR. SPENCER:

12 Q Just real quick, I want to ask you a question
13 about this e-mail from Kevin Riley to Wendy, July 25th of
14 2016 -- on the next page, Keith, at the top.

15 Clarification with respect to Bright
16 Holland, the escrow monies are being held
17 in an exchange account for another 135
18 days so these funds are not currently
19 accessible. Todd will provide you with
20 an update in the months to come.

21 Did you provide Wendy with an update with regard
22 to that money being held?

23 A I do recall discussing it with Kevin, and Kevin
24 was going to inform Wendy the status of the 1031

1 exchange. We had a couple of properties that we were
2 looking at, an apartment complex. And we had received a
3 letter from Wendy's attorney at that point in time,
4 telling us that we should not follow through with the
5 exchange.

6 And so I'm just thinking through, this is about
7 the time that Wendy had attorneys looking into each one
8 of these entities and so I believe at that point in time
9 there started being communications that were directly
10 between the attorneys, is what I recall.

11 Q Okay. So you don't know if Wendy was ever
12 provided that update, you relied on Kevin Riley to give
13 her that; right?

14 A Yes.

15 Q He says that you're going to give the update and
16 then you relied on him to do it?

17 A It looks like that's what he said here, yes.

18 Q And so there were -- we talked earlier about the
19 ACPA's, there were ten of those all in; right -- ten
20 ACPA's?

21 A That sounds accurate, yes.

22 MR. SPENCER: Your Honor, some of those are in
23 already, but just to be certain I would offer Exhibits 14
24 through 23, stipulated.

1 THE COURT: Ms. Clerk, please confirm that all of
2 14 through 23 are admitted.

3 THE CLERK: They're not.

4 THE COURT: Then if you would admit them, please.

5 THE CLERK: Okay.

6 THE COURT: Thank you.

7 (Exhibits 14 through 23 were admitted.)

8 MR. SPENCER: Thank you, your Honor.

9 MR. ROBISON: Oh --

10 THE COURT: I thought it was stipulated.

11 MR. ROBISON: We did, but the trouble is there are
12 subexhibits to -- for example, Exhibit 15 -- and I don't
13 know whether counsel wants all the subexhibits in, like
14 15A, 15B.

15 MR. SPENCER: I didn't offer those, just the
16 ACPA's themselves each numbered individually.

17 THE COURT: Okay. Do you have that, Ms. Clerk? I
18 presume that there's a point and then a numeral, like 9.4
19 or 11.16, and it's just the primary numbers that are
20 admitted?

21 MR. ROBISON: Correct.

22 THE COURT: Okay. Thank you.

23 BY MR. SPENCER:

24 Q So let's look at the Exhibit 18, ACPA, which is --

1 to kind of name these, this is the Cattle ACPA, you
2 recall this transaction; right?

3 A I do.

4 Q And this was the concept of selling some of the
5 cattle to generate some income for White Pine Ranch?

6 A Yes.

7 Q Okay. And the end result of that was that some of
8 the cattle were sold and then some of the cattle you
9 purchased yourself; correct?

10 A I did, yes.

11 Q And that was sort of the point of the Exhibit 15
12 ACPA is that you -- you wanted to sell the hundred --
13 sell all but a hundred of the best cattle on White Pine
14 Ranch; do you see that in Recital B?

15 A I do.

16 Q And down in paragraph 2, co-trustees of the family
17 trust, primary beneficiary, secondary beneficiary were to
18 use funds received by the family trust to sell all but
19 100 of the best cattle in order for White Pine Ranch --
20 to pay White Pine Ranch debt, and past due expenses and
21 reserve funds; do you see that?

22 A Yes.

23 Q The hundred reserved cattle would be run on SJ
24 Ranch to keep the traditional family cattle operation;

1 right?

2 A Yes.

3 Q And nowhere in there does it say that you're going
4 to actually acquire cattle; does it?

5 A No.

6 MR. SPENCER: Offer Exhibit 420, stipulated, your
7 Honor.

8 THE COURT: 420 is admitted.

9 THE CLERK: Thank you.

10 (Exhibit 420 was admitted.)

11 BY MR. SPENCER:

12 Q And then it turns out, on February 1st of 2014,
13 Livestock Bill of Sale, you bought a hundred heifers from
14 White Pine -- let's be clear, White Pine Lumber Company
15 sold to Duck Lake Ranch a hundred heifers; is that right?

16 A Yes.

17 Q And you owned Duck Lake Ranch, LLC?

18 A Yes.

19 Q And that was not something that was contemplated
20 by the ACPA, Exhibit 18; was it?

21 A Not in the ACPA, no.

22 Q And then --

23 MR. SPENCER: Offer Exhibit 437, your Honor,
24 stipulated.

1 THE COURT: 437?

2 MR. SPENCER: 437.

3 THE COURT: Thank you. It is admitted, Ms. Clerk.

4 THE CLERK: Thank you.

5 (Exhibit 437 was admitted.)

6 BY MR. SPENCER:

7 Q Here's an e-mail, April 16, 2014, from Stan to
8 you, where he says he's kind of surprised by the purchase
9 by Duck Lake of cows.

10 Must have missed a part of the cow
11 discussion. I wasn't aware that Duck
12 Lake purchased cows from the ranch. How
13 does this transaction work? Where did
14 the funds come from to purchase cows?
15 What is your percentage ownership of Duck
16 Lake?
17 He didn't even know you were the owner; did he?

18 A Of Duck Lake?

19 Q Yes, sir.

20 A I'm not sure. He should have known but --

21 Q But at least this e-mail indicates that he did
22 not; right?

23 A I see that.

24 Q And he certainly didn't know it based on the

1 disclosure or whatever was said relating to the

2 Exhibit 18 ACPA; did he?

3 A I'm not sure. Probably not.

4 Q Okay. And let's go to Exhibit 17 -- first, let's
5 go to one of the earlier ones, Exhibit 16 is fine. Then
6 tab down -- right there, that big all caps paragraph; do
7 you see that?

8 A Yes.

9 Q It references in the numerous times that this
10 was -- or that Maupin, Cox, LeGoy is referenced numerous
11 times, but at the top it says, "This agreement has been
12 prepared by the law firm of Maupin, Cox, LeGoy"?

13 A Yes.

14 Q And that was true of the Life Insurance Proceeds
15 ACPA?

16 A What was true?

17 Q That Maupin, Cox, LeGoy prepared that.

18 A Yes.

19 Q And the Pioneer Group Stock ACPA, Exhibit 15,
20 Maupin, Cox, LeGoy prepared that?

21 A Yes.

22 Q There were some, though, that you and Jessica
23 prepared; correct?

24 A We did prepare some of them based off the fact

1 that Bob LeGoy had prepared a template for us to use so
2 that not every time that we went to one of these ACPA's
3 we didn't have to always have the expense of them doing
4 all of the work. And since we were carrying a balance
5 with them at the time and unable to pay their bills we
6 were trying to figure out ways to cheapen things up, so
7 Bob LeGoy prepared a template for us to use, but the
8 group still participated in the language and the
9 information that went into them, but Jessica typed them
10 up based on the information that she was receiving.

11 Q You answered a bunch of the questions I was going
12 to ask you. My first question was simply that you and
13 Jessica prepared some of these ACPA's; right?

14 A And I just wanted to explain to you how.

15 Q Exhibit 17 is one of them. Go to that one, find
16 that big paragraph, all caps. It's not as big but --

17 This agreement has been prepared by
18 co-trustees of the family trust without
19 legal representation.

20 That was one of those; right?

21 A Yes.

22 Q And Exhibit 18, the Cattle ACPA, was one prepared
23 by the co-trustees; right?

24 A Yes. I believe we had three of them out of the

1 ten that we prepared without the legal representation.

2 **Q And then Exhibit 20 was another one that was**
3 **prepared by the co-trustees without legal representation,**
4 **April 15 of 2014. So when that says "co-trustees" that**
5 **really means and you Jessica; doesn't it?**

6 **A No.**

7 **Q As opposed to Stan being involved with that?**

8 **A No.**

9 **Q Stan was involved?**

10 **A Stan was involved on these phone discussions when**
11 **we would talk about these ACPA's, and so was the rest of**
12 **our of group -- Kevin, Bob. Brian -- we'd have the**
13 **discussions and then we'd put the language that everybody**
14 **discussed into the document.**

15 **Q But as far as preparing this document, that was**
16 **you and Jessica?**

17 **A Jessica typing it with information that we gave**
18 **her to put into here, and then everybody reviewed it**
19 **after the fact and made comments and then circulated for**
20 **signatures.**

21 **Q Everybody being the co-trustees?**

22 **A Either co-trustees, the primary beneficiary,**
23 **whoever was signing these were distributed to.**

24 **MR. SPENCER: And so, your Honor, offer Exhibit**

1 205, stipulated.

2 THE COURT: 205 is admitted.

3 THE CLERK: Thank you.

4 (Exhibit 205 was admitted.)

5 BY MR. SPENCER:

6 Q And you were talking about getting the forms so
7 you all could prepare these without the help of legal
8 representation and save money; right?

9 A Yeah. We started out with one that we tried to
10 type up, then we asked Bob and Brian, for them to provide
11 us with some type of template, that's what they did.

12 Q And that's what this is talking about. Jessica's
13 e-mail to you, July 25th, 2013.

14 I started last night to try to write a
15 similar agreement and consent for
16 proposed action. Bob, sorry for copying
17 your form but we weren't sure what to do
18 and we already sent the checks out
19 yesterday.

20 A I recall this, yes.

21 Q And the attachment, Keith, the next two pages --
22 that's you all's attempt to prepare an ACPA from the
23 form?

24 A That's correct.

1 MR. SPENCER: And then offer Exhibit 44, your
2 Honor, stipulated.

3 THE COURT: 44 is admitted.

4 THE CLERK: Thank you.

5 (Exhibit 44 was admitted.)

6 BY MR. SPENCER:

7 Q E-mail from Mr. LeGoy to Jessica copying you,
8 Kevin and Stan, August 28, '13.

9 Jess, Stan, Todd and Kevin:

10 Todd asked me to revise the proposed
11 action agreement and I deemed
12 appropriate -- as I deem appropriate, and
13 prepare a form agreement and consent you
14 can use before you take any future trust
15 actions.

16 So there were -- that's the form that's attached
17 to this; correct?

18 A I'm not sure. I would believe so, yes.

19 Q All right. And so --

20 THE COURT: Ladies and gentlemen of the jury,
21 let's stand for a minute.

22 Be seated.

23 Counsel, you may continue.

24 MR. SPENCER: All right. And, your Honor, offer

1 Exhibit 111, stipulated.

2 THE COURT: 111 is admitted.

3 THE CLERK: Thank you.

4 (Exhibit 111 was admitted.)

5 BY MR. SPENCER:

6 Q Going down to the bottom of the page -- of the
7 first page, WJ 11975, one of -- this e-mail Stan to Adam
8 Hosmer-Henner, says he called Bob LeGoy today to ask him
9 how these -- this is February 27 of 2019:

10 Called Bob LeGoy to ask him how these
11 notice of proposed actions came about.

12 A Okay.

13 Q

14 And then he mentioned their firm put
15 together a couple of them to deal with
16 certain trust matters, which makes sense
17 when there are certain documents that
18 double specifically. However, he said
19 after that occurred --
20 Then in the all caps there.

21 -- Todd and Jessica drafted most of the
22 other ones, which now makes total sense.
23 They put these agreements together also
24 with the help of Nick Palmer. I assumed

1 they came from Bob LeGoy's office. He
2 would always get me to sign them in that
3 hurry, rush time frame, and then get back
4 to Mr. McQuaid to hold for the file at
5 the appropriate time.

6 Next page.

7 So this is a perfect example of how
8 Todd and Jessica would forge fraudulent
9 documents for the benefit of Todd,
10 whether it was me signing them or they
11 were forging my dad's signature. All
12 along, I assumed they came from LeGoy's
13 office, definitely need to take McQuaid,
14 LeGoy, Palmer, Todd and Jessica's
15 depositions regarding this.

16 That indicates that Stan is pretty upset about
17 ACPA because he was not involved in their preparation and
18 creation; doesn't it?

19 A He was involved. I mean, he just made a mistake,
20 I'm not sure. He just forgot. I can't speak for what
21 Stan said but, number one is Nick Palmer didn't prepare
22 any of the ACPAs. As you alluded to, Maupin, Cox & LeGoy
23 had prepared seven out of the ten. And when Stan says
24 here that he doesn't recall some of these being prepared

1 and he thought that Todd and Jessica were preparing them,
2 Stan got the e-mail from Bob LeGoy, and Bob LeGoy, when
3 you go back to the exhibit that Bob LeGoy sent -- would
4 you mind going back to that?

5 Q Exhibit 44, is that the one you're thinking of?

6 A I'm not sure, if you could maybe blow it up a
7 little bit.

8 Q Blow it up.

9 A Here you can see the e-mail from Bob LeGoy, it's
10 to Jessica, Stan, Kevin, so in the e-mail here, here's
11 Bob LeGoy saying that he has prepared an attachment which
12 would be what we could use as the template for future
13 ACPA actions, so Stan received the e-mail with the
14 template of the ACPA on there.

15 And then after this is signed, after this
16 particular ACPA is signed, Jessica sends another e-mail
17 where she scans Stan's signature and sends it to Stan,
18 Here, Stan, here's your signature on this particular
19 ACPA, and she also talks about the template that we're
20 using for other ACPAs. So I don't fault Stan, I don't
21 blame Stan, but he just forgot.

22 Q Well, this Exhibit 44 was back in August of 2013
23 and the e-mail from Stan was in February of 2018, so it
24 was five years?

1 A Yeah. So he just forgot.

2 THE COURT: Hold on. Hold on, sir. Go ahead.

3 BY MR. SPENCER:

4 Q And it's true that some of the ACPAs that
5 referenced Maupin, Cox & LeGoy preparing the documents
6 were actually prepared by you and Jessica; right?

7 A I don't think so. We used whatever the template
8 said. We got information from the co-trustees and the
9 attorneys, and we put them into the ACPA, and my
10 understanding is that the three that we did would all say
11 that they were prepared by the co-trustees.

12 Q So there were two templates, one that -- which is
13 TJ 2503 of Exhibit 44 -- that reflects Maupin, Cox, LeGoy
14 prepared the document and then another one attached that
15 we've seen prepared by the co-trustees of the family
16 trust without legal representation, so you used that one;
17 is that right?

18 A I don't recall the two templates. All I can tell
19 you is out of the ten, we did -- Jessica and I, based off
20 information we got from the team meetings, we did the
21 Cattle ACPA, we did the Entity Deficient ACPA, and we did
22 the Using Money for Taxes Purposes on April 15 of 2014,
23 we did that one as well, but those were the only three.

24 The other seven were done by Maupin, Cox & LeGoy.

1 Q Okay. And just to be clear for the record, the
2 three you referenced are Exhibits 17, 18 and 20?

3 A I'm not sure.

4 Q I'm just --

5 MR. ROBISON: Stipulate that's correct.

6 THE COURT: Thank you.

7 BY MR. SPENCER:

8 Q So the other ones, other than 17, 18 and 20, your
9 testimony is that Maupin, Cox, LeGoy prepared those
10 ACPAs?

11 A Correct.

12 Q Have you ever talked to Mr. LeGoy about him
13 believing that some of the Maupin Cox, LeGoy ACPA's were
14 done by the co-trustees or you and Jessica?

15 A I believe they're aware of which ones were
16 prepared by us which ones were prepared by them.

17 Q I think you misunderstood. I meant have you ever
18 talked to Mr. LeGoy about some of the ones that appear to
19 be prepared by Maupin, Cox, LeGoy to actually being
20 prepared by you and Jessica?

21 A Like I said, I'd have to look at each one
22 individually. It was my understanding we had the one
23 template that just had what was prepared by the
24 co-trustees.

1 Q Okay. And so the only -- only those three were
2 done by you as opposed to the law firm?

3 A That's what I recall, yes.

4 Q Okay. It's true, isn't it, that you signed your
5 dad's name to documents a time or two?

6 A When I had his power of attorney, yes.

7 Q Okay. So after you had his power of attorney; is
8 that right?

9 A It could have been something else dad asked me to
10 sign his name on, but I don't really recall right at this
11 second. But I do specifically recall signing dad's name
12 on some water rights correction deeds when dad was in Los
13 Angeles, a part of his heart surgery, and he had given me
14 his power of attorney to ask me to do some of these
15 things that he needed to get done before the end of the
16 year.

17 Q Let's --

18 MR. SPENCER: Sorry, your Honor, I offer
19 Exhibits 119, 120 and 121 stipulated.

20 THE COURT: 119 through 121 are admitted.

21 THE CLERK: Thank you.

22 (Exhibits 119 through 121 were admitted.)

23 BY MR. SPENCER:

24 Q Okay. And let's look at 119. Do you recall --

1 before we look at that, do you recall the date the power
2 of attorney was signed?

3 A The power of attorney was signed on, I believe,
4 December 17, and I think that there was some discrepancy
5 as to some of these dates would have been a little bit
6 different, like on December 4th, but they were all signed
7 on December 28 but probably just didn't change the date
8 language in there.

9 Q December 17, 2012, was kind of the date that stood
10 out because your dad left for Los Angeles?

11 A Correct.

12 Q So he signed that power of attorney on the day he
13 left to go there?

14 A Correct.

15 Q And this document, Water Rights Deed, was filed in
16 the deed -- was recorded in the deed records December 28
17 of 2012; we see at the top right corner?

18 A Yes.

19 Q And then flip three pages, Keith -- up one. Right
20 here.

21 And so this is a document that you signed your
22 dad's name to, that was notarized by Nanette Childers?

23 A Correct.

24 Q And Nanette was a notary for Mr. Hascheff?

1 A Yes.

2 Q And this document is dated December 4th of 2012;
3 isn't it?

4 A I think that that was the error I was alluding to,
5 because the dates didn't change. Because what happened,
6 I'd like to explain for 30 seconds is dad actually signed
7 these documents on December 4th, and then there was an
8 error. And when the error was found and corrected by
9 Pierre Hascheff on December 28, Pierre had asked me to
10 sign these to get these corrected for dad.

11 Q What was the error?

12 A I'm not sure. It was some discussion between
13 Pierre and dad and the water rights engineer that they
14 were working with.

15 Q Were those ever recorded in the deed records, the
16 ones that your dad signed on December 4th?

17 A No. They were signed and notarized by dad but
18 they weren't recorded. But I believe Pierre intended to
19 record those, but he found that there was some error in
20 the language of transfer so Pierre redid these. And I
21 wasn't really aware of what was going on here and I just
22 signed them, but this particular Water Rights Deed is
23 transferring the water from Lakeridge Golf Course to
24 Stan, Wendy and Todd in their capacities to the Jaksick

1 Family, is what the first one did.

2 Q To be fair, so you can see it, let's look at the
3 first page. Water Rights Deed -- second page, Keith --
4 that was from Lakeridge Golf Course, Limited, to Jaksick
5 Family, LLC; right?

6 A Yeah, that's what I was recalling, yes.

7 Q That's the entity that the inheritance from
8 Thelma's estate went into; is that right?

9 A Yes.

10 Q Okay. And one that was owned by the three of you,
11 Stan, Wendy and you, Todd?

12 A Correct.

13 Q But going back to the signature page, you did not
14 sign this as Sam -- Todd Jaksick, as attorney in fact for
15 Sam Jaksick, or Sam Jaksick, POA Todd Jaksick, or
16 anything that indicated you were signing it in a
17 capacity, did you?

18 A I didn't. I thought what I was doing here was
19 correct.

20 Q And Nanette notarized the signature as if it was
21 Sam that was signing it even though it was you signing
22 it?

23 A Correct. Nanette knew we had the power of
24 attorney as well.

1 Q But not at this point in time, December 4th?

2 A No, the date is inaccurate there.

3 Q Okay. Let's look at Exhibit 1 -- 120, next --

4 recorded on December 28 of 2012 -- next page, Keith.

5 Again, Lakeridge, Inc., to the Jaksick Family, LLC, and

6 then the signature page. The same form for the signature

7 page, that one was signed by you, notarized by Nanette

8 December 28 of 2012; do you see that?

9 A Yeah. We did them all at the same time on
10 December 28.

11 Q You did not designate that you were signing Sam's
12 name in some representative capacity there either; did
13 you?

14 A I didn't know I was supposed to.

15 Q But Nanette notarized your signature -- notarized
16 the signature that appears to be Sam's, even though it
17 was you signing it?

18 A Based off the fact that she had a copy of the
19 power of attorney.

20 Q Let's look at Exhibit 121 just real quick. The
21 same thing, December 28, 2012 -- next page -- Sam
22 Jaksick, Jr., and Sam Jaksick, Jr., Executor of the
23 Estate of Thelma Jaksick, deceased, to the Jaksick
24 Family, LLC; right?

1 A Yes.

2 Q And then the signature page, Keith.

3 Again, the same thing, but this time it's
4 December 4th and it's handwritten in; correct?

5 A Looks like, yes, Pierre's date on there.

6 Q That's Pierre's handwriting?

7 A Yes.

8 Q And so Pierre was involved with all of this?

9 A Pierre and dad and the engineer did all of this.
10 The only thing I did was come in on the 28th and sign
11 based on having the power of attorney. So Pierre would
12 be able to explain what, how, when, and why all this
13 happened.

14 Q Why the documents were backdated by him?

15 A I don't think there was any intention to backdate
16 them, I just don't know how it happened. There really
17 wasn't any reason it had to be dated one date, whether it
18 was the 4th or 28th, it was just something dad wanted
19 completed before the ended of the year. And, like I
20 said -- but that's where the power of attorney came in to
21 allow me to be able to do that.

22 Q Okay. And then these three deeds were filed in
23 the -- or strike that -- were recorded in the deed
24 records as if Sam Jaksick signed them, as far as there's

1 no designations of someone signing on his behalf; is
2 there?

3 A That is correct.

4 Q That was put into the public record by you or
5 Mr. Hascheff, or what?

6 A Probably after they were signed, I would imagine
7 Pierre's secretary would have submitted them. I'm not
8 sure how you record them or submit them, I'm not sure how
9 that works out, but she typically would, I'm sure, do
10 that.

11 Q And --

12 MR. SPENCER: Your Honor, offer Exhibits 123, 124
13 and 125, stipulated.

14 THE COURT: 123, 124 and 125 are admitted,
15 Ms. Clerk.

16 THE CLERK: Thank you.

17 (Exhibits 123 through 125 were admitted.)

18 BY MR. SPENCER:

19 Q And then later you mentioned there were some
20 correction deeds that were signed relating to those that
21 we just looked at?

22 A Correct.

23 Q So 199 through 121 were the ones you signed, then
24 122 -- I'm sorry, did I say --

1 MR. SPENCER: I want to be clear on the record,
2 your Honor. I'm sorry. Exhibit 123, 124, 125 I've
3 offered?

4 THE CLERK: Correct.

5 MR. SPENCER: Okay.

6 BY MR. SPENCER:

7 Q And then these were correction deeds that were
8 signed -- let's look at Exhibit 123 -- February 23rd of
9 2013, recorded April 9, 2013. Next page, it's between
10 the Jaksick Family, LLC, and the Todd B. Jaksick Family
11 Trust?

12 A Yes.

13 Q Those are the same water rights that were
14 transferred before?

15 A Yes.

16 Q And this is a correction deed in relation to
17 those?

18 A Yes.

19 Q That went from the entity that was owned by the
20 three of you to one that was owned by just you; right?

21 A Correct.

22 Q Again, the same -- let's go to the signature
23 page -- the same form for the signature, orphan signature
24 page identical to the other ones; right?

1 A I'm not -- I'm not sure. That's obviously dad's
2 signature there, not mine. And the reason why this
3 happened was Kevin Riley, the accountant, I would say in
4 the February range, told Pierre and dad that he did not
5 want to put those water rights into Jaksick Family, when
6 Kevin Riley learned about it. So there was discussion
7 between dad and Pierre and Kevin that they wanted to take
8 them out of Jaksick Family because Jaksick Family had
9 some risk of some creditor issues and they transferred --
10 dad transferred them to my family trust because as part
11 of the Thelma Jaksick Estate, Wendy had received a
12 \$400,000 priority distribution, and Stan had received a
13 couple of hundred thousand dollar priority distribution,
14 and so dad was putting those into there to help offset
15 some of those prior distributions others had received.

16 Q And let's look the other two deeds and then
17 Exhibit 124, the same date, April 9, 2013, Jaksick
18 Family, LLC, to the Todd B. Jaksick Family Trust, and
19 then the signature page, the same format, February --
20 this one is 28 of 2013.

21 And then Exhibit 125, the same date, April 9,
22 2013, grant from Jaksick Family, LLC, to the Todd B.
23 Jaksick Family Trust, signature page the same format,
24 Jessica Clayton notarizing Sam's signature; right?

1 A That looks like it there, yes.

2 Q So those water rights that were transferred into
3 the Jaksick Family, LLC, ended up getting transferred out
4 to your LLC -- I mean, I'm sorry -- to your trust; right?

5 A Based off the discussions with dad, Pierre and
6 Kevin Riley, and based off the reasons that I had just
7 stated.

8 Q Where is the appraisal for the water rights that
9 were transferred?

10 A I don't know.

11 Q And you said that these were transferred to your
12 trust to offset what Stan and Wendy had received prior;
13 correct?

14 A It was my understanding it was supposed to be a
15 partial offset that Wendy had received -- the Thelma
16 Jaksick Estate, Wendy had received about \$450,000 prior
17 distribution in advance of Stan and I, and Stan had also
18 received about a \$250,000 advance so this was part of the
19 compensation, as I recall.

20 Q And you said "partial offset" meaning that there
21 were some of that -- those water rights that would have
22 been over and above what you may have been needed to get
23 in order to equalize; right?

24 A I don't believe so. I don't think the value of

1 those exceeded the priority returns.

2 Q Well, if there's no appraisal, how do you know?

3 A You could ask Pierre. He did a little bit of
4 analysis on checking with, I think, TMWA or the engineer
5 at the time to find out what water rights were going for,
6 and I think he had a declaration of value based off of
7 that.

8 Q Where is that declaration; do we have that
9 anywhere?

10 A I'm not sure.

11 Q Well, we're not either.

12 MR. ROBISON: Your Honor --

13 THE COURT: Sustained. It was an editorial
14 comment and not a question.

15 MR. ROBISON: It's recorded.

16 THE COURT: I think we've each made our point, and
17 move on.

18 BY MR. SPENCER:

19 Q Let me ask about this before the break,
20 Exhibit 23.19, December 27 of 2012, that was when your
21 dad was still in Los Angeles?

22 THE COURT: Counsel, this is 23.19?

23 MR. SPENCER: Yes.

24 THE COURT: You seek its admission?

1 MR. SPENCER: Oh, gosh.

2 THE COURT: I just wanted to make sure.

3 MR. SPENCER: I'm sorry. I offer 23.19,
4 stipulated.

5 THE COURT: Perfect. 23.19 s admitted.

6 MR. SPENCER: Appreciate it, your Honor.

7 (Exhibit 23.19 was admitted.)

8 BY MR. SPENCER:

9 Q December 27, 2012, it's a letter from Bank of
10 America, they needed your dad's signature; right?

11 A What was -- oh -- yes.

12 Q In relation to that mortgage that was outstanding.
13 And your dad was in LA; correct?

14 A Yes.

15 Q And there's a signature on the first page -- I'm
16 sorry, on the second page, right there, appears to be of
17 your dad, and there is a fax designation at the top and
18 the bottom of the page. And so the top one, do you see
19 that, Jaksick, and it says "Page 1"?

20 A I do, yes.

21 Q And then at the bottom there's another one, it's
22 upside down but it's from the Bonaventure Bell Desk,
23 12/12/2012, which is -- it shows the -- it's the back
24 designation -- it shows page 1 of 1, so only one page was

1 sent back even though the document was two pages?

2 A Yes, just the signature page sent back.

3 Q Was just the signature page sent?

4 A No. The whole document, what I recall, was sent.

5 Q Well, the first fax designation at the top -- it
6 has page one as the signature page, then 1 of 1 at the
7 bottom, so that would mean that that first page that went
8 out on that fax was page one, which would be this
9 signature page; right?

10 A I'm not sure. It's possible.

11 Q Okay. Then the one coming back was only the
12 signature page, as indicated at the bottom?

13 A Yes, I do remember just getting the signature page
14 back. I don't know if we just sent the signature page or
15 what, but I do recall just getting that back.

16 Q Then there was an issue with the fax version of
17 your dad's signature; right?

18 A Yes. The bank -- well, it wasn't an issue. At
19 the time, the bank allowed this to be utilized to
20 consummate the transaction, but when dad got home they
21 wanted an original signature for their records, is what I
22 recall.

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

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

3 We'll stand for our jury. Fifteen minutes.

4 (Recess.)

5 THE COURT: Thank you.

6 Deputy, the jury, please.

7 MR. ROBISON: Your Honor, may we have a moment?

8 THE COURT: Yes.

9 MR. ROBISON: My understanding is there was an
10 order in limine regarding any reference to the fact that
11 Wendy accused Todd of killing Sam Jaksick. That was
12 displayed on the screen, fully and boldly in front of the
13 witness. And it's in front of the jury now. I want to
14 call that to the court's attention. I want to request
15 permission to inquire of Mr. Jaksick about those
16 accusations now that they're in front of the jury.

17 MR. SPENCER: I didn't realize those were in that
18 document. It was a stipulated document, but which
19 document was it?

20 MR. ROBISON: 111.

21 MR. SPENCER: Okay.

22 THE COURT: May I see it, please? If you'll pull
23 it up, I'll look it.

24 MR. SPENCER: Do you want to pull it up, Keith?

1 THE COURT: I'm just going to look at the court
2 document.

3 You're talking about a -- well, let's take this up
4 before you begin your examination of your client, let's
5 not have the jury wait.

6 MR. SPENCER: I won't show it again. Let me
7 find --

8 THE COURT: It certainly was not part of the
9 colloquy between the lawyer and the witness, and I trust
10 Mr. Robison's representation that it was broadcast. I
11 don't know if it was pulled up and enlarged like is
12 happening -- I'm being told no -- and I just need to
13 analyze whether it's a mountain or a molehill. Because
14 one purpose would be to clarify, the other purpose would
15 be to use this, what appears to be inadvertent event, to
16 bludgeon Wendy.

17 MR. ROBISON: It's the consequence of the
18 inadvertent event that my client got very emotional, to
19 the jury maybe inexplicably, and I think it warrants an
20 explanation so it doesn't look like he's a crybaby on the
21 stand over being cross-examined on estate matters.

22 THE COURT: All right. So we'll -- we'll continue
23 this conversation before your examination of your client.

24 MR. ROBISON: Thank you.

1 THE COURT: Right now we'll continue with
2 Mr. Spencer.

3 MR. SPENCER: That's going to start pretty soon,
4 his examination.

5 THE COURT: I try so hard to be stoic so I'm not
6 going to respond. When I attempt humor it doesn't work,
7 and I know how this serious this is to everybody.

8 MR. SPENCER: Trying to wrap up right now.

9 MR. ROBISON: Wait a minute.

10 THE WITNESS: That was blown up.

11 THE COURT: Go ahead, please.

12 (Discussion between counsel and witness.)

13 MR. ROBISON: Just so the record is clear, my
14 client has informed me that that particular phase was
15 blown up so the jury could see it in its blown-up form.

16 MR. SPENCER: Well, that was not the purpose of
17 showing that exhibit. I would prefer to argue that when
18 we get to it. I won't show it again until then.

19 THE COURT: Thank you.

20 Would that be a subject that you would go directly
21 into at the beginning? I'm just thinking about whether
22 or not I need to recess the jury if you get this witness
23 before the end of the day.

24 MR. ROBISON: I would like to cover it today so

1 it's fresh in the jurors' minds as to why he was upset.

2 THE BAILIFF: All rise for the jury.

3 (Jury entered courtroom.)

4 THE COURT: If everyone will be seated, please.

5 Counsel, you may continue.

6 MR. SPENCER: Thank you, your Honor.

7 Your Honor, I offer Exhibit 159, stipulated.

8 THE COURT: Thank you 159 is admitted.

9 THE CLERK: Thank you.

10 (Exhibit 159 was admitted.)

11 BY MR. SPENCER:

12 Q A moment ago we were talking about those water
13 rights deeds and there was a declaration and -- that
14 there was a declaration that had been filed or recorded,
15 and I wanted to that ask you if this is the one that you
16 were thinking about, and it's dated that same April 9,
17 2013, date?

18 A I'm not sure.

19 Q And then look down below, right there, Document
20 No. 3756673, to show water rights included, then below it
21 says, "White Pine Ranch"; do you see that?

22 A I do.

23 Q White Pine Ranch wasn't involved with any of those
24 water rights deeds that we saw; was it?

1 A No.

2 Q Was this a separate declaration than the one you
3 were thinking of?

4 A I believe --

5 Q Okay. Pan out a little bit, Keith.

6 And the declaration there looks like started at a
7 million 732,000 and was stricken through to reflect a
8 million dollars; right?

9 A This is a -- I don't think this is the same one
10 but I see what you're saying there, yes.

11 Q White Pine Ranch is owned by whom again?

12 A It was by -- 100 percent dad.

13 Q Okay. So that would mean the family trust?

14 A Yes.

15 Q All right. And is that still true today?

16 A Yes.

17 Q All right. Now, the water rights are very
18 valuable; correct?

19 A They more or less go with the ranch value. They
20 kind of go hand-in-hand with appraised values of ranch
21 properties. Depending on the location of the water, they
22 can be very valuable. For example, if you have water
23 here in Reno, it could be very valuable.

24 Q All right. And I'm talking about the Jaksick

1 family water rights as opposed to just generally, the
2 ones that are owned by Jaksick family entities are very
3 valuable; aren't they?

4 A You'd have to be much more specific.

5 Q Just globally thinking about the water rights that
6 are owned, those together are very valuable; aren't they?

7 A Like I said, they go with the land, so when you
8 get the appraisals it includes with the land and the
9 water rights, the combination of the land and the water
10 rights.

11 Q And the water rights can be monetized; can't they?

12 A Could you be more specific?

13 Q They can be -- certainly be used for the operation
14 of ranches to water cattle or to irrigate crops or
15 something like that, but they can also be monetized where
16 they're converted into dollar value or dollars' worth of
17 income; can't they?

18 A I guess it would depend where you're at. If you
19 had a ranch sitting right here in Reno, that could be the
20 case, yes.

21 Q Okay. And you certainly felt like at least some
22 of the water rights would be monetized at one point;
23 didn't you?

24 A We were working on trying to make some of the

1 water rights very valuable in an area out in the northern
2 part of the county. We ran into a lot of road blocks
3 but --

4 MR. SPENCER: Your Honor, offer Exhibits 166 and
5 167, stipulated.

6 THE COURT: 167 and 166 are admitted.

7 THE CLERK: Thank you.

8 (Exhibit 166 and 167 were admitted.)

9 BY MR. SPENCER:

10 Q Start with 166, and this was a term sheet with
11 ECO2 Forests, Inc., Jaksick Entities; do you see that at
12 the top?

13 A Yes.

14 Q And the entities that are listed are Buckhorn Land
15 and Livestock, Jackrabbit Properties, Bright Holland
16 Company, Duck Flat Ranch, Duck Lake Ranch, White Lumber
17 Company, and Home Camp Land and Livestock Company,
18 designated collectively as the Jaksick Entities; do you
19 see that?

20 A Yes.

21 Q Then that's with ECO2 Forests, Inc., which was a
22 company that you had negotiated with but then later it
23 went under or went out of business or something; correct?

24 A Yes. It wasn't just myself, it was the partners

1 of all of those entities were negotiating with them.

2 Q Okay. But it was legitimate negotiations to use
3 14,000 acres, which is right there at 2, and then
4 subparagraph (1), to plant trees and then to get carbon
5 credits that could then be sold on the open market to
6 convert to money; right?

7 A We were not familiar with this. This group, ECO2
8 Forests, came in and were throwing out this potentially
9 wonderful opportunity. It was an opportunity that we
10 never heard about before and we thought we had nothing to
11 lose by trying it.

12 You're exactly right, we never really got started.
13 We got into this agreement, they had a publically traded
14 company and the secretary -- or the -- I'm not sure who
15 regulates the stock exchange, but their company got shut
16 down, and one of the guys went to jail and there was a
17 bunch of stuff that happened and we never got off of --
18 anything going.

19 Q Sure. But it was an opportunity that presented
20 itself and caused you, and those are at the bottom --
21 your initials at the bottom of the first page; right?

22 A Yes.

23 Q And then at the bottom of the second and third
24 pages; correct?

1 A Yes.

2 Q And then your signature is on the fourth page,
3 which is PH 504, Duck Lake Ranch, LLC, POA for Jaksick
4 Entities; right?

5 A Yes.

6 Q In that instance, you did designate you were
7 signing as power of attorney for other people or other
8 entities; right?

9 A With everybody involved, yes.

10 Q And that was February 17 of 2010. And let's go
11 now to Exhibit 167. If this deal had worked out for
12 these 14,000 acres, the trees had been planted and the
13 carbon credits obtained, et cetera -- scroll down,
14 Keith -- the net profit, if it worked out as planned,
15 would have been \$1.4 billion; is that right?

16 A That would have been nice.

17 Q That's 1.4 billion with a B, though; right?

18 A Yes. Like I told you in my deposition, I never
19 did see this schedule but I guess you got it from
20 Pierre's office, but the trees wouldn't grow here and,
21 like I said, it was a pretty much an
22 if-it's-too-good-to-be-true, it is.

23 Q Well, you wouldn't have negotiated it, signed a
24 term sheet and been involved in that situation if you

1 **didn't believe it was possible, though; did you?**

2 A We had nothing to lose. All the partners and all
3 the entities from Jackrabbit, Buckhorn to White Pine,
4 Duck Lake, if this group was willing to come and invest a
5 huge amount of money and put improvements in and generate
6 that amount of money, we had nothing to lose, but it
7 never even came close to materializing.

8 Q But you've worked on -- in relation to the water
9 rights, you've worked -- sort of educated yourself about
10 those; right?

11 A Yes, I would say so.

12 Q All right.

13 MR. SPENCER: And, your Honor, I'm going to -- I
14 would offer Exhibits 223 through 229, stipulated.

15 THE COURT: 223 through 229 are admitted,
16 Ms. Clerk.

17 THE CLERK: Thank you.

18 (Exhibits 223 through 229 were admitted.)

19 BY MR. SPENCER:

20 Q Just to get an idea, these are lists from the
21 State of Nevada, Division of Water Resources that
22 indicate -- just kind of scroll through, Keith -- some of
23 the various water rights owned by the Jaksick entities;
24 is that right?