

**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 23**

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Dated this 14th day of June, 2021.

MARQUIS AURBACH COFFING

By /s/ Chad F. Clement

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 23** 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 MR. ROBISON: Well --

2 BY MR. SPENCER:

3 Q We can show those to you if you want to see the  
4 hard copy.

5 A Sure.

6 Q You may have it there. Do you know what binder  
7 you have? Yeah, it's in that binder.

8 A What number?

9 Q 223.

10 A Okay.

11 Q I don't want to get into whole bunch of detail in  
12 this, but in the right-hand column it lists the entity,  
13 Nevada Pronghorn II, LLC; 224 would be Bright Holland;  
14 225 would be Duck Lake, et cetera; do you see that?

15 A Yes. Yes.

16 Q Okay. And Wendy was receiving some distributions  
17 over the course of several years, I think it was about  
18 three, three-and-a-half years; does that sound about  
19 right?

20 A Would you be more specific?

21 Q Did Wendy received distributions on a monthly  
22 basis from any -- from the trust or any other source that  
23 you're aware of?

24 A You're talking about like after dad passed away?



1 Q Yes, sir. I'm sorry, yes.

2 A Yes.

3 Q And that came from the family trust?

4 A A portion of it came from the family trust and a  
5 portion came from a couple of other entities that we had  
6 that we could put money into so that we could flow money  
7 over to Wendy.

8 Q And when we say "Wendy," we're talking about Luke  
9 also; right?

10 A Yes.

11 Q And he was her dependent and is her dependent,  
12 you're aware of that; right?

13 A Yes.

14 Q And then some of those distributions were -- we  
15 saw were credited as loans but then others were just  
16 distributions; right?

17 A They were distributions to be credited at a future  
18 time.

19 Q And around July -- well, let me --

20 MR. SPENCER: Your Honor, I'd offer Exhibit 151,  
21 stipulated.

22 THE COURT: 151 is admitted, Ms. Clerk.

23 THE CLERK: Thank you.

24 (Exhibit 151 was admitted.)

1 BY MR. SPENCER:

2 Q July 27, 2017, Wendy received a letter from Mr.  
3 Lattin, who was your attorney; correct?

4 A What number are you on?

5 Q 151.

6 A Okay. I don't have that one.

7 Q If you want the hard copy, we can get it.

8 A Okay.

9 Q This letter was sent out by Mr. Lattin as your  
10 attorney as co-trustee of the family trust; right?

11 A Yes. He's the trustee for the family trust, for  
12 Stan and I.

13 Q And Mr. Kimmel?

14 A Yes, Mr. Kimmel.

15 Q Just to be clear, that's Mike Kimmel, the  
16 co-trustee?

17 A Yes.

18 Q It says:

19 Wendy, I'm enclosing a Check No. 7005  
20 in the amount of \$5,000 from the Samuel  
21 S. Jaksick Jr. Family Trust. As the  
22 trustees had previously indicated, this  
23 will be the last payment you will receive  
24 until all trust matters have been

1 resolved.

2 Do you remember that letter going out?

3 A I do.

4 Q And the trust matters to be resolved included  
5 determining the scope of your indemnification; right?

6 A Not necessarily that I recall. It was -- what I  
7 recall here was that up until this time I believe we had  
8 given Wendy about 4- or \$500,000 fed out monthly for her  
9 and Luke to live and help her get a job to be able to  
10 help her get trained to become an EMT and so that she  
11 could start to provide for herself, and what I recall was  
12 that right at this time Wendy hired a law firm of -- in  
13 Las Vegas, Dana Dwiggin, I remember, was the case -- or  
14 was her attorney and they said that none of the payments  
15 that we had previously made were going to be applied  
16 anymore, as well as the family accountant, Kevin Riley,  
17 had done an analysis and he had determined that Wendy had  
18 been, for the most part, fully paid on her insurance  
19 note. And so this was an indication that things were  
20 going to come to an end and we had to get things resolved  
21 with how these payments were going to apply.

22 Q My question was simple. Did your indemnification,  
23 matters to be -- trust matters to be resolved, include  
24 the scope of your indemnification?

1       A       I don't believe so. Like I mentioned, we were  
2       focused on trust matters as opposed to situations that we  
3       were having with the letters that we had received from  
4       Wendy's attorney, is what I recall.

5       **Q       So you wanted -- you were basically saying by this**  
6       **letter sent on your behalf that you wanted Wendy to**  
7       **settle before she got anything else; right?**

8       A       No, that's not the case. This was an analysis  
9       prepared, like I said, by Kevin Riley, the CPA -- you can  
10      ask him here in a few days as well -- that he had come up  
11      with that, and all the trustees and the family accountant  
12      as well as the trust attorneys had decided to take this  
13      approach based off what we had received from Dana  
14      Dwiggins.

15      **Q       So to cut Wendy off unless she resolved all issues**  
16      **that were not clearly defined to her in this letter;**  
17      **right?**

18      A       There was discussions going back and forth between  
19      Wendy's attorneys and our attorneys at that point in  
20      time. This is about the time when all this stuff  
21      started.

22      **Q       Can you answer my question, please? This letter**  
23      **does not outline the trust matters that must be resolved;**  
24      **does it?**

1       A     Like I said, I don't think they could have put  
2       them all in that letter. I think they did have the  
3       discussions directly with the law firm so there was  
4       communications in other letters as to what the issues  
5       were.

6       Q     And Wendy did not have accountings for a number of  
7       years of the trust at this time, July 27 of 2017; did  
8       she?

9       A     Could you be more specific? I'm not sure what you  
10      mean by that.

11      Q     Yeah. She hadn't received an accounting in two  
12      years, had she, accounting of the family trust?

13      A     I don't -- I don't believe that to be the case. I  
14      don't recall that. I feel that the first accounting was  
15      a little slow getting out there but these additional  
16      accountings were coming in annually, from what I recall.

17      Q     The first accounting was back in October of 2015;  
18      right?

19      A     That sounds right. It took Kevin a while longer  
20      to perform all the necessary things he needed to do, but  
21      after that they were on a more regular basis, is what I  
22      recall. So I wasn't too sure what you meant by not  
23      having them for two years.

24      Q     Back then that was -- the state tax return was

1 being prepared and your father had died not long before,  
2 and so it took a little longer than usual on the front  
3 end. But then after that, Wendy didn't have full  
4 accounting or full information that she could have used  
5 to determine whether she should resolve those issues; did  
6 she?

7 A As I sit here right now, I don't -- my opinion is  
8 that she did have those. I just -- I don't have anything  
9 else to base off of that.

10 Q Not your opinion, do you remember that?

11 A Yeah, I remember that the accountant, the family  
12 accountant, Kevin Riley, and the trust team, Stan and I  
13 and the attorneys, prepared additional accountings. I  
14 don't think there would have been a two-year period prior  
15 to this that she didn't have accounting.

16 Q Well, Ms. Dwiggins was asking for information  
17 regarding the trust assets, trust administration,  
18 et cetera; wasn't she?

19 A Yes.

20 Q If she had accountings, she wouldn't have needed  
21 to ask; would she?

22 A I can't tell you if Wendy handed her her  
23 accounting that she had or -- for example, you're saying  
24 that she didn't have any accounting for two years prior

1 to this; right?

2 Q Well, that's true; isn't it?

3 A No.

4 Q When did you serve -- when did you serve the 2016  
5 accounting on Wendy?

6 A If you go back up to your chart, that's July 27 of  
7 2017.

8 Q Right.

9 A Like I said, we had an in-person meeting where all  
10 the accountings and a big, long meeting happened on  
11 October 21st of 2015, that's certainly within that  
12 two-year window. Then there was an additional accounting  
13 provided for 2016 after that.

14 MR. SPENCER: Pull up Exhibit 74, Keith, if you  
15 would -- 72?

16 I offer Exhibit 72. I'm not sure it's in.

17 MR. ROBISON: It's in.

18 MR. SPENCER: It's in. Okay.

19 BY MR. SPENCER:

20 Q Next page, Keith. This is the -- from -- go back  
21 up, I'm sorry -- your dad's date of death was March 2014,  
22 JSK 1118, so that letter is dated January of 2015 and  
23 Wendy -- that meeting you mentioned did not occur until  
24 October of 2015; right?

1       A       October 21st of 2015.

2       Q       And then -- okay. And then let's look at  
3       Exhibit 73, go down to the -- that's the next year's  
4       accounting. And then go down to Mr. Riley's letter  
5       again, I believe it documents the date -- that's October  
6       of 2016 for the period April 1st, 2014, through  
7       March 31st of 2015, so that would have corresponded with  
8       your meeting; right?

9       A       I believe so.

10      Q       Then the next one, Keith, Exhibit 75 -- 74, I  
11      apologize -- let's go down to that same letter -- well,  
12      first, this is for the period April 1, 2015, through  
13      March 31st of 2016. Then skip down to that letter,  
14      January 12 of 2017, do you know when that was actually  
15      delivered to Wendy?

16      A       I think -- what I recall is that anything that was  
17      delivered to Wendy on or around this time was  
18      delivered -- I recall the counsel delivering them  
19      directly to Dana Dwiggins, is what I recall.

20      Q       Okay. And then in relation to 2017 --

21              MR. SPENCER: Exhibit 126, I believe that's  
22      admitted already.

23              THE CLERK: It is.

24      / / / /



1 BY MR. SPENCER:

2 Q Exhibit 126, April 1st, 2016, through  
3 December 31st, 2017 -- and then scroll down to that  
4 letter -- August 6 of 2018, so some of the information,  
5 at least between January of 2017 and July of 2017, would  
6 not have been provided to Wendy by -- in the form of an  
7 accounting; right?

8 A I'm not sure.

9 Q All right. And then she -- and, you know Wendy  
10 had moved down to Texas; right -- around that time frame  
11 in '17 -- or was it '16?

12 A I don't recall. She moved to Las Vegas first and  
13 then she moved to Texas.

14 Q You knew that she was relying upon those monthly  
15 distributions; right?

16 A Our understanding was the money was definitely  
17 helping her, and our understanding was that she was able  
18 to get a job and that the funds that we were sending down  
19 to -- she was able to get a job and had an income coming  
20 in from being an EMT at this point in time. That's what  
21 was indicated to us in a letter from Wendy's attorney,  
22 that Wendy had gotten a job and she was an EMT at that  
23 point in time and had income.

24 Q And how many -- what is the value of the house

1     **that you currently live in?**

2             MR. ROBISON:  Objection; relevance.

3             THE COURT:  I sustain the objection.

4             MR. SPENCER:  Your Honor, his house is listed on  
5     the indemnification and I think it's relevant.

6             MR. ROBISON:  The debt is.

7             THE COURT:  The debt, which was initially listed,  
8     and then --

9             MR. ROBISON:  Now gone.

10            THE COURT:  -- no longer listed because of the  
11     agreement that was reached?

12            MR. ROBISON:  Correct.

13            THE COURT:  I think -- I think the question  
14     elicits facts leading to a conclusion.  It's not -- it is  
15     sustained.

16     BY MR. SPENCER:

17       **Q     How many square feet is the house that you live**  
18     **in?**

19            MR. ROBISON:  Objection; relevance.

20            THE COURT:  Mr. Spencer, your point is to show  
21     Mr. Todd Jaksick is wealthy and Wendy is not; is that  
22     your point?

23            MR. SPENCER:  That's fact.

24            THE COURT:  Sustained.

1 BY MR. SPENCER:

2 Q Did you ever know Wendy and Luke to be living out  
3 of their car down in Texas?

4 A No, sir, I have not heard that.

5 Q Okay. And did you ever know Wendy to have to  
6 borrow money in order to feed her son?

7 A I was not aware of that.

8 Q Or to pay rent for an apartment down in Texas?

9 A On the rent situation, I'd like to clarify that  
10 for 30 seconds. That once she got Dana Dwiggins hired,  
11 the trustees would send money to Dana Dwiggins' office  
12 for Wendy monthly, and tell the attorneys that she has to  
13 pay it -- they have to pay the money directly from the  
14 money they're getting -- we're sending a check down and  
15 make sure Wendy pays her rent, and they didn't.

16 Then we got a big demand for 20-plus thousand  
17 dollars in back rent, and all the trustees agreed we  
18 weren't going to pay that. But what we did tell Wendy  
19 is, Wendy, we're willing to get into a new place, we'll  
20 pay the deposits, we'll pay the security deposits, we  
21 were sending her different houses that we thought would  
22 be good properties for her accommodate, and we were  
23 willing to make all of those payments for her to get her  
24 into a new place.

1 Q What did that have to do with my question of  
2 whether she had to borrow money to pay rent? That was a  
3 different question that you were trying to answer; right?

4 A I'm sorry?

5 Q Can you answer just the question, which is: Were  
6 you ever aware that Wendy had to borrow money in order to  
7 pay rent for an apartment while she was in Texas?

8 A I was not.

9 Q Okay. And was there a time when Wendy needed a  
10 car or vehicle?

11 A Yes.

12 Q All right.

13 MR. SPENCER: Offer Exhibit 81, make sure it's  
14 stipulated.

15 THE CLERK: 81 is stipulated.

16 THE COURT: 81 is admitted, Ms. Clerk.

17 THE CLERK: Thank you.

18 (Exhibit 81 was admitted.)

19 BY MR. SPENCER:

20 Q This is February of 2018, and this is an e-mail  
21 thread so let's go to the third page first, Keith --  
22 second page, I'm sorry, SJ 526. At the bottom, it's  
23 SSJ 3232, which we understand is Stan's writing.

24 Hey, guys. I'm not available today. I

1 think the Geo is a waste of time. I  
2 don't see Wendy ever driving it and it  
3 would cost more to get it down there than  
4 its worth anyway.

5 Do you remember that?

6 A I do.

7 Q Then up above Michael Kimmel responds,  
8 February 21st of 2018 at 12:03 p.m.

9 This isn't my call, and I'm not a  
10 trustee of her trust, but to the extent  
11 she wants to claim Sam's trust has some  
12 obligation to provide her with a vehicle,  
13 then I'm in favor of having trust counsel  
14 write a letter to Wendy's counsel  
15 indicating that Sam's trust would give  
16 her the vehicle free and clear. If Wendy  
17 wants to explain to the court why she is  
18 too good to drive a Geo, and in  
19 particular one that it sounds like Sam  
20 actually drove, then she's certainly free  
21 to do so.

22 That Geo was what year model?

23 A I'm not sure. Dad had it as an office car and  
24 we -- everybody in the office drove it quite frequently,

1 as well as dad would drive it frequently when we needed a  
2 vehicle. I'm not sure what year it was but it probably  
3 has about 50,000 miles on it. And it's not that great of  
4 a vehicle by any stretch of the imagination, but we were  
5 going to clean it up, put new tires, fix the air  
6 conditioner, and then send it down to her and just give  
7 it to her for free as an interim solution, because we had  
8 previously gotten her an Audi, an A5 or A7 Audi that the  
9 lease was up and the lease had expired and she wasn't  
10 turning in the vehicle and Stan was trying to get her to  
11 turn back in the vehicle, so it was just an interim  
12 solution to get her the Geo and she could keep it or do  
13 whatever she wanted at the end of it until we got a  
14 different vehicle.

15 Q That's really your answer to my question, what  
16 year model the Geo was?

17 A Yeah. I wanted to explain the whole circumstances  
18 of the vehicle.

19 Q What year model was it?

20 A I have no idea.

21 Q Okay. That's the answer.

22 MR. SPENCER: Offer Exhibit 239 your Honor,  
23 stipulated.

24 THE COURT: 239 is admitted.

1 MR. SPENCER: Make sure -- hold on.

2 THE CLERK: Thank you.

3 (Exhibit 239 was admitted.)

4 BY MR. SPENCER:

5 Q Is this the Geo that you're talking about?

6 A Yes.

7 Q Okay. This is what you were going to expect Wendy  
8 to have to drive?

9 A Wendy has driven it previously before, yes. We  
10 were thinking it was an interim solution for Wendy. It  
11 was obviously sitting in the barn and dirty, but it  
12 cleans up. It's a good running vehicle. We've all  
13 driven it, Wendy has driven it a bunch before, and we  
14 were going to send it down.

15 Q And you thought that was a good decision by you as  
16 the trustee to send down a vehicle like that for Wendy to  
17 drive when you had numerous vehicles yourself?

18 A Like I said, it was an interim solution and Wendy  
19 had an Audi A7 that she was driving, arrangements were  
20 made to have her keep the car.

21 Q And you've had Cadillacs and --

22 MR. ROBISON: Objection, your Honor.

23 BY MR. SPENCER:

24 Q -- trucks and all kinds of luxury vehicles?

1 MR. ROBISON: Objection, your Honor.

2 THE COURT: Sustained.

3 BY MR. SPENCER:

4 Q Let's look at page SJ 525 of Exhibit 81, Stan  
5 writing to Mike Kimmel after his e-mail.

6 Hey, Mike. The Geo is embarrassingly  
7 bad --

8 It's at the bottom.

9 -- embarrassingly bad and the AC never  
10 worked, which is a problem in Dallas.  
11 But I think you should take a look at a  
12 current picture which Todd will need to  
13 send before you make that decision. My  
14 dad drove it as a joke sometimes if his  
15 other cars were being worked on. I think  
16 the trust would look bad by giving her  
17 this car. Even with everything working,  
18 it might be worth \$500.

19 So that's the car that you were going to have  
20 Wendy drive; right?

21 A Based off my previous discussions, what I said,  
22 yes, with the short amount of time for the solution.

23 Q Then after that letter that cut off the monthly  
24 income unless Wendy agreed with whatever the co-trustees



1    **wanted to resolve, what happened; do you recall?**

2       A       Not exactly right now.

3       Q       Okay.

4           MR. SPENCER: Your Honor, I'll offer Exhibits 3  
5   and 4, which are stipulated.

6           THE COURT: 3 and 4 are admitted.

7           THE CLERK: Thank you.

8           MR. ROBISON: Your Honor, these are not  
9   stipulated.

10          MR. SPENCER: Take it down.

11          MR. ROBISON: Not stipulated at all.

12          MR. SPENCER: Yes, they were.

13          MR. ROBISON: These are admitted with respect to  
14   the claims in equity only.

15          MR. SPENCER: They were marked on the stipulated  
16   list. That's not the list.

17          MR. ROBISON: Your Honor, this --

18          MR. SPENCER: You have a different list.

19          THE COURT: Okay. If you -- hold on. Based upon  
20   the disagreement before this jury, it is not admitted if  
21   you --

22          Ladies and gentlemen, during this recess please  
23   don't discuss this case among yourselves, don't form or  
24   express any opinion about this matter until submitted to

1 you. I think you'll be in the jury room about ten  
2 minutes. Our hard end still applies today.

3 (Jury exited courtroom.)

4 THE COURT: I'm going to remain standing just  
5 because I've been sitting all day. You can sit or stand.

6 The first thing, I've been encouraging civil  
7 cooperation and that last one was not. I'm trying to  
8 decide if that violated my hundred dollar prohibition.  
9 The way the two of you, especially, you, Mr. Spencer,  
10 ended the exchange was kind of like a football game when  
11 you see -- when the ref doesn't see the first punch but  
12 he certainly sees the second, and it's always the second  
13 that gets flagged, and I'm focusing on you and that is  
14 past what I expect in the well of this court.

15 Now, counsel, will you please approach. I don't  
16 know how to read this. I've got green marks and --

17 MR. ROBISON: We prepared it. It's a copy of what  
18 we gave to counsel with respect to stipulated admissions,  
19 but the pleadings we intended to stipulate into the  
20 claims in equity trial, and that's exactly what the court  
21 clerk's exhibit list reflects.

22 THE COURT: All right. I really want to break in  
23 a just moment for the court reporter. You're going to  
24 seek the admission of these documents, will you please

1 tell me the purpose for the legal claims?

2 MR. SPENCER: Yes, your Honor.

3 They are two-fold. One, they -- we're the  
4 petitioner here but they started this, is sort of the way  
5 to put it simply, and I wanted to show the jury that they  
6 filed this and then we were left with no choice but to  
7 respond to it under the Nevada law.

8 Then, number two --

9 THE COURT: What do you mean respond to -- respond  
10 with defense or with counterclaims?

11 MR. SPENCER: Well, either object to it and -- if  
12 we didn't respond, it would be -- it would have been  
13 approved by agreement or by stipulation or acquiescence.

14 THE COURT: Why can't you get that in with a  
15 couple of quick questions?

16 MR. SPENCER: I can, but here's the second reason.  
17 There's a section of Mr. Jaksick's deposition testimony  
18 relating to those very pleadings and some other ones  
19 where he had verified the content of the accountings,  
20 we're calling them, and when asked under oath what he was  
21 verifying when he signed those sworn statements, he said  
22 he didn't know, he said he needed to talk to his team. I  
23 then changed the subject to, now as you as you sit here  
24 today under oath, can you verify these accountings, and

1 he said, I don't know, I'd have to talk to my team. I  
2 don't know what it was that I agreed to. Mr. Kimmel  
3 signed them under oath also, and so he says, I don't know  
4 what I signed, I don't know if it's accurate. Mr. Kimmel  
5 says it's accurate, two co-trustees swearing to two  
6 different things, so it goes to the -- they're submitting  
7 these for approval, they're also submitting them as being  
8 accurate, and the two co-trustee who submitted them can't  
9 even verify them.

10 MR. ROBISON: Wendy's claim, as this court has  
11 indicated in its pre-trial order, are limited to this  
12 jury breach of fiduciary duties, aiding and abetting,  
13 conspiracy, unfit duties, and fraud. We filed the  
14 petition through Mr. Lattin -- Mr. Lattin did for court  
15 approval of the accountings and now they want to use  
16 exhibits -- or pleadings, not exhibits -- pleadings that  
17 were filed in the accounting process, the claim in equity  
18 process to use against Mr. Jaksick and perhaps Mr. Kimmel  
19 in front of the jury. These are pleadings.

20 THE COURT: Understood. All right.

21 MR. SPENCER: Your Honor, I'm sorry.

22 THE COURT: First day of trial I said there was a  
23 time to talk and a time to try. When the jury is sitting  
24 in there, it's time to try. I'm going to sit down, you

1 may remain standing or remain seated, I have a couple of  
2 things I'm going to address with you.

3 I turn to Exhibit 111, 111 is an e-mail thread, it  
4 was stipulated for admission and -- counsel, do you have  
5 111 in front of you or familiar enough to follow along?

6 MR. ROBISON: Familiar enough to follow along.

7 THE COURT: In the very middle of the page there's  
8 a paragraph, it is from the e-mail from Wendy to Stan  
9 saying:

10 I am telling you, comma, this just gets  
11 worse so I will -- I'm telling you,  
12 comma, this just gets worse by the day.  
13 It does.

14 Emphasis with exclamation point.

15 I know we are all right --

16 Some word, W-H-E-A-B-W-D --

17 -- say he killed him. I'm going to see  
18 if it's possible to start an  
19 investigation. Dave is -- misspelled --  
20 adamant about it.

21 Is that the offensive language?

22 MR. ROBISON: That's the reference to Todd killing  
23 his father.

24 THE COURT: Okay. So first it was stipulated to

1 admission and I could end the analysis by just saying it  
2 was invited error, but I think that's unfair because I've  
3 been very happy about evidentiary economy and the  
4 agreements that have been reached, and I don't want  
5 anybody to be punished by their efforts to streamline our  
6 work and so just that it is admitted is not enough.

7 I don't remember that particular paragraph, two  
8 lines, being enlarged though the witness apparently does  
9 through counsel. I don't remember at all it being  
10 highlighted in yellow for emphasis and any questions upon  
11 it. And so the reference is very indirect but I also  
12 believe that each side should be able to try their case,  
13 and if that -- if those words caused an emotional  
14 reaction, then Mr. -- then Mr. Todd Jaksick can explain.

15 And so remember my limiting ruling was, without  
16 the context of trial, I'm doing my best but trial has to  
17 unfold, and I'm going to allow, upon examination by  
18 opposing -- I don't know what to call it, it's not  
19 cross-examination of your client.

20 MR. ROBISON: It's direct.

21 THE COURT: It's a general cross-examination, I  
22 guess. I'm going to allow you to inquire but I don't  
23 know if this idea that Todd participated in killing his  
24 father is a passing reference or a focused concept, I

1 just don't know how deeply it's embedded in this case, so  
2 I'm not going to allow other specific instances of that  
3 allegation but just an explanation of the four corner  
4 document itself. So you may inquire to explain but not  
5 to emphasize the issue, because if it goes too far it's  
6 used to bludgeon Wendy, I think, unfairly.

7 And, finally, another reason I'm allowing this is  
8 there have been lots of e-mails admitted for possible  
9 prejudice against Todd and Stan. I said I'm not going to  
10 cleanse this record -- excuse me, not the trial record --  
11 I'm not going to cleanse the parties of their past, and  
12 so whatever Wendy said in this e-mail is what Wendy said.

13 I have a juror question. I'll read it aloud and  
14 make sure you have a copies.

15 Judge Hardy: Can you provide an  
16 estimated end trial for tomorrow, Friday,  
17 the 22nd, please, at the close of the  
18 case today?

19 I have to speak at an investiture across the  
20 street at 2 o'clock, so I need to be away from about 1:35  
21 to 2:45. We can bring everyone in at 8:30, we can run it  
22 from 8:30 to 10:00.

23 I'm going to go off the record at point and I want  
24 you to shake your hands out.

1 (Off the record.)

2 THE COURT: I am not going to admit those  
3 pleadings as an exhibit to be reviewed in the jury room.  
4 I think that your questions are appropriate as you  
5 described the purpose, I think they're relevant. I also  
6 think depending upon the witness' answer there may be  
7 some impeachment opportunity with a prior inconsistent of  
8 some type, whether it be deposition or affirmative  
9 statement, but you can tease out of this witness by oral  
10 colloquy what you need to get.

11 MR. SPENCER: Without the -- right. Okay.

12 THE COURT: All right. Take your time. Let's go  
13 about seven minutes and then I'll bring the jury in until  
14 the end of the day.

15 (Recess.)

16 THE COURT: If you'll be seated, please.

17 Ladies and gentlemen, at the end of trial day,  
18 which is coming soon, I will announce tomorrow's  
19 schedule.

20 Counsel, you may continue.

21 BY MR. SPENCER:

22 Q Todd, after that July 27, 2017, letter, cutting  
23 off the distributions to Wendy, did you apply to have  
24 your accountings approved in this court?



1 A That sounds accurate.

2 Q And so all -- well, the contents of the  
3 accountings but then all your actions you had taken prior  
4 approved and confirmed?

5 A That sounds accurate.

6 Q And you filed that August 12, 2017?

7 A That sounds accurate.

8 Q Around that time?

9 A Yeah.

10 Q Okay. And is it your understanding that if Wendy  
11 had not responded to your request to have all of those  
12 accountings approved, they would have been approved?

13 A I'm not sure about that.

14 Q All right. Wendy responded, didn't she?

15 A Yes.

16 Q And in relation to those accountings you signed a  
17 verification of them; didn't you?

18 A If it was necessary to file for the court, I would  
19 imagine so.

20 Q You know what by verification that means you swore  
21 to the contents of those accountings; right?

22 A That could be a possible definition.

23 Q Well, is it true that you did not know whether you  
24 swore to the contents of those accountings?

1       A       I wasn't sure exactly about -- I don't recall  
2 exactly your terminology -- that day you were asking me  
3 in my prior, I didn't know exactly some of the  
4 terminology that you were using.

5       Q       Well, I asked about whether you understood taking  
6 an oath and the penalties of perjury that go along with  
7 that oath; right?

8       A       Yes.

9       Q       All right. And then I asked you, as you sat there  
10 that day under oath, could you then swear to the contents  
11 of those accountings and you said you didn't know; right?

12      A       I do recall something like that, yes.

13      Q       And by the end of that back-and-forth questioning,  
14 you could not swear to the contents of those accountings;  
15 could you?

16      A       My understanding was is that our job was to have  
17 Mr. Riley prepare the accountings and I'm swearing that  
18 he's provided me accountings, but the details within the  
19 accountings is what Mr. Riley prepares and I couldn't  
20 swear that day to every single thing that was in that  
21 accounting based off of not being an accountant. But my  
22 understanding is I was swearing to the fact that we had  
23 required Mr. Riley to prepare those.

24      Q       Well, but in presenting them to the court, you had

1 to swear that everything in them were true and correct;  
2 right?

3 A Yes, and we count on our accountant, Mr. Riley, to  
4 be able to prepare the accounting.

5 Q So the fact of the matter is you didn't know  
6 whether the contents of accountings were true and  
7 correct; did you?

8 A We have looked at those, they've seemed accurate,  
9 but it wasn't our duty -- my understanding was that just  
10 that we were verifying that Mr. Riley had prepared them  
11 and that then we were submitting them to the court.

12 Q Well, and that the -- that the information  
13 contained in the accountings were true and correct?

14 A I don't know if that was the obligation or not, I  
15 just know that it was our obligation that we were  
16 verifying that our accountant had provided them.

17 Q Do you recall that being your statement to the  
18 court, though, that the contents of the accountings were  
19 true and correct?

20 A I don't recall that document right now.

21 Q All right. And Wendy, the beneficiary, has to  
22 take what you would say, that the contents were true and  
23 correct for what their worth on the paper; right?

24 A Yes.

1 Q And absent putting you under oath and asking you  
2 those questions, she wouldn't know anything your  
3 statement that they're true and correct; would she?

4 A I'm not sure.

5 Q How would she?

6 A I mean, there's a lot of legal terminology that  
7 I'm not familiar with. It was my understanding that we  
8 were just verifying the fact that Kevin Riley had  
9 preparing the accountings and that we were filing it with  
10 the court.

11 Q Do you deny that you swore that the contents of  
12 the accounting were true and correct?

13 A No.

14 Q Okay. So you made that statement and you didn't  
15 know whether it was true and correct; did you? I'm  
16 talking about the accountings.

17 A We trust our accountant, Kevin Riley, to  
18 accurately reflect those, we went over them with him in  
19 detail and I do -- I do respect and agree that his  
20 accountings should be accurate.

21 Q Well, I understand, but my question was different.

22 When you made that statement that the content of  
23 the accountings were true and correct and at the time you  
24 made it, you did not know if it was true and correct; did

1     **you?**

2       A     The way you're asking me the question that day I  
3     wasn't sure as to the verification, what you meant by  
4     your questioning, if you're alluding to prior to  
5     discussions we had, I didn't know exactly what you meant  
6     by that. I do know now that it's based on the verifying  
7     the accountings were prepared by Kevin Riley, that was  
8     our job.

9       Q     **And expecting the beneficiaries to believe your**  
10    **sworn statement that they're true and correct; right --**  
11    **the information in the accountings is true and correct?**

12    A     That's my understanding, yes.

13    Q     **And expecting this court to believe that the**  
14    **information contained in the accountings were true and**  
15    **correct?**

16    A     I would agree with that.

17    Q     **As far as the information contained therein, you**  
18    **did not know whether it was true and correct; did you?**

19    A     I could just tell you that I didn't prepare the  
20    accountings and you were wanting to go into details of  
21    the accounting and so I didn't feel comfortable at that  
22    time. But, yes, we verified that Kevin Riley had  
23    prepared all of those accountings for us and we submitted  
24    them to the court.

1       Q     And you didn't know that they were true and  
2     correct, though; did you?

3       A     I believe that they are true and correct if Kevin  
4     Riley prepared them.

5           MR. SPENCER: Your Honor, I would like to at this  
6     time publish Volume 6 of Mr. Todd Jaksick's deposition  
7     taken on October 31st of 2018.

8           THE COURT: All right. So you may open and  
9     publish it.

10          MR. ROBISON: May I approach, your Honor? There  
11     seems to be two originals.

12          MR. SPENCER: That's Volume 2.

13          MR. ROBISON: I'm sorry. Okay.

14          MR. SPENCER: We stipulate this is the original  
15     right here.

16          MR. ROBISON: That's the one I just provided?

17          MR. SPENCER: Yes.

18          MR. ROBISON: So stipulated.

19          THE CLERK: Deposition opened and published.

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

21          THE COURT: Yes, please.

22     BY MR. SPENCER:

23       Q     I'm going to refer you to the page numbers; do you  
24     see them there?

1       A       Okay.

2               THE COURT:  Ladies and gentlemen of the jury,  
3       there's a bench in front of the witness that is about  
4       this wide, that happens all the time so please don't --

5               MR. SPENCER:  I didn't know it didn't go all the  
6       way over.

7               May I confer with counsel?

8               THE COURT:  Yes.

9       BY MR. SPENCER:

10      Q       So when you swore under the penalties of perjury  
11      that you knew the contents of the accountings, were you  
12      simply swearing that the Exhibit 2, which was attached to  
13      the financial statements or are you swearing as to the  
14      contents of the financial statements?

15      A       I don't recall right now.

16      Q       Okay.  And you do know what -- do you know what  
17      you were swearing to when you signed the verification  
18      under the penalties of perjury; right?

19      A       We were all sitting in a room with the attorneys  
20      and the accountants and I just recall going through it  
21      with them.  I just don't know the exact terminology, I'm  
22      sorry.

23      Q       You've seen the accountings that we've put up  
24      here, you know what we're talking about, the financial

1 statements that are accounting for certain periods;  
2 right?

3 A Yes.

4 Q And, as you sit here today, do you swear to the  
5 content of those accountings?

6 A Yes, I believe Kevin Riley has accurately done his  
7 job as lead accountant.

8 Q Sir, that's not my question. I'm not asking you  
9 whether you swear that you believe Kevin Riley properly  
10 did his job. I'm asking you, as a co-trustee, if you  
11 swear to the contents of the accountings?

12 A And I'm just telling you that that's what I was  
13 told my job was to do, to verify that we had Kevin Riley  
14 providing the accountings -- the accountings, that's what  
15 I was explained by counsel when we were signing them, but  
16 I believe that Kevin Riley's accounting is accurate.

17 Q Let me refer to you page 1172 of your deposition,  
18 which is Volume 6 taken on October 31st, 2018.

19 A Okay.

20 Q And I asked that day -- and I'm referring to line  
21 18:

22 Do you swear to the contents of the  
23 financial statements that are attached?  
24 And do you see your answer at line 21?



1 A I do, yes.

2 Q Will you read that?

3 A I'm not sure I'm on the right page. Mine said:  
4 I'd like to talk to Kevin Riley about  
5 that.

6 Q Hold on. Page 1172 of Volume 6.

7 A Okay. Okay.

8 MR. SPENCER: Can I show that on the TV screen?

9 THE COURT: If you can just isolate that single  
10 page, yes.

11 BY MR. SPENCER:

12 Q One page, page 1172, where -- my question was at  
13 18:

14 Do you swear to the contents of the  
15 financial statements attached thereto as  
16 Exhibit 20?

17 And then your answer at line 21 was?

18 A Do you want me to read that?

19 Q Yes, sir.

20 A

21 Yeah, I don't know. I'd have to  
22 re-review them again. It's just been a  
23 long time since we've looked through  
24 these.

1 Q Okay. And so October 31st of 2018, when asked  
2 under oath at that time, you didn't know whether the  
3 contents of the financial statements were true and  
4 correct; did you?

5 A I didn't more or less understand some of the line  
6 of the questioning and the interpretation of where you  
7 were going, but certainly the accountings that Kevin  
8 Riley provided.

9 Q Okay. And then that was after I had talked to you  
10 about the verification --

11 MR. SPENCER: Keith, show only line 7 down, if you  
12 could.

13 UNIDENTIFIED SPEAKER: The same page?

14 MR. SPENCER: Yes.

15 BY MR. SPENCER:

16 Q I asked you about your verification.

17 You don't know what you were swearing  
18 to in the verification on page four of  
19 Exhibit 156?

20 And your answer was what?

21 A

22 I just don't recall that right now.

23 Q So you didn't recall what you were swearing to in  
24 the verification and on October 21st, 2018, you didn't

1 know what you were swearing to -- or you didn't know  
2 whether you could swear to the contents of the financial  
3 statements at that time as you were sitting there; right?

4 A That looks to be the case, yes.

5 Q And you needed to re-review them again, etcetera;  
6 correct?

7 A That's what I said, yes.

8 Q And right now all you can do is swear and verify  
9 that you believe Kevin Riley is competent to do his job?

10 A That was my -- that was my understanding of what  
11 our duty was, to make sure that Kevin Riley was -- did  
12 his job properly.

13 Q All right. And how would we know what your sworn  
14 verification is swearing to if you're not sure about it?  
15 We being Wendy.

16 A I don't have an answer for that except for the  
17 fact that it's part of what we do with the accountants  
18 and the trustees to help us perform the obligations that  
19 we did when we submitted that.

20 Q And your testimony would be the same for all of  
21 the accountings; correct?

22 A Yes. I'm not an accountant, that's why we rely on  
23 Mr. Riley to provide all the accounting.

24 Q All right. So let me take you over to Exhibit 72

1 real quick, and looking at JSK 1118 -- zoom into the  
2 first paragraph -- this is the letter that was attached  
3 to all of those accountings; do you remember that?

4 A It looks familiar, yes.

5 Q And it says:

6 We have not audited or reviewed the  
7 accompanying financial statements and,  
8 accordingly, do not express an opinion or  
9 provide any assurance about whether the  
10 financial statements are in accordance  
11 with the accounting principles generally  
12 accepted in the United States of America.  
13 Do you see that disclaimer?

14 A I do.

15 Q Further, it says, next paragraph:

16 The trustee of the Samuel S. Jaksick  
17 Jr. Family Trust are responsible for the  
18 preparation and fair presentation of the  
19 financial statements in accordance with  
20 accounting principles generally accepted  
21 in the United States of America, and for  
22 designing, implementing and maintaining  
23 internal control relevant to the  
24 preparation and fair presentation of the

1 financial statements.

2 So that disclaimer required the trustees or put  
3 the responsibility on the trustees to know the contents  
4 of the financial statements; right?

5 A I'm not sure.

6 Q The trustees are responsible for preparation and  
7 fair presentation; right?

8 A Okay.

9 Q And then next paragraph:

10 Our responsibility --

11 Which would be Rossmann, MacDonald, Benetti --

12 -- is to conduct the compilation in  
13 accordance with statements and standards  
14 for accounting and review services issued  
15 in American Institute of Certified Public  
16 Accountants. The objective of a  
17 compilation --

18 And then you can see there --

19 -- is to assist the trustees of the  
20 family trust in presenting financial  
21 information in the form of financial  
22 statements without undertaking to obtain  
23 or provide any assurance that there are  
24 no material modifications that should be

1           made to the financial statements.

2           Leaving that up to you; right -- as far as  
3   modifications?

4       A     It's what Kevin has in his letter there, yes.

5       Q     And, lastly:

6           The trustees have elected to omit  
7           substantially all of the disclosures  
8           required by accounting principles  
9           generally accepted in the United States  
10          of America. If the omitted disclosures  
11          were included in the financial  
12          statements, they might influence the  
13          user's conclusions about the trust's  
14          financial positions, results of trust  
15          activity and cash flows. Accordingly,  
16          the financial statements are not designed  
17          for those who are not informed about such  
18          matters.

19          That's Kevin Riley's disclaimer on top of it that  
20          is an introduction to all of the financial statements;  
21          right?

22       A     Looks like that, yes.

23       Q     So, in summary, that makes it incumbent upon the  
24          co-trustees to know whether the numbers and information

1    **that had been compiled by Mr. Riley is true and correct;**  
2    **right?**

3       A     Yes, and we did do that. We would meet with  
4    counsel and Kevin Riley and then make sure that the  
5    accounting is -- meets state law standards, as well as we  
6    would have the meetings I mentioned to you on purpose to  
7    go into more detail about the accounting.

8       Q     But you didn't know that when asked those  
9    questions under oath; did you?

10      A     I didn't understand exactly what you meant when  
11    you were asking those questions at the time.

12      Q     Well, you signed a verification under the penalty  
13    of perjury when I wasn't even present; right?

14      A     Correct.

15      Q     All right. So you didn't know it -- know that  
16    information when you signed that either; did you?

17      A     It was a discussion that we all had, we were all  
18    in a room together when we signed that, yes.

19      Q     So you did know it was true and correct but you  
20    told me in the deposition that you didn't know?

21      A     I just don't know if I understood exactly what  
22    your line of questioning was. I apologize. Like I said,  
23    it was in our conference room with Mr. Riley and the  
24    attorneys for the trust team.

1       Q     Okay.

2           MR. SPENCER: Your Honor, Exhibits 72, 73, 74 are  
3 in. I offer Exhibits -- I think 126 is in also, but I  
4 offer Exhibits 95, 126 --

5           THE COURT: Hold on.

6           MR. SPENCER: It's --

7           THE COURT: Sounds like it --

8           MR. SPENCER: -- nine of them.

9           THE COURT: So let's -- let's do that out of the  
10 jury's presence. Let me them send them home.

11          MR. SPENCER: I was going to pass the witness  
12 after doing that.

13          THE COURT: So with the housekeeping matter  
14 reserved, you pass this witness?

15          MR. SPENCER: Sorry. Yes, your Honor, I pass the  
16 witness.

17          THE COURT: You have three minutes.

18          MR. ROBISON: I'm honored. Thank you.

19

20                       +++ CROSS-EXAMINATION +++

21 BY MR. ROBISON:

22       Q     Good afternoon, Mr. Jaksick.

23           Were you in my office when I deposed Wendy's  
24 accountant, Mr. Campagna?



1 A Yes, I was, sir.

2 Q Are you aware that she's hiring an accountant to  
3 look at the accountings that you've provided to this  
4 court?

5 A Yes, sir.

6 Q And didn't he say they complied with state law?

7 A Yes, sir.

8 Q Is it your opinion that they do?

9 A Yes, sir.

10 Q Do you have any reason to dispute Mr. Campagna's  
11 opinion that your accountings comply with state law?

12 A No.

13 Q We had an episode here earlier today where you got  
14 emotional, and I want to show Exhibit 111.

15 Did your sister accuse you of your killing your  
16 father?

17 A Yes, sir.

18 Q Has that been a devastating source of information  
19 for you throughout this entire matter?

20 A Yes, sir.

21 MR. ROBISON: Your Honor, I'll resume tomorrow.

22 THE COURT: Ladies and gentlemen, during this  
23 evening recess -- Mr. Jaksick, you may step down.

24 THE WITNESS: Thank you, sir.

1           THE COURT: During this evening recess, you are  
2 admonished not to converse amongst yourselves or with  
3 anyone else on any subject connected with this trial.  
4 You will not read, watch or listen to any report of or  
5 commentary on the trial by any person connected with this  
6 case or by any medium of information, including without  
7 limitation the newspaper, television, internet or radio.  
8 You are not to conduct any personal, electronic research  
9 or experimentation. You are further admonished not to  
10 form or express any opinion on any subject connected with  
11 this case until the case is finally submitted to you.

12           It is so hard to know what each of your  
13 circumstances are as you are here during the day, and I'm  
14 not allowed to inquire into your personal circumstances  
15 and how you're doing outside of the courtroom so I have  
16 to make the best decisions I can knowing that some will  
17 be happy and some will be unhappy.

18           Tomorrow you will appear in the jury deliberation  
19 room for entry into the courtroom at 8:30. We will take  
20 a break at 10 o'clock, it will be 15 minutes. We will be  
21 in trial from 10:15 to 11:30, which is an hour and  
22 15 minutes. We'll have a 30-minute lunch at 11:30. So  
23 bring your own food, there won't be time to go buy food.  
24 You'll then be in the courtroom from 12:00 to 1:30, and

1 then your trial day will be over at 1:30.

2 Goodnight, ladies and gentlemen.

3 We'll stand for our jury.

4 (Jury exited courtroom.)

5 THE COURT: Be seated if you wish. I'm going to  
6 remain standing because I've been sitting a lot.

7 Let's quickly recite the exhibits you seek the  
8 admission, Mr. Spencer.

9 MR. ROBISON: Your Honor, I have a list -- do you  
10 have my list?

11 MR. JOHNSON: I do not.

12 MR. SPENCER: Your Honor, I think you have it, if  
13 we can borrow it.

14 THE COURT: Yes, of course you can. Do I still  
15 have that?

16 MR. ROBISON: Okay. I don't need. I don't want  
17 to go through the whole list.

18 MR. SPENCER: I'd like to --

19 THE COURT: Just one at a time here.

20 MR. SPENCER: 72, 73, 74, are in. I want to make  
21 sure and offer Exhibits 95, 126, 129, 130, 131, and 132.

22 MR. ROBISON: May I have a word?

23 THE COURT: Yes.

24 MR. ROBISON: No objections.

1 THE COURT: Those are admitted, Ms. Clerk.

2 THE CLERK: Thank you.

3 (Exhibits 95, 126, 129, 130, 131, and.

4 132 were admitted.)

5 THE COURT: All right. Goodnight.

6 MR. ROBISON: Goodnight.

7 THE COURT: See you in the morning at

8 8:20-someting.

9 MR. HOSMER-HENNER: Just one housekeeping matter.

10 THE COURT: Yes. Let's go off the record, Ms.

11 Reporter.

12 (At 4:42 p.m., court adjourned.)

13 \* \* \*

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24

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, ERIN T. FERRETTO, an Official Reporter  
6 of the Second Judicial District Court of the State of  
7 Nevada, in and for the County of Washoe, DO HEREBY  
8 CERTIFY:

9 That I was present in Department No. 15 of  
10 the above-entitled Court on THURSDAY, FEBRUARY 21ST,  
11 2019, and took verbatim stenotype notes of the  
12 proceedings had upon the matter captioned within, and  
13 thereafter transcribed them into typewriting as herein  
14 appears;

15 That the foregoing transcript is a full,  
16 true and correct transcription of my stenotype notes of  
17 said proceedings.

18 DATED: This 15th day of May, 2019.  
19

20 /s/ Erin T. Ferretto  
21 ERIN T. FERRETTO, CCR #281  
22  
23  
24

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5

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE  
--oOo--

9

10 In the Matter of the	Case No. PR17-00445
11 Administration of the	Dept. No. 15
SSJ'S ISSUE TRUST.	
12 _____/	CONSOLIDATED

13 In the Matter of the	Case No. PR17-00446
14 Administration of the	Dept. No. 15
SAMUEL S. JAKSICK, JR.	
15 FAMILY TRUST.	
16 _____/	

17

18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL - DAY 10

20 THURSDAY, FEBRUARY 28, 2019

21

22

23 Job No. 530647

24 Reported By: PEGGY B. HOOGS, CCR 160, RDR, CRR

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2 RENO, NEVADA; THURSDAY, FEBRUARY 28, 2019; 8:42 A.M.

3 -oOo-

4

5 (The following proceedings were held outside  
6 the presence of the jury.)

7 THE COURT: I will read into the record a juror  
8 note, and then we'll make copies and they will be  
9 available for your review.

10 "I'm allergic to something. I've seen the  
11 doctor. I have taken medikin [phonetic] hoping it  
12 works."

13 And then the juror's name, Darla Ward.

14 All right. Anything before the jury?

15 Deputy, please.

16 (The following proceedings were held in the  
17 presence of the jury.)

18 THE COURT: Ladies and gentlemen, good morning.  
19 Nice to see you all again. On behalf of the attorneys  
20 and trial participants, good morning. Be seated, please.

21 Petitioner's counsel, you may call your next  
22 witness.

23 MR. SPENCER: Your Honor, we call our expert  
24 witness, Bruce Wallace.

1 THE COURT: Please follow the deputy's  
2 instructions.

3

4 BRUCE WALLACE,  
5 having been first duly sworn,  
6 was examined and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. SPENCER:

10 Q Good morning.

11 A Good morning. How are you?

12 Q Good.

13 Would you state your name for the record,  
14 please.

15 A Robert Bruce Wallace, Jr.

16 Q And do you go by Bruce?

17 A I do, yes.

18 Q Is it okay if I call you that if I need to?

19 A Please do.

20 Q Bruce, where did you grow up?

21 A I grew up in Houston, Texas.

22 Q Did you graduate from high school down there?

23 A I did, in Houston.

24 Q What did you do after high school?



1           A I went to -- actually, I played hockey  
2 intercollegiately at Merrimac College in Andover,  
3 Massachusetts, and came back to the University of Texas  
4 my sophomore year and graduated from the University of  
5 Texas in 1976.

6           **Q What was your degree in?**

7           A My undergraduate degree is in English.

8           **Q And what did you do after graduating from**  
9 **University of Texas?**

10          A I started immediately in law school and also  
11 with what was then Texas Commerce Bank the same week.

12          **Q Okay. And did you graduate from the University**  
13 **of Texas Law School?**

14          A Not University of Texas. I went to South Texas  
15 Law School in Houston.

16          **Q My apologies. South Texas, that's in Houston?**

17          A Yes.

18          **Q Did you graduate from there?**

19          A I did, yes.

20          **Q In what year?**

21          A I was licensed in May of 1980.

22          **Q Just for everybody's benefit, but mainly the**  
23 **court reporter's, slow it down just a little bit.**

24          A Yes, sir. I'm sorry.

1           Q   So in 1980 you graduated from law school. Did  
2   you take the bar exam?

3           A   Yes, sir.

4           Q   And became an attorney?

5           A   Yes, sir.

6           Q   All right. And then what did you do after  
7   that?

8           A   I was -- excuse me. I had been with Texas  
9   Commerce, the predecessor organization to JP Morgan  
10   Chase, throughout law school, and I remained with the  
11   bank for the next 35 years.

12          Q   Okay. And in what capacity did you start in  
13   after law school?

14          A   I started as a trust officer, primarily  
15   administering trusts that had significant real estate and  
16   oil and gas associated with them and over the years held  
17   many, many different positions with the trust department  
18   and private bank of JP Morgan Chase.

19          Q   So during those 35 years you worked in the  
20   trust department there?

21          A   Yes, I did.

22          Q   At the two entities?

23          A   Correct.

24          Q   All right. And as a trust officer, did you

1 administer trusts in many locations?

2 A Yes, sir, I did. Throughout the country.

3 Q Okay. Trusts that would be -- where would  
4 those trusts be located in comparison to where you were  
5 located?

6 A The administration of those trusts would have  
7 been primarily in Texas. However, the origin of many of  
8 those trusts were in multiple states throughout the  
9 United States.

10 Q And in that capacity as a trust officer, any  
11 way to estimate or do you know how many trusts you  
12 administered over the years?

13 A Directly as a trust officer over the 35 years,  
14 several hundred, if not a thousand, but in addition to  
15 having direct responsibility for the administration of  
16 trusts, I also held the responsibility -- I was the chief  
17 administrative officer for the trust department where I  
18 was responsible for the fiduciary policy, if you will, of  
19 the organization as well as the acquisition of trust  
20 departments in other parts of the city.

21 So not only did I directly administer, I was  
22 also responsible for the overall policy of the  
23 organization with respect to the administration of trusts  
24 and estates.

1           **Q Which organization?**

2           A This would have been JP Morgan Chase. There  
3 were a number of mergers which took place, but for the  
4 majority of the time it was JP Morgan Chase.

5           **Q Where were you based?**

6           A In Houston.

7           **Q And when you say involved with the fiduciary  
8 policy of the organization, what did that entail?**

9           A The administration of trusts and estates is  
10 based on a series of precepts, if you will, which are  
11 applied almost universally across the administration of  
12 any trust and estate. There are certain basic fiduciary  
13 duties that must be followed by trustees in the  
14 administration of any trust or estate.

15           It also extends into corporations and  
16 partnerships as well, but my primary responsibility was  
17 with respect to trusts and estates.

18           **Q And so did you become acquainted with fiduciary  
19 duties and obligations?**

20           A Oh, yes, sir. That's what I did.

21           **Q Okay. When did you leave JP Morgan?**

22           A About ten years ago. 2008, as I recall.

23           **Q What did you do after that?**

24           A I'm in private practice as an attorney in

1 Houston.

2 Q And once you went into private practice, what  
3 areas do you practice in?

4 A My primary areas are fiduciary litigation and  
5 the administration of trusts and estates to include what  
6 I mentioned earlier also, corporations and partnerships  
7 with respect to the duties owed by officers and directors  
8 and partners of partnerships and corporations.

9 Q So prior to going into private practice, when  
10 you were serving as a trust officer, did you gain  
11 experience in relation to different things that can  
12 happen along the way in trust administration?

13 A Yes, sir. Every family deals a different set  
14 of facts and circumstances which must be considered.

15 Q And in that regard how important is the trust  
16 document itself?

17 A The trust document is always the foundation.  
18 It's always the point at which a trust officer begins the  
19 administration of any trust and estate because it is --  
20 it is the bible, if you will. That is what one refers to  
21 when they figure out what duties and responsibilities are  
22 owed.

23 Trust departments -- excuse me -- trust  
24 documents provide the powers that the trustee has to

1 operate the trust, but those powers have to be exercised  
2 within the standards of care that are spelled out within  
3 that document. So it's not -- just because one has the  
4 power to do something doesn't necessarily mean that they  
5 can do it with impunity.

6 Q In this trial we've called it the rule book.  
7 Would you agree with that?

8 A Yes, sir.

9 Q And in relation to what you just mentioned,  
10 what would be an example of having a power but not being  
11 able to use it with impunity?

12 A Well, the best example that I can think of is,  
13 most trust documents will give the trustee the ability to  
14 buy stocks, okay, but just because the trustee has the  
15 power to buy stocks, it doesn't mean that they can go out  
16 and buy bad stocks. They can't go out and buy --

17 I'll use an example that's in the news right  
18 now: Sears, for example, which is in bankruptcy. They  
19 have the power to buy Sears, but to do so would violate  
20 the standard of care which is -- under the Prudent  
21 Investor Act which spells out how the power to buy stock  
22 must be measured by prudent investor standards.

23 Q And so analysis and discretion has to be  
24 involved with the exercise of those powers?

1           A   The exercise of discretion is key to the  
2   administration of a trust or an estate, yes, sir.

3           **Q   And have you heard of the Restatement of**  
4   **Trusts?**

5           A   Yes, sir.

6           **Q   What is that, generally?**

7           A   The restatement -- there are restatements of  
8   many areas of the law.  The one that I am most familiar  
9   with is the Restatement of Trusts, which is a body of  
10   work which is put together by the American Law Institute,  
11   I believe, that is basically the summarization of all of  
12   the fiduciary duties which are standard throughout the  
13   administration of trusts.  It is a go-to document for  
14   trust officers and for attorneys for that matter in  
15   determining the duties and how those duties should be  
16   exercised.

17          **Q   And in relation to the Restatement of Trusts,**  
18   **you mentioned there are duties that are outlined in it?**

19          A   It defines the duties, if you will.  It states  
20   what they are and then defines -- defines those duties  
21   and then actually gives examples of how they should be  
22   exercised in many cases.

23          **Q   And what are some of the duties that a**  
24   **fiduciary would typically have?**

1           A   There are many fiduciary duties.  The ones  
2   which are most important in my opinion are, first of all,  
3   the duty of good faith, and the duty of good faith is  
4   very straightforward and simple.  It means that you must  
5   act honestly and you must act in a way that is in the  
6   best interest of your beneficiaries, and the actions --  
7   you must believe that the actions you are taking are  
8   honest and in the best interest of those beneficiaries.  
9   That's a simple definition of the duty of good faith.  
10  Very straightforward.

11           **Q   And is there a duty of loyalty?**

12           A   The duty of loyalty is the most expansive of  
13   all of the fiduciary duties, and a basic definition of  
14   the duty of loyalty is, under all circumstances a trustee  
15   must also put the interests of the beneficiary ahead of  
16   himself, herself, itself.  The beneficiary is the one to  
17   whom -- the highest level of duty defined by law is a  
18   fiduciary duty.

19           MR. ROBISON:  Objection, Your Honor.  Calls for  
20   a legal conclusion.  Move to strike.

21           THE COURT:  Sustained.

22           Let me just explain, ladies and gentlemen.  I  
23   will be providing instructions of law at the close of  
24   evidence.  The expert witness may provide his opinion of



1 law. I will be providing the statements.

2 You may proceed.

3 BY MR. SPENCER:

4 **Q Speaking generally about the duties, were you**  
5 **finished with that one?**

6 A No, sir. There are three components to it that  
7 any trust officer would consider in the administration of  
8 a trust. One is to always put the interests of the  
9 beneficiaries first. The second is to avoid conflict of  
10 interest and self-dealing.

11 MR. ROBISON: Your Honor, again, I object.  
12 This is going to be covered by jury instructions.

13 THE COURT: No. I sustained the last objection  
14 because of the witness's priority of law, making the  
15 duties superlative. He's describing it. It's overruled.

16 You may continue.

17 THE WITNESS: And the final component is that a  
18 trustee is required to disclose to the beneficiary all  
19 information that is material to his or her interests.  
20 Those are the -- generally, those are the three  
21 components of the duty of loyalty and what trust officers  
22 consider in exercising discretion for the trust.

23 BY MR. SPENCER:

24 **Q Is that duty of disclosure a duty of full**

1     **disclosure?**

2             A   Yes, sir.  That is a component of the duty of  
3     loyalty where the trustee is required to disclose  
4     information that is material to the interests of the  
5     beneficiaries and the trust.

6             **Q   How does that duty of full disclosure come into**  
7     **play if a fiduciary has made a mistake or done something**  
8     **wrong?**

9             A   If a fiduciary has made a mistake and they are  
10    aware of it, that mistake must be disclosed to the  
11    beneficiaries.

12            **Q   And what about if they've done something wrong?**

13            A   If they've done something wrong, then it would  
14    be a violation -- it could potentially be a violation not  
15    only of the duty of loyalty, but of the duty of good  
16    faith to the extent that they did not act honestly and  
17    did not do what they believe to be in the best interest  
18    of the beneficiary.  So there are a couple of fiduciary  
19    duties that would come into play in those circumstances.

20            **Q   Would they have an obligation to tell on**  
21    **themselves, so to speak?**

22            A   Absolutely.

23            **Q   And then is there also a duty of impartiality?**  
24    **What is that?**

1           A Yes, sir. The fiduciary duty of impartiality  
2 requires a trustee -- in the situation where there are  
3 multiple beneficiaries, that the trustee, in exercising  
4 discretion, making decisions, making investments, making  
5 distributions, must balance the interests and the  
6 equities of each of those beneficiaries equally.

7           That doesn't necessarily mean that the decision  
8 is the same for each of the beneficiaries. What it means  
9 is that the trustee must factor into its decision,  
10 whether it be an investment decision, a discretionary  
11 distribution, but must factor the interest of each of the  
12 beneficiaries and deal effectively and impartially with  
13 each of those in making his or her decision.

14           **Q Okay. And what is the duty of -- let me back**  
15 **up. What is income productivity? Is that a duty?**

16           A A fiduciary has a duty to make the trust assets  
17 productive. In other words, if an asset of the trust is  
18 not productive and it is -- there is not otherwise  
19 language in the trust agreement allowing or requiring the  
20 trustee to hold that particular asset, the trustee, in  
21 putting together its investment philosophy, should do  
22 something to make that asset productive so that it's  
23 generating income, has the opportunity of appreciation  
24 for the benefit of the beneficiaries.

1           **Q**   Okay.  And what is the duty of prudence?  Is  
2   there a duty of prudence?

3           A   There is a duty of prudence.  The duty of  
4   prudence is twofold.  A fiduciary -- a trustee has a duty  
5   to act prudently with respect to the administration of  
6   the trust.  The duty of prudence has been expanded to  
7   incorporate what is known as the Prudent Investor Act.

8           **Q**   What is that?

9           A   Excuse me?

10          **Q**   What is the Prudent Investor Act?

11          A   The Prudent Investor Act is a uniform  
12   codification, if you will, of the -- of what a fiduciary  
13   should consider in making investment decisions with  
14   respect to the trust.  It requires that the fiduciary  
15   operate with care, skill, and caution in terms of making  
16   investment decisions, but more importantly, those  
17   investment decisions have to be made in accordance with  
18   the purpose of the trust.

19                So I mentioned earlier that the trust document  
20   is the bible.  The trustee must first establish what the  
21   purpose of the trust is and then make investment  
22   decisions with care, skill, and caution in accordance  
23   with what the purpose of that trust is.

24          **Q**   And let's pull up Exhibit No. 9.

1           You've had an opportunity to look at the  
2   Jaksick Family Trust and the Jaksick SSJ Issue Trust?

3           A   Yes, sir.  I've reviewed both of those multiple  
4   times.

5           Q   Okay.  And we'll turn to page 27, TJ 33, if you  
6   would, please.

7           In relation to that Prudent Investor Rule --  
8   this is the family trust, by the way -- did it cite to  
9   the Restatement?

10          A   Yes, it does.

11          Q   Let's look in the middle of the paragraph there  
12   about ten lines down, Restatement (Third) of Trusts, the  
13   Prudent Investor Rule.

14          Is that what you were alluding to there?

15          A   Yes, sir, it is.

16          Q   And the fact that that's in this trust, what  
17   does that explain to you or mean to you?

18          A   Well, it certainly leaves no room for error in  
19   terms of whether or not the Prudent Investor Act applies.  
20   The person who drafted this trust as well as the issue  
21   trust made it very clear that the Prudent Investor Act  
22   was to be -- was to provide the standard of care for  
23   purposes of making investment decisions on behalf of the  
24   family trust in this case.

1 Q Now let's look at the issue trust, Exhibit 10.

2 This is the issue trust at the top?

3 A Yes, sir.

4 Q We'll flip to page 14, which is TJ 883.

5 Does it likewise contain reference to the  
6 Restatement?

7 A Yes, sir, it does.

8 Q Regarding the Prudent Investor Rule?

9 A Yes, sir.

10 Q And does the use of the Restatement in the  
11 trust documents, at least in relation to this, tell you  
12 anything about what the rule books require in relation to  
13 consulting the Restatement?

14 A Yes, sir. In the administration of this trust,  
15 one would look to the Restatement of the Third,  
16 particularly the Prudent Investor Rule, in making any  
17 decision with respect to the management of the trust,  
18 both with respect to its management as well as making  
19 investment decisions, exercising discretion with respect  
20 to the administration of the trust.

21 Q All right. And in that regard, exercising  
22 discretion, what would be abuse of discretion by a  
23 fiduciary?

24 A If the fiduciary were to exercise discretion

1    which is contrary to what the trust agreement says that  
2    he or she should do, that would be an abuse of  
3    discretion.  So a misinterpretation of the document would  
4    be -- could be an abuse of discretion, and also, if they  
5    were to exercise their discretion in a way that is  
6    unfair, it could be an abuse of discretion.

7           **Q   What is the effect of a fiduciary abusing their**  
8    **discretion?**

9           A   It would render the decision invalid, subject  
10   to review and rescission.

11          **Q   You've heard the term "best interests"?**

12          A   Yes.

13          **Q   How do the best interests of the beneficiaries**  
14   **come into play in all of that?**

15          A   I want to define that as specifically as I can,  
16   but assets are put in trust for the administration of the  
17   beneficiaries.  Many times the beneficiary believes that  
18   what is in their best interest is that everything that's  
19   in that trust should come to them.

20           THE COURT:  Hold on, everybody.  I usually  
21   don't start intervening until later in the afternoon, but  
22   we're starting really, really fast with the cadence.

23           THE WITNESS:  My apologies.

24           THE COURT:  You have to slow down.  At some

1 point we'll stand and give you an opportunity to slow  
2 down. It's just your flow of speech and it has to slow  
3 down.

4 THE WITNESS: I get excited about this stuff.

5 So a beneficiary may very well think that what  
6 is in their best interest is that everything that is in  
7 the trust should be made available to them, but that  
8 generally is not what the trust agreement says.

9 What this trust agreement says -- frankly, what  
10 most say -- is that what is in their best interest is  
11 generally measured by health, education, maintenance, and  
12 support, called the HEMS standard, H-E-M-S.

13 So making decisions with respect to what is in  
14 the best interest of the beneficiary requires that that  
15 HEMS standard be applied.

16 BY MR. SPENCER:

17 Q Have you seen trusts that don't contain the  
18 HEMS standard?

19 A Sure. Sure.

20 Q So you've got to go back to the rule book to  
21 see how the discretion is applied, if there is some?

22 A Always.

23 Q In some trusts you may not have to apply  
24 discretion; is that right?



1           A   There are trusts which remove discretion, that  
2   says something will happen as follows and spells out  
3   exactly what should occur, in which case there would not  
4   be discretion exercised by the trustee.

5           Q   But most trusts have a discretionary standard?

6           A   Yes, definitely.

7           Q   And did you educate yourself a little bit about  
8   Nevada law in these regards?

9           A   I reviewed the Nevada statutes, yes, sir.

10          Q   Okay. And you mentioned that you reviewed the  
11   trusts, the issue trust and the family trust?

12          A   Yes, sir.

13          Q   And who did you understand the trustees to be  
14   of the family trust?

15          A   Initially the family trust was -- Todd and Stan  
16   Jaksick and Kevin Rowley were the three original trustees  
17   of the family trust.

18          Q   After Sam's death?

19          A   I'm sorry. Yes, after Sam's death.

20          Q   And then did that change?

21          A   It did. Mr. Rowley resigned in the summer of  
22   2013, as I recall, and Stan and Todd served as trustees  
23   until, I believe, December of 2016.

24          Q   Okay. And then who did you understand the

1 trustee to be of the issue trust?

2 A Todd Jaksick is the sole trustee of the issue  
3 trust.

4 Q And what did you come to understand the purpose  
5 of the family trust was?

6 A The purpose of the family trust is to operate  
7 in the best interests of the beneficiaries in accordance  
8 with the HEMS standard that I spelled out a few minutes  
9 ago. The primary purpose of that trust is to take care  
10 of the beneficiaries, which are Wendy, Todd, and Stan.

11 Q And then is there a provision for their  
12 descendants?

13 A Yes, there are provisions for their descendants  
14 as well.

15 Q And what did you determine is the purpose of  
16 the SSJ Issue Trust?

17 A It's very different from the family trust. The  
18 purpose of the issue trust is twofold: It is an  
19 insurance trust which held a life insurance policy  
20 which -- \$6 million in life insurance which was payable  
21 to the trust upon Sam's death.

22 The purpose of those life insurance proceeds  
23 were the potential to loan funds to the family trust to  
24 pay estate taxes and then on a long-term basis was to

1 maintain the properties which Sam had contributed to the  
2 issue trust for a period of some 365 years going forward.  
3 There are not provisions for distributions to be made to  
4 beneficiaries in the issue trust.

5 **Q Did you determine what the issue trust actually**  
6 **ended up owning?**

7 A There are a list of entities. I can't -- I  
8 can't repeat those to you off the top of my head, but I  
9 reviewed what those were through the accountings that  
10 were filed in this matter, so I do know what they are,  
11 yes.

12 **Q Interest in entities versus land?**

13 A Versus land itself, yes, sir.

14 **Q And you also had a chance to look at some of**  
15 **the transactions in this case?**

16 A I have, yes, sir.

17 **Q And are you familiar with what we have sort of**  
18 **called the Lake Tahoe transaction?**

19 A I am, yes, sir.

20 **Q Let me back up.**

21 **You've heard testimony in the trial about the**  
22 **co-trustees, Stan and Todd, resolving their disputes?**

23 A I understand that there was a lawsuit involving  
24 Todd and Stan and that they settled that lawsuit some

1 short time ago.

2 Q And in relation to fiduciary duties, what would  
3 be your opinion with respect to that?

4 MR. ROBISON: Objection, Your Honor.

5 MR. LATTIN: Objection.

6 MR. HOSMER-HENNER: Objection, Your Honor.

7 MR. ROBISON: And exceeds the scope of any  
8 examination -- of the report. We have no supplements  
9 whatsoever.

10 MR. SPENCER: Your Honor, that was done after  
11 his --

12 THE COURT: I know when the settlement was  
13 reached and when discovery occurred.

14 Leaving the scope argument aside for a moment,  
15 would you please explain the objection, Counsel.

16 MR. ROBISON: Your Honor, we had this  
17 discussion prior to trial, that if there were to be any  
18 supplement to the experts' reports, we were to be  
19 notified pursuant to Rule 26 of the Nevada Rules of Civil  
20 Procedure. We have received no notification that there  
21 would be any testimony beyond the scope of his deposition  
22 and his report.

23 THE COURT: Do you have an objection beyond  
24 that?

1 MR. ROBISON: That's my objection.

2 MR. HOSMER-HENNER: I join in that objection,  
3 and consistent with this Court's order ordering the  
4 parties to a settlement conference, his testimony  
5 necessarily implicates the terms of that settlement  
6 agreement, which has already been excluded.

7 THE COURT: Sustained.

8 BY MR. SPENCER:

9 Q Going back to the Lake Tahoe property or  
10 transaction, where did you understand the Lake Tahoe  
11 property started?

12 A Initially it was Sam's home, and I've come to  
13 understand that he bought the property perhaps as early  
14 as the late 1970s, and then he contributed that property  
15 to the family trust.

16 Q Okay. And were you able to follow sort of the  
17 trail of where it ended up?

18 A Yes, sir.

19 Q Where did the property go next?

20 A From the family trust it was transferred to  
21 SSJ LLC, I believe is the entity, and it was transferred  
22 into that entity, which was wholly-owned by the family  
23 trust subject to an option agreement.

24 Q All right. And what did you learn about that

1     **option agreement?**

2             A   The option agreement was initially granted by  
3     the family trust to Incline TSS, an entity that was  
4     wholly owned by Todd Jaksick wherein he had the ability  
5     to purchase the Lake Tahoe property under terms spelled  
6     out in the option agreement, which generally had a  
7     \$7.25 million unsecured note as well as certain option  
8     payments that were required to be made on an annual  
9     basis.

10            **Q   Did you learn whether the option agreement was**  
11     **exercised?**

12            A   The option agreement was exercised, yes.

13            **Q   Where did the Lake Tahoe property go after**  
14     **that?**

15            A   It went from SSJ LLC to Incline TSS.

16            **Q   Did you determine who or what entities owned**  
17     **Incline TSS?**

18            A   Incline TSS was owned by Todd -- Todd Jaksick's  
19     family primarily through two trusts. One is an issue  
20     trust for his family, and the other, I believe, is a  
21     trust for his children, but I'm not positive of that.

22            **Q   And what did that do to the dispositive plan**  
23     **that was outlined in the family trust?**

24            A   It was completely contrary to what was spelled

1 out in the family trust with respect to how the Lake  
2 Tahoe home was to be treated.

3 **Q And what do you remember about that?**

4 A The family trust required that the Lake Tahoe  
5 home be placed in a series of three subtrusts under the  
6 family trust where it was to be held and paid for, if you  
7 will, by the family trust for the benefit of initially  
8 Todd, Wendy, and Stan to use. There was also provisions  
9 for money to be allocated to those subtrusts for the  
10 maintenance and payment of the upkeep of the home.

11 **Q And did you find out if there were any issues**  
12 **with determining amendments and which amendments applied**  
13 **to the family trust?**

14 A It was a bit confusing, but as I mentioned a  
15 few moments ago, Todd -- Incline TSS was required to make  
16 a series of option payments on an annual basis. On at  
17 least two occasions the option payments were late.

18 In one case there was an extension of the  
19 payment date for the option agreement, and the payment  
20 was made, as I recall, even later than the extension that  
21 was granted. In the second case I did not see  
22 documentation with respect to allowing a late payment on  
23 an option payment that was made after the date required  
24 under the agreement.

1           Q   Okay.  And so Incline TSS owns the Lake Tahoe  
2   property, and then what happened to the ownership of it?

3           A   Well, with respect to Incline --

4           Q   The SSJ Issue Trust?

5           A   Well, the reason I'm hesitating is that I don't  
6   believe that Incline TSS ever owned the property to allow  
7   it to convey what ultimately occurred, 54 percent of the  
8   interest to the issue trust.

9           Q   Let's back up, then.

10          A   That's why I hesitated.

11          Q   Let's break it up, then.

12                So in relation to the exercise of the option  
13   and Incline TSS getting the title, what is it that you  
14   saw that caused you to think that?

15          A   Under the terms of the option agreement,  
16   Incline TSS was required to pay seven and a quarter  
17   million dollars for the house offset by any option  
18   payments that had been made.

19          Q   And what did you find out happened?

20          A   My understanding is that there were credit --  
21   there were credits received for two or three option  
22   payments, which would have -- which would have reduced  
23   the seven and a quarter million dollars down to  
24   approximately \$7.1 million that Incline TSS would have



1    been required to pay to SSJ LLC in order to acquire the  
2    house.

3           **Q   On an unsecured note?**

4           A   On an unsecured note, yes, sir.

5           **Q   And then as far as the consideration of the**  
6    **amount paid to acquire that title, what did you find out**  
7    **there?**

8           A   I have seen no indication that \$7.1 million was  
9    ever paid by Incline TSS to SSJ LLC.  There's no  
10   reference to that in the accounting that I'm able to find  
11   nor has there been any testimony documenting a check or a  
12   wire transfer or whatever of that \$7.1 million, which was  
13   the consideration required to be paid by Incline TSS for  
14   that acquisition.

15          **Q   Okay.  And so other than those option payments**  
16    **that you mentioned?**

17          A   Other than those option payments, which, as I  
18   say, would have reduced it approximately \$150,000.

19          **Q   And what would be the effect of that?**

20               MR. LATTIN:  Objection.  Calls for a legal  
21   conclusion.

22               THE COURT:  Overruled.

23               THE WITNESS:  I do not believe -- if the  
24   payments were not made, then there was no consideration.

1 If you buy a house or buy a car for \$20,000, the  
2 consideration is \$20,000.

3 In this case the purchase of the house would  
4 have been \$7.1 million. I don't see where that  
5 consideration was ever paid, and if it wasn't, then  
6 Incline TSS never held the interest giving it the ability  
7 to do what it subsequently did with the issue trust.

8 BY MR. SPENCER:

9 Q Okay. So did that create a title issue?

10 A It does in my mind, yes, sir.

11 Q Okay. And then later, after all of that, the  
12 SSJ Issue Trust got the life insurance proceeds that you  
13 mentioned?

14 A Yes, sir. As I understand it, it was a bit  
15 more complicated than that. The \$6 million in life  
16 insurance proceeds were received by the issue trust, and  
17 as I mentioned earlier, the purpose for those proceeds  
18 was to loan money to the family trust for payment of  
19 taxes and to maintain the existing properties that had  
20 been put into the issue trust by Sam.

21 What subsequently happened is Incline TSS,  
22 which was an entity operated 100 percent by Todd, sold a  
23 46 -- I'm sorry -- a 54 percent interest not in the Lake  
24 Tahoe property, but in Incline TSS, Class B shares, for

1 just under \$5 million, \$4.9 million to \$5 million, which  
2 was the insurance proceeds in the issue trust.

3 Q Okay. And those insurance proceeds had a  
4 specific purpose in the trust?

5 A In the issue trust, yes, sir, they did.

6 Q To do what?

7 A Twofold: One was to pay estate taxes, to loan  
8 money to the family trust to pay estate taxes; and to  
9 maintain the many properties that had been contributed  
10 into the issue trust by Sam Jaksick.

11 Q And, instead, the trustee of that trust did  
12 what in relation to it?

13 A The trustee of the trust entered into what I  
14 believe is a self-dealing transaction where Todd as  
15 manager of Incline TSS sold to Todd as trustee of the  
16 issue trust a 54 percent interest in an entity wholly  
17 controlled by Todd. That is -- that's self-dealing.  
18 That is a conflict of interest. There was no disclosure.

19 In any conflict of interest situation, it is  
20 incumbent upon the trustee to demonstrate the fairness of  
21 that transaction and to make disclosure to the  
22 beneficiaries.

23 Q Okay. And so do you have an opinion about  
24 whether that's a breach of fiduciary duty?

1           A I believe it is a breach of fiduciary duty. It  
2 is a breach of the duty of loyalty; it is a beach of the  
3 duty of good faith; it is a breach of the trustee's duty  
4 of disclosure.

5           **Q And then --**

6           A It is also -- pardon me -- it is also a breach  
7 of the Prudent Investor Act by Todd as trustee of the  
8 issue trust because it is not in accordance with the  
9 purpose of the issue trust.

10          **Q And in relation to the purchase price that was**  
11 **negotiated between Todd as manager of Incline TSS and**  
12 **Todd as trustee of the issue trust, do you believe that**  
13 **to be fair market value or the correct value, I should**  
14 **say?**

15          A Are you talking about the amount that was paid  
16 by the issue trust to Incline TSS?

17          **Q Yes, sir. The just under \$5 million amount,**  
18 **what is your opinion regarding that?**

19               MR. ROBISON: Objection.

20               THE COURT: Sustained unless you lay a  
21 foundation for this expert's ability to answer that  
22 particular question.

23               MR. ROBISON: Even if he does, it's beyond the  
24 scope of the report and the testimony.

1 THE COURT: Well, I have to just go with the  
2 first one and see where it goes.

3 BY MR. SPENCER:

4 Q So in your experience, education, and  
5 experience over the years you worked as a trust officer,  
6 have you entered into transactions relating to purchasing  
7 property?

8 A Yes, sir. I think I mentioned when I was  
9 summarizing my experience that I managed the real estate  
10 and oil and gas for JP Morgan Chase for a period  
11 exceeding 20 years, and so I managed fiduciary real  
12 estate, the purchase and sale of real estate in trusts  
13 and estates for over 20 years and oversaw that for the  
14 bank.

15 Q And do you also have experience in the process  
16 of determining value of assets for reporting them for  
17 various purposes?

18 A Yes, sir. Evaluating the nature of the  
19 interest which is being sold, which in this case, as I  
20 mentioned, is not an interest in the property, but an  
21 interest in an entity that is controlled by Todd Jaksick.

22 Q And do you have experience with discounting  
23 valuations?

24 A Yes, sir, I do.

1           **Q And what does that mean exactly? What does it**  
2   **entail?**

3           A Discounting is required in a situation where  
4   the acquiring entity does not have the ability to market  
5   the asset or control the asset, and in this case the  
6   54 percent interest in Incline TSS that was conveyed to  
7   the trust did not have marketability and it did not -- it  
8   did not have control. The issue trust cannot sell the  
9   property and the issue trust has no input in terms of the  
10  management of the property.

11           If you don't have those elements associated  
12  with ownership, then the asset is not as valuable as it  
13  would otherwise be, so there would be a discount  
14  associated with the minority interest, the Class B  
15  shares, the lack of marketability, and the lack of  
16  control.

17           **Q And those things affect the value of that**  
18   **interest that's been purchased?**

19           A Yes, sir. They must be factored into it.

20           **Q And in relation to the 54 percent that was**  
21   **purchased by the issue trust with the just under**  
22   **\$5 million worth of cash, what is your opinion about**  
23   **whether that value was accurate?**

24           MR. ROBISON: Object, Your Honor. This

1 individual has not been disclosed as a valuation expert.

2 We have no reports, no backup for valuation --

3 THE COURT: I would just like to have a quick  
4 sidebar.

5 Ladies and gentlemen, during this conversation,  
6 feel free to stand if you like and stretch.

7 Counsel.

8 (A discussion was held off the record outside  
9 the presence of the jury.)

10 THE COURT: The objection is sustained.

11 BY MR. SPENCER:

12 Q So once at least the title was in Incline TSS,  
13 the issue trust bought in -- 54 percent bought into the  
14 Incline TSS entity?

15 A Yes, sir. For approximately \$4.9 million.

16 Q What's your opinion about the idea that Todd  
17 negotiated that transaction with himself?

18 A It is a conflict of interest and it is a  
19 self-dealing transaction.

20 Q And who owned the other 46 percent?

21 A Todd's entity -- well, Incline TSS, which was  
22 wholly controlled and owned by Todd and his family.

23 Q Okay. And what's your opinion about whether  
24 that investment into Incline TSS met the standards within

1     **the issue trust?**

2             A   I mentioned earlier that the purpose of the  
3     issue trust was to maintain and manage the properties  
4     which had been contributed to the trust by Sam, and it  
5     was to do that for a period of 365 years. The issue  
6     trust does not have the ability to make distributions to  
7     beneficiaries, and it has as its purpose the maintenance  
8     of those properties.

9             Removing 4.9, \$5 million in life insurance  
10    policies and cash from the issue trust severely  
11    jeopardizes its purpose to be able to manage those  
12    properties going forward, and so I believe that it fails  
13    in its test of being a prudent investment under the  
14    Prudent Investor Act given the purpose of the issue  
15    trust.

16            **Q   It affected the purpose?**

17            A   It's contrary to the purpose.

18            **Q   And what did you come to understand about**  
19    **whether -- about the disclosure relating to that**  
20    **transaction to Wendy?**

21            A   Well, there was no disclosure with respect to  
22    most of the elements of the transaction at all, the fact  
23    that it was a self-dealing transaction nor that there was  
24    a conflict of interest.



1           Q   Okay.  And you've heard testimony about the  
2   fact that the Incline house has gone up in value?

3           A   Yes, I have.

4           Q   Does the fact that the property increased in  
5   value exonerate any breach or conflict that you saw?

6           A   No, sir.

7           Q   And then you recall -- regarding the option  
8   agreement, do you recall the appraisal?

9           A   There were a couple of appraisals.  Yes, sir, I  
10   remember those.

11          Q   And you also understood there was a mortgage  
12   outstanding with Bank of America?

13          A   Correct.

14          Q   And what did you understand the difference  
15   between the appraisal and the mortgage that was  
16   outstanding to be?

17          A   The original appraisal in 2010 was for  
18   \$6-1/2 million, as I recall, and the outstanding  
19   indebtedness to Bank of America, the mortgage, if you  
20   will, was \$6.3 million, so there was very little equity  
21   in the house in 2010.

22          Q   You've got experience in dealing with estate  
23   tax returns; right?

24          A   Yes, sir, I do.

1           Q   And if a property is worth \$6-1/2 million and  
2   it has \$6.3 million worth of debt against it, how is that  
3   dealt with in an estate tax situation?

4           A   Well, the net impact in 2010, before they  
5   undertook these transactions --

6           MR. ROBISON:  Objection.  Relevant as to 2010,  
7   Your Honor.

8           THE COURT:  Overruled.

9           THE WITNESS:  -- is that there would have been  
10   an asset in the estate tax return appraised at  
11   \$6.5 million and a corresponding debt for \$6.3 million,  
12   leaving a net contribution of value of approximately  
13   \$200,000.

14   BY MR. SPENCER:

15           Q   So that was a \$200,000 estate tax value for  
16   determining estate taxes?

17           A   Value, yes.

18           Q   And what did you understand was at least one of  
19   the reasons for the option agreement?

20           A   My understanding is that there were two -- that  
21   there were two primary justifications for the option  
22   agreement.  One is avoiding an excise tax that may have  
23   come into play as a result of ObamaCare in 2013, and the  
24   other was creditor protection in trying to get the title

1 to the house removed not only from the estate, but from  
2 potential creditors of Sam Jaksick.

3 Q So estate and excise tax issues?

4 A Yes, sir.

5 Q And then creditor protection?

6 A Correct.

7 Q And going back to that 6.5 versus \$6.3 million  
8 debt, how would that come into play in regard to the  
9 estate tax and the net investment income, excise tax?

10 A Well, the only way you would have been subject  
11 to the excise tax would have been if the property were  
12 sold, and with respect to the estate tax, obviously, Sam  
13 Jaksick would have to pass away.

14 Q And if he had passed away the day after that  
15 option agreement, there would have been, you mentioned, a  
16 \$200,000 estate tax?

17 A Well, after the option -- after the option  
18 agreement, I believe that they may have been required to  
19 reflect a value of \$7.25 million on the estate tax  
20 return. That was a consequence of the option.

21 Q And that's the amount of the sales price in the  
22 option agreement?

23 A Under the option agreement, yes, sir.

24 Q What did that do to the estate tax picture

1 following the option agreement?

2 A It increased the potential for estate taxes  
3 from six and a half million dollars to seven and a  
4 quarter million dollars.

5 Q Instead of the \$200,000 difference?

6 A Yes, sir.

7 Q And you mentioned that the ObamaCare tax, the  
8 net investment income tax that was going to hit in 2013,  
9 that would have applied if the property had been sold?

10 A Yes, sir.

11 Q All right. So would that have applied if the  
12 option had been exercised?

13 A Yes. If the property were sold out of the  
14 family trust or SSJ LLC, then it would have triggered  
15 capital gains tax, which would include the ObamaCare  
16 excise tax, but it would also include approximately  
17 20 percent capital gains tax on the difference between  
18 the basis for which Mr. Jaksick bought the house for  
19 originally and what it sold for, which in this case would  
20 have been seven and a quarter million dollars.

21 Q So the concern about the net investment income  
22 tax would only have applied if the property had been sold  
23 or the option had been exercised?

24 A Correct.

1           Q   But as far as the estate tax hit so to speak,  
2   the amount that would be added to the gross estate for  
3   tax purposes actually went up because of the option  
4   agreement?

5           A   It went up, but the other advantage which the  
6   estate would have received upon Mr. Jaksick's death is  
7   what's called a step-up in basis, which means --

8           Q   What is that?

9           A   -- which means that upon his death, his basis  
10   in the property becomes what it was worth on his date of  
11   death, not what he paid for it back in 1979.

12                  So if the property on his death was worth --  
13   pick a number -- \$10 million, then that is the basis, and  
14   if it is sold, there's no capital -- if it's sold for  
15   \$10 million, there's no capital gains due, whereas if  
16   it's sold prior to his death, then capital gains are  
17   incurred.

18           Q   So the amount he paid for it back in the '70s,  
19   whatever that number might have been -- let's just  
20   hypothetically say a million dollars -- if it's now  
21   \$6-1/2 million and he passed away, the basis steps up to  
22   what it was on date of death?

23           A   Yes, sir.

24           Q   So if it's sold after that time, the basis

1 would be date-of-death value, not the 1970s value?

2 A And there would be estate tax due -- there  
3 would be estate tax due which is subject to exemptions  
4 and a number of other things. So I'm not in a position  
5 to tell you exactly what the estate tax might have been  
6 because I don't know what exemptions might have been  
7 available.

8 Q But the point is that that step-up-in-basis  
9 advantage was lost by the sale?

10 A Correct.

11 Q Are you aware of what we call the Agreement and  
12 Consent to Proposed Action? We call them the ACPAs?

13 A Yes, sir, I am.

14 Q So if I say "ACPA," you'll know what that is?

15 A Yes, sir.

16 Q Are you familiar with the ACPA relating to the  
17 Lake Tahoe transaction? And that would be the investment  
18 to buy the 54 percent.

19 A I am, yes, sir.

20 Q It's Exhibit 14.

21 MR. ROBISON: Objection. There's not a word  
22 about this in the report.

23 THE WITNESS: Yes, there is.

24 MR. SPENCER: Your Honor --

1 THE WITNESS: Yes, there is.

2 THE COURT: Hold on. Hold on.

3 MR. ROBISON: There is a reference to it. I  
4 apologize and withdraw the objection.

5 THE COURT: Thank you. You may proceed.

6 MR. SPENCER: Thank you.

7 BY MR. SPENCER:

8 Q And so did you come to understand that Todd  
9 came to rely upon this ACPA here?

10 A I'm sorry. Would you repeat that?

11 Q Did you come to understand that Todd relies  
12 upon this ACPA?

13 A I have heard through testimony that he does use  
14 this as -- does rely on this as disclosure.

15 Q In relation to this ACPA, Exhibit 14, what is  
16 your opinion about whether all information was fully  
17 disclosed that materially affected the beneficiaries'  
18 interest at the time that this would have been signed?

19 A My reaction to the ACPA is twofold. First of  
20 all, an ACPA is only effective when the action to be  
21 undertaken is within the scope permitted of the trustee,  
22 and it is my opinion that the scope of this transaction  
23 substantially exceeded Todd's authority as trustee of the  
24 issue trust and is invalid for that reason.

1 MR. ROBISON: Objection. Your Honor, I move to  
2 strike. That's a conclusion of law that's before this  
3 court.

4 THE COURT: Sustained.

5 BY MR. SPENCER:

6 Q I asked you regarding the full disclosure, and  
7 as you testified earlier regarding full disclosure, what  
8 is your opinion about whether this fully discloses all  
9 information needed to make a decision?

10 A It does not.

11 Q And do you have an understanding of the  
12 requirements for an ACPA?

13 MR. LATTIN: Objection. Calls for a legal  
14 conclusion.

15 THE COURT: Overruled.

16 THE WITNESS: The elements are spelled out in  
17 Nevada statute, I believe it's 164.725, as to what must  
18 be included in order for this to be effected, and there  
19 are a number of elements which are required under that  
20 which are not included in this, some of them material,  
21 some of them nonmaterial.

22 BY MR. SPENCER:

23 Q And what are the material ones that are not  
24 included?



1           A Well, there's -- there is no disclosure that  
2 this is a self-dealing transaction. There is no  
3 disclosure that Todd is the -- is the controller of  
4 Incline TSS. There is no disclosure with respect to the  
5 nature of the interest which is being conveyed. It fails  
6 on many, many different levels.

7           Q And as far as the -- let me start over.

8                   Would you expect that information to be  
9 contained in this document?

10          A In order to qualify as a disclosure, a consent  
11 to action, it would have to include that.

12          Q And so do you have an opinion about whether  
13 this document, the document itself, is a breach of  
14 fiduciary duty?

15          A Well, the document itself attempts to paper  
16 over a breach of fiduciary duty and fails to do that.

17          Q All right. And does it disclose anything about  
18 the effect it has on the purpose of the issue trust?

19          A It does not, no.

20          Q Does it disclose anything about Todd as manager  
21 negotiating the deal with himself as trustee of the issue  
22 trust?

23          A No, sir. That's the conflict of interest and  
24 self-dealing element that I was talking to earlier.

1           **Q Does this meet the requirements, the basic**  
2           **requirements of the Prudent Investor Act?**

3           A With respect to an investment on behalf of the  
4           issue trust, no, sir, it does not meet the purposes or  
5           terms for an investment in the issue trust.

6           **Q Does it meet the requirements to manage trust**  
7           **assets with care, skill, and caution?**

8           A No, sir.

9           **Q What about in relation to an abuse of**  
10          **discretion? What do you believe about this transaction**  
11          **in that regard?**

12          A I mentioned that discretion is abused when it's  
13          exercised outside the scope and terms of the instrument  
14          and that this violates the purpose of the trust. It is a  
15          breach of Todd's fiduciary duty under the Prudent  
16          Investor Act.

17          **Q Okay. And you mentioned the conflict relating**  
18          **to Todd as manager and Todd as the issue trustee.**

19          **Are there any other conflicts?**

20          A Well, yes. There is the -- there is a conflict  
21          of interest in terms of the acquisition of the interest  
22          by Incline TSS to begin with. Todd is also trustee of  
23          the family trust and is the -- was a managing member of  
24          SSJ LLC, as I recall, so at every level of this

1 transaction Todd is involved, and there is no disclosure  
2 as to those conflicting positions that he held -- that he  
3 holds by virtue of this transaction.

4 **Q Todd as manager of the family trust, Todd as**  
5 **trustee of the family trust, manager of SSJ LLC, trustee**  
6 **of the issue trust?**

7 A Manager of Incline TSS.

8 **Q Trustee of his trust?**

9 A Trustee of his family trust and his kids'  
10 trust.

11 **Q And do you understand or do you know what it**  
12 **means to -- well, let me strike that.**

13 **Is there a duty also to diversify?**

14 A There is a duty to diversify under the Prudent  
15 Investor Act to the extent that diversification is not  
16 permitted under the terms of the trust agreement. Again,  
17 you always go back to the trust agreement.

18 So with respect to the assets which Sam  
19 contributed to the issue trust initially, the various  
20 entities, most of which own or all of which own real  
21 property, the purpose of which is to be held for the next  
22 365 years, I don't believe that Todd has a duty to  
23 diversify with respect to those contributed assets.

24 However, in making other investments on behalf

1 of the issue trust, setting aside the conflict of  
2 interest for a moment, I do believe that Todd would need  
3 to consider a diversification with respect to an  
4 acquisition in a lake house which has the ability to  
5 appreciate in value but is never going to be income  
6 productive and has a significant value that could be used  
7 better in other ways.

8 Q Let's look at page 14 of Exhibit 10, the issue  
9 trust. It's that large paragraph there. I'm going to  
10 refer you to six lines up.

11 You see there "In making decisions" -- right  
12 there -- "In making and implementing investment  
13 decisions, the trustee has a duty to diversify the  
14 investments of the trust unless under the circumstances  
15 it is prudent not to do so"?

16 A Yes, sir.

17 Q And then below that I think you were mentioning  
18 there's no duty to diversify assets originally  
19 contributed?

20 A Under this trust, yes, sir, I believe that to  
21 be true.

22 Q The A, B, and C there, A being any property  
23 contributed; B, any life insurance policies purchased by  
24 the trustee; C, any real property described in paragraph

1 B of Article 5 below and any tangible personal property  
2 described in paragraph C of Article 5 below.

3 A Yes, sir.

4 Q And so I think you've kind of mentioned it, but  
5 now that we've seen it, how is that to be interpreted  
6 generally?

7 A The originally contributed assets by Sam  
8 Jaksick I do not believe are subject to a diversification  
9 requirement.

10 MR. ROBISON: Your Honor, objection. There is  
11 no ambiguity in this and does not need any parol evidence  
12 to be interpreted.

13 THE COURT: Overruled.

14 THE WITNESS: I do not believe that with  
15 respect to the originally contributed assets by Sam  
16 Jaksick that there is a requirement for diversification.  
17 However, I do believe that Todd, as trustee of the issue  
18 trust, must factor diversification into new and  
19 additional investments that he might make on behalf of  
20 the trust going forward.

21 BY MR. SPENCER:

22 Q And was the purchase of the 54 percent in  
23 Incline one of those?

24 A No, sir. Well, it was -- I'm sorry, I

1 misunderstood your question. Yes, it is a new investment  
2 that would be subject to diversification considerations.

3 **Q Okay. Investing the \$6 million in life**  
4 **insurance proceeds would be subject to the**  
5 **diversification?**

6 A It would be, yes, to diversification  
7 considerations, yes.

8 **Q Do you believe that Todd profited -- first of**  
9 **all, let me back up.**

10 **Do you believe Todd breached his trust?**

11 A I believe that he breached his duty under the  
12 issue trust, and I believe that he breached his duties as  
13 trustee of the family trust, but with respect to the  
14 issue trust, this is a self-dealing transaction and is a  
15 specific conflict of interest and I believe, on that  
16 basis alone, is clearly a breach of trust and is subject  
17 to rescission.

18 MR. ROBISON: Objection, Your Honor. That  
19 matter is before the Court, not the jury.

20 THE COURT: Well, that is sustained as to any  
21 possible remedy that flows from a finding this jury may  
22 or may not make. Sustained.

23 BY MR. SPENCER:

24 **Q Eliminating that rescission part and talking**

1     **about the breach of trust part, that's your opinion?**

2             A   It is my opinion that it is a breach of trust,  
3     and for self-dealing transactions it is incumbent on the  
4     trustee to demonstrate the fairness of the transaction.

5             **Q   And did Todd profit from his breaches of trust?**

6             A   Yes.  He's ended up with 46 percent of the  
7     interest in Incline TSS which holds the 16, \$18 million  
8     lake house property, and as I mentioned earlier, I can  
9     find no evidence that he paid anything for it.

10            **Q   How much do you think he paid for it?**

11            A   I believe at most he paid the total of the  
12    option payments, which is represented to be approximately  
13    \$150,000.

14            **Q   Now, shifting gears or topics, I should say,**  
15    **you had a chance to review what we call the Bronco**  
16    **Billy's transaction?**

17            A   Yes.

18            **Q   Which included the Pioneer Group interest?**

19            A   Yes, sir.

20            **Q   And just generally, what is your understanding**  
21    **of what Bronco Billy's is and the transaction that**  
22    **occurred?**

23            A   Pioneer held an interest in a casino in  
24    Colorado which was known as Bronco Billy's.  The family

1 owned, I believe, approximately 37 percent of the total  
2 of Pioneer, and during his lifetime Sam was apparently a  
3 licensed -- had a license for -- a Colorado gaming  
4 license.

5 **Q And then what happened?**

6 A My understanding is that he decided that it was  
7 in the best interest of his family if Todd and Stan would  
8 obtain their Colorado gaming licenses, and he proceeded  
9 to gift them an interest in Bronco Billy's sufficient to  
10 allow them to qualify for a gaming license in Colorado.

11 **Q Do you recall if they ended up getting that**  
12 **interest?**

13 A My understanding is that interest was in fact  
14 transferred. It was 6 percent -- my recollection, it was  
15 6 percent of the outstanding shares of Pioneer to each  
16 Stan and Todd.

17 **Q And then the rest of the Jaksick family**  
18 **interest in Pioneer Group was owned by whom?**

19 A Was owned by the family trust.

20 **Q Okay. And do you recall the sale occurring?**

21 A Yes, sir. There was -- there were multiple  
22 things that ended up occurring. At the end of the day  
23 the Pioneer Group sold the casino, and it was -- it then  
24 became a cash asset and was not subject to gaming license



1 requirements and at that point in time was strictly cash  
2 that was available to be distributed to the ownership.

3 **Q And where did that cash or those proceeds end**  
4 **up; do you know?**

5 A Well, it's very complicated and it's very  
6 difficult to follow.

7 Initially the trustees, Todd and Stan, took the  
8 position that Wendy required a gaming license in order to  
9 hold an interest in Bronco Billy's prior to its sale.  
10 I'm not a gaming license expert so I don't have any  
11 opinion on that, but as a beneficiary of the trust, what  
12 Todd and Stan said they were going to do was allow her  
13 the ability to obtain a gaming license and, absent her  
14 ability to do that, would replace her interest in Bronco  
15 Billy's with other assets of the trust to equalize it.  
16 That became unnecessary because of the sale of Pioneer.

17 **Q And why did it become unnecessary?**

18 A Because at the point that the casino was sold  
19 and the asset was converted from an interest in a casino  
20 to cash, there was no further requirement to be licensed  
21 in Colorado.

22 **Q In other words, once the money was received,**  
23 **you didn't have to have a license to disburse the money?**

24 A Correct.

1           Q   And the proceeds from the sale of Bronco  
2   Billy's ended up -- Stan and Todd got their licenses, so  
3   the proceeds ended up where; do you know?

4           A   My understanding is that initially the proceeds  
5   were contributed into -- initially into their respective  
6   subtrusts in the family trust, but I have to say that the  
7   evidence is very confusing because subsequently the  
8   interest was removed from the subtrusts and there was --  
9   I don't see where Wendy ever received her interest in the  
10   property.

11          Q   Okay. And do you recall that there was an ACPA  
12   related to that?

13          A   Yes, sir, I do.

14          Q   Exhibit 15, is this the ACPA you just  
15   mentioned?

16          A   Yes.

17          Q   Have you had a chance to review that?

18          A   I have, yes, sir.

19          Q   And in relation to -- strike that.

20               What is your opinion about whether this  
21   qualifies from a disclosure standpoint as meeting the  
22   requirements of the statute and fiduciary duties?

23          A   I don't believe that it does. It is in essence  
24   an attempt to deprive Wendy of what she is entitled to

1 under the terms of the family trust.

2 Q And --

3 A This was predicated, again, on the period of  
4 time in which Bronco Billy's was actually owned by  
5 Pioneer Group. It subsequently becomes moot once the  
6 sale occurs.

7 Q Okay. And what are some of the things you  
8 would expect this Exhibit 15 to have in it as far as  
9 disclosure to inform the beneficiaries before they sign  
10 it?

11 A Well, there would need to be a great deal more  
12 disclosure with respect to exactly what was occurring  
13 with respect to Stan and Todd receiving their respective  
14 interests for their subtrusts and Wendy not receiving her  
15 portion of what she was entitled to.

16 And it's important to note that what this  
17 Consent to Proposed Action requires or does is it states  
18 that the trustees have decided that Wendy is not entitled  
19 to receive her one-third share because of the operating  
20 casino, gives her the ability to get a gaming license and  
21 then buy into it, but her interest is held in trust, and  
22 the only -- the only entity or persons that can exercise  
23 that option are Stan and Todd. Wendy is not a co-trustee  
24 so she can't make any election. So I think it fails on a

1 number of levels.

2 Q And the idea that the ACPA could deprive a  
3 beneficiary of her rights under a trust?

4 A Is ridiculous.

5 Q If what was detailed in an ACPA was not or did  
6 not occur, would the co-trustees be required to disclose  
7 to the beneficiaries?

8 A Yes, sir. That's material information of -- in  
9 this case it was information that was material to Wendy's  
10 interest in the trust. Once the sale took place, none of  
11 this is applicable. As I said earlier, it was moot,  
12 meaning none of it is applicable any longer, and that  
13 needed to be disclosed to Wendy.

14 Q And that was an issue with Exhibit 14 as well,  
15 wasn't it?

16 A It is, that's true.

17 Q Where some or all of the funds will be used,  
18 and it doesn't say when or where?

19 A Lack of specificity, yes, sir.

20 Q Did you see anywhere where there was any sort  
21 of accounting where the funds from the sale went?

22 A No, sir. That's why I mentioned that it was so  
23 difficult for me to follow exactly where the funds went  
24 is that these assets or this particular transaction, the

1 assets need to be reconstituted and accounting provided  
2 with exactly where they went and who ended up with what,  
3 and there isn't any such an accounting, so it was very  
4 difficult to follow.

5 **Q And would that be a failure of co-trustees in**  
6 **relation to disclosure?**

7 MR. HOSMER-HENNER: Object, Your Honor. That's  
8 outside the scope of the report. He doesn't include a  
9 single mention of any breach by Stan in his entire  
10 report.

11 THE COURT: Counsel?

12 MR. SPENCER: He does mention Stan in the  
13 report, not in relation to that particular question, but,  
14 yes, he is mentioned.

15 MR. HOSMER-HENNER: There's not a single  
16 indication that Stan -- a conclusion or expert opinion  
17 that Stan did anything wrong or breached any fiduciary  
18 duty. There's not even a reference to the co-trustees  
19 jointly.

20 MR. ROBISON: I concur there's no mention of  
21 Stan or Kevin Riley in these forms of opinions at all.

22 THE COURT: I'm going to sustain the objection.

23 BY MR. SPENCER:

24 **Q What do you understand from the trust document**

1    **about the trustees taking action when they're**  
2    **co-trustees?**

3           A   That any decision has got to be exercised by at  
4    least a majority of the co-trustees.

5           Q   **Okay. And in failing to account for the sales**  
6    **proceeds, do you believe that to be a breach of fiduciary**  
7    **duty?**

8           A   I believe it is a breach of the duty to  
9    disclose information material to the beneficiaries'  
10   interest, in this case Wendy.

11          Q   **And were there other duties that were breached**  
12   **in relation to this Bronco Billy's transaction?**

13          A   Wendy's share has never been accounted for,  
14   she's never received her share of this transaction, so  
15   without an accounting, without knowing where her interest  
16   in the transaction is, it's basically disappeared and  
17   there's no disclosure and no accounting provided with  
18   respect to that interest, and so that is a breach of the  
19   duty to maintain proper books and records and to report  
20   to the beneficiary material information.

21          Q   **Was it a breach of the duty of loyalty? Did**  
22   **Todd breach his duty of loyalty?**

23          A   In that they put their own interests ahead  
24   of --

1 MR. HOSMER-HENNER: Objection. Move to strike  
2 for the use of the word "they," Your Honor.

3 THE COURT: Counsel, I've already previously  
4 indicated that I'm unfamiliar with the report that was  
5 prepared in advance of testimony. So the objection is  
6 consistent with the prior objection that was sustained,  
7 but I don't know the scope of the report. So sustained  
8 and you can clean it up.

9 BY MR. SPENCER:

10 Q Let me be clear. I thought I said it, but if I  
11 didn't, I apologize.

12 Did this breach Todd's duty of loyalty was my  
13 question?

14 A Yes. In that the interests of Todd where he  
15 put his own interests ahead of those of Wendy, a  
16 beneficiary of the trust, in that there was no proper  
17 accounting or disclosure made with respect to her share  
18 of the transaction.

19 Q And what about the duty of impartiality?

20 A This is an interest that was owned by each of  
21 the beneficiaries, and yet Wendy's interest has never  
22 been properly accounted for, and the distributions that  
23 were made excluded her. So, clearly, it is a violation  
24 of the duty of impartiality in that her interest was not

1 treated the same as other beneficiaries'.

2 **Q Was this an abuse of the discretion by the**  
3 **co-trustees?**

4 A In my opinion, yes.

5 MR. HOSMER-HENNER: Objection. Same objection,  
6 Your Honor.

7 MR. SPENCER: Your Honor, if I may.

8 THE COURT: Yes.

9 MR. SPENCER: Page 12 of the report references  
10 the co-trustees in regard to that exact question.

11 THE COURT: Overruled.

12 BY MR. SPENCER:

13 **Q Was this an abuse of --**

14 MR. ROBISON: Your Honor, I'll take issue with  
15 that.

16 THE COURT: Okay. Ladies and gentlemen, don't  
17 discuss this case amongst yourselves. Please don't form  
18 or express any opinion about this matter until it's  
19 submitted to you. Please retire to the jury deliberation  
20 room.

21 (The following proceedings were held outside  
22 the presence of the jury.)

23 THE COURT: The general concept is that an  
24 expert is constrained by the written report. That's the



1 purpose of the report. Discovery is available based upon  
2 the report, discovery through primarily deposition. A  
3 witness need not testify verbatim word for word but  
4 cannot cross themes, cannot surprise an adverse party.

5 Would you like me to read the report, just have  
6 the jury sit and wait and I'll read the report?

7 MR. ROBISON: I'll read the operative phrase  
8 that counsel is trying to twist into co-trustees. That's  
9 not what it says. "In my opinion, that the failure of  
10 Todd as a co-trustee of the family trust," it goes on to  
11 say "breach of trust." It doesn't say anything about the  
12 other co-trustees, not a word.

13 THE COURT: I want to make sure that Stan's  
14 attorney agrees.

15 MR. HOSMER-HENNER: Your Honor, I want to say  
16 one thing. We made the strategic decision not to depose  
17 Mr. Wallace because his report does not contain a single  
18 opinion that Stan did anything wrong, and in this  
19 paragraph there is one ambiguous phrase, and I want to  
20 read the whole paragraph so you understand what  
21 Mr. Spencer is --

22 THE COURT: Slow down, please.

23 MR. HOSMER-HENNER: "It is my opinion that the  
24 failure of Todd as co-trustee of the family trust to

1 properly account for the sales proceeds from the Bronco  
 2 Billy's sale and properly fund Wendy's share to her GST  
 3 trust are breaches of his duty to properly account for  
 4 trust assets and to disclose material information. In  
 5 addition, it is a breach of his duty of loyalty as he  
 6 placed his own interests above those of the beneficiaries  
 7 and duty of impartiality favoring himself and his brother  
 8 over the rights of Wendy. The treatment of the proceeds  
 9 of this transaction is an abuse of discretion by the  
 10 co-trustees."

11 The only reference to the co-trustees in that  
 12 entire paragraph talks about what Todd did and not what  
 13 Stan did. That's the only reference to co-trustees  
 14 globally here, and that's more or less a typo given the  
 15 remainder of the paragraph.

16 THE COURT: You don't get to respond,  
 17 Mr. Witness.

18 Counsel.

19 MR. SPENCER: Your Honor, he said the sentence  
 20 that I was operating under, which is "The treatment of  
 21 the proceeds of this transaction is an abuse of  
 22 discretion by the co-trustees," plural. And so they say  
 23 there's no reference to the co-trustees or Stan anywhere  
 24 in here, and there is, and that's why I asked that

1 question specifically about the abuse of discretion,  
2 because that particular sentence says that. The other  
3 ones didn't, I agree, but that one does, and so that's  
4 why I asked it that way.

5 THE COURT: Would you just consult quickly with  
6 Mr. Connot? He's standing over your shoulder as if he  
7 wants to talk with you.

8 MR. SPENCER: You probably heard that.

9 We also have the aiding and abetting and civil  
10 conspiracy claims related to that, and, in addition, I  
11 was about to show the majority vote of trustees is  
12 required to make decisions. So all of that really  
13 encapsulates everything, but as to that particular  
14 question, it's in the report.

15 THE COURT: We were scheduled to take a 10- to  
16 15-minute break because that's an hour and a half from  
17 8:45. We will now take our 15-minute break. Please tell  
18 the jury that they should be available to return to the  
19 courtroom at 10:30.

20 (A recess was taken.)

21 (The following proceedings were held outside  
22 the presence of the jury.)

23 THE COURT: The objections will be overruled.  
24 This may be examined on cross-examination, whether his

1 report language is intentional or typographical error.

2 The jury, please.

3 MR. HOSMER-HENNER: Your Honor, is that limited  
4 to that one sentence?

5 THE COURT: Yes.

6 (The following proceedings were held in the  
7 presence of the jury.)

8 THE COURT: If you'll all be seated.

9 Counsel, you may continue upon the jury's  
10 convening.

11 MR. SPENCER: Thank you, Your Honor.

12 BY MR. SPENCER:

13 Q Going back to the question that I asked you  
14 before the break, is it your opinion that the treatment  
15 of the proceeds of this transaction we're talking about,  
16 the Bronco Billy's Pioneer Group transaction, was an  
17 abuse of discretion by the co-trustees?

18 A Based upon the information I have seen, I  
19 believe that to be the case, yes, because there was an  
20 improper accounting, and it appears that Wendy's share  
21 was not properly accounted for.

22 Q I just want to bring up Exhibit 9. This is the  
23 family trust, page 25, which is TJ 31.

24 You mentioned earlier about the majority vote

1 of the co-trustees. Let's look at paragraph E.

2 Do you see that?

3 A Yes.

4 Q Is that where you got that?

5 A Yes.

6 Q From the rule book of the family trust?

7 A Correct.

8 Q "During any period of time that there are two  
9 or more co-trustees, all of the acts of the co-trustees  
10 are to be governed by a majority of the vote of the  
11 co-trustees"?

12 A Yes, sir.

13 Q While we're in the document there, let's look  
14 at one other thing before we move on.

15 Next page, page 26, TJ 32, there's a paragraph  
16 J there, capital J, the "Accountings" paragraph.

17 A Yes, sir.

18 Q What is your understanding of what that  
19 entails?

20 A I believe I mentioned earlier that there is a  
21 fiduciary duty on the part of the trustee to maintain  
22 proper books and records and that those books and records  
23 under the -- under this trust must be provided, I believe  
24 it's annually.

1           **Q   That's the fourth line down?**

2           A   Third.

3           **Q   Third line down?**

4           A   "At least annually," beginning at the third  
5 line down, yes.

6                   The purpose of the duty to maintain books and  
7 records and to make those available to the beneficiary is  
8 for the reporting of financial transactions, but it  
9 cannot be confused or should not be confused with the  
10 duty of disclosure which I've talked about earlier where  
11 information material to the interests of the beneficiary  
12 must be relayed to the beneficiary. These are two  
13 totally separate and distinct concepts.

14           **Q   Full disclosure versus accountings?**

15           A   Yes. An accounting, looking at a transaction  
16 in an accounting --

17                   MR. LATTIN: I'm going to object. There's no  
18 question pending.

19                   THE COURT: Sustained.

20                   MR. ROBISON: The accounting is beyond the  
21 scope, Your Honor, of this report. There's nothing about  
22 the accountings in this report.

23                   MR. SPENCER: Your Honor, may I respond?

24                   THE COURT: Yes.

1 MR. SPENCER: Page 13 talks about the  
2 accounting. That was going to be my next topic. It's  
3 right there.

4 MR. ROBISON: May I inquire, Your Honor?

5 THE COURT: Yes.

6 MR. ROBISON: Are you an accountant?

7 THE WITNESS: I am not an accountant.

8 MR. ROBISON: Thank you.

9 THE COURT: The objection is overruled. You  
10 may continue.

11 BY MR. SPENCER:

12 Q So let me ask a good question.

13 So there's a difference between full disclosure  
14 and accountings?

15 A Yes. An accounting is intended to convey that  
16 the trustee bought 100 shares of Exxon and sold 100  
17 shares of IBM, and that can be disclosed, if you will, in  
18 an accounting.

19 What can't be disclosed in an accounting is the  
20 thought process behind the transaction or the additional  
21 details, such as conflict of interest, self-dealing.  
22 Those types of information are not disclosed through an  
23 accounting, and that's why the duty to maintain books and  
24 records is separate and distinct from the ability or the

1 requirement to disclose information material to the  
2 beneficiary.

3 Q And you had a chance to review the accountings  
4 or -- they're also called financial statements?

5 A I have, yes.

6 Q And do you have an opinion about whether they  
7 meet the standards required for a proper trust  
8 accounting?

9 MR. LATTIN: Objection. Calls for a legal  
10 conclusion and is beyond the scope of this gentleman's  
11 expertise.

12 THE COURT: Overruled.

13 THE WITNESS: I have been involved in the  
14 preparation of --

15 MR. LATTIN: There's no question pending.

16 THE WITNESS: I thought there was.

17 THE COURT: Reask the question, please.

18 BY MR. SPENCER:

19 Q Do you have an opinion, based upon your  
20 experience as a trust officer over four decades or --  
21 35 years, almost four decades, and then your education  
22 and your experience, do you have an opinion about the  
23 accountings in this case, about whether they meet the  
24 standards required for a proper trust accounting?



1 A It is my opinion they do not.

2 Q Why is that?

3 A They give in some cases the financial  
4 information, but it does not give the commentary with  
5 respect to the background information necessary to  
6 understand why a particular transaction was undertaken,  
7 and those -- those -- those notes denoting that  
8 information are equally important to just reflecting the  
9 numbers themselves.

10 Q And are you familiar with the Nevada statute in  
11 regard to accountings?

12 MR. LATTIN: I'm going to object. It calls for  
13 a legal conclusion, and may I request we have a sidebar?

14 THE COURT: Yes.

15 Ladies and gentlemen, please stand.

16 (A discussion was held off the record outside  
17 the presence of the jury.)

18 THE COURT: There are contemporaneous  
19 objections and sidebar conversations, and I have invited  
20 counsel to complete the record during our next recess,  
21 but there has been a proper memorialization of concerns,  
22 and with that the objection is overruled.

23 You may proceed, Counsel.

24 /////

1 BY MR. SPENCER:

2 Q Mr. Wallace, the question I had posed -- I'll  
3 just ask it again so you'll know.

4 Do you have an opinion about whether these  
5 accountings that are in this case meet the standards of  
6 proper trust accountings under Nevada statute?

7 A It is my opinion that they do not.

8 Q And why is that?

9 MR. LATTIN: I'm going to have to just  
10 interpose my objection for the record, that they had  
11 another expert identified who they withdrew who was  
12 deposited on this issue.

13 THE COURT: Thank you.

14 You may continue.

15 BY MR. SPENCER:

16 Q Why is that?

17 A With respect to the accountings, an accounting,  
18 as I mentioned a few moments ago, can convey information  
19 relative to the purchase and sale of stocks or bonds, but  
20 it cannot convey the additional information which is  
21 required to give context to the transaction, why it was  
22 done, how it was done, what other -- what other things  
23 should be considered.

24 An accounting can do that through the inclusion

1 of footnotes and discussions with respect to -- for  
2 transactions that go beyond the simple buying and selling  
3 of, say, stocks or bonds. This accounting does not do  
4 that, and that is why I don't believe that it meets the  
5 requirements.

6 Q Sir, are you an accountant?

7 A I am not an accountant, no, sir.

8 Q Did you analyze this from an accounting  
9 perspective?

10 A No, sir. From a --

11 Q Would you have had ability to do that?

12 A To prepare the accounting?

13 Q Just from an accountant's perspective? You're  
14 not an accountant?

15 A No.

16 Q So your analysis is through the perspective of  
17 your experience as a fiduciary?

18 A As a trust officer, yes, sir.

19 Q And when you give that response, that's where  
20 you're coming from in relation to your background in  
21 relation to that response?

22 A My use of accountings in the administration of  
23 trusts and estates and in meeting the requirements of  
24 filings with courts.

1 Q And the duties of full disclosure?

2 A Correct.

3 Q Okay. And then shifting now to the Fly Geyser  
4 sale, you became familiar with that transaction?

5 A I did, yes, sir.

6 Q And that was the property that was sold to the  
7 Burning Man Festival?

8 A That's my understanding, yes, sir.

9 Q And what did you understand was received from  
10 that?

11 A My understanding is that the property sold for  
12 approximately \$6.3 million, something like that, and that  
13 it was owned in an entity that Todd controls known as  
14 Bright Holland Group.

15 Q And do you know the circumstances of that  
16 transaction as far as Todd's activity?

17 A I don't know it in detail because there's been  
18 no disclosure with respect to the nature of the  
19 transaction. My understanding is that the proceeds are  
20 being held at the Bright Holland corporate or entity  
21 level and an accounting has not been provided to the  
22 beneficiaries.

23 Q Do you know whether Todd has ever accounted or  
24 received an ultimate disbursement of those funds?

1           A   I have looked for an accounting and I have not  
2   seen one.

3           Q   And then in relation to that, what is your  
4   opinion regarding whether that's a breach of fiduciary  
5   duty?

6           A   Well, I believe this is a significant  
7   transaction in a trust which is short of funds and that  
8   to -- that to hold proceeds outside of the trust when the  
9   trust is in a position where it's not able to meet its  
10   obligations is a conflict of interest on the part of Todd  
11   and it is not in the best interest of the trust.

12          Q   Did you know who the owners of Bright Holland  
13   were?

14          A   I believe that they are a series of  
15   generation-skipping trusts is my understanding, yes.

16          Q   For Todd, Stan, and Wendy?

17          A   Yes.

18               MR. LATTIN:   Leading.

19               THE COURT:   Overruled.

20   BY MR. SPENCER:

21          Q   For Todd, Stan, and Wendy?

22          A   Yes, sir.

23          Q   And do you know whether Todd owned an interest  
24   outside of those?

1           A   I believe that he does.

2           Q   Did you have a chance to look at some of the  
3   other ACPAs?

4           A   I looked at all the ACPAs, I believe. My  
5   recollection is that there were 10 or 12 of them in  
6   total. Some of them I did not have sufficient  
7   information to be able to have an opinion about. For  
8   example, the one that comes to mind is the one involving  
9   the airplane.

10          Q   There were ten of them, and we've talked about  
11   a few. As it relates to the others, do you have an  
12   opinion about whether they fully disclose or fail to  
13   fully disclose the information necessary for a  
14   beneficiary to make a decision?

15          A   The ACPAs can only successfully disclose that  
16   which is in them, and in the significant transactions  
17   that we have discussed, there is insufficient information  
18   included in them for a beneficiary to give any kind of  
19   credible approval with respect to the underlying  
20   transaction, and in some cases the ACPAs themselves are  
21   no longer valid because of changed circumstance and  
22   shouldn't --

23          MR. ROBISON: Objection. That is before the  
24   Court, not the jury, and move to strike. The

1 enforceability and interpretation of the ACPA is before  
2 the Court, Your Honor.

3 THE COURT: So ladies and gentlemen of the  
4 jury, this witness is an expert to provide his opinions,  
5 but his opinions do not replace this Court's legal  
6 instructions to you and in no way replaces your  
7 independent conclusions as to what the facts may or may  
8 not require. With that, it is overruled.

9 You may continue.

10 THE WITNESS: I actually didn't mean that  
11 answer to be controversial. I was speaking specifically  
12 with respect to the Pioneer sale of the casino where it  
13 turned from the transaction proposed into cash, and so it  
14 was no longer an ACPA that was applicable. That really  
15 was all I was trying to say.

16 BY MR. SPENCER:

17 Q Okay. And it was your understanding these  
18 ACPAs were -- let me ask it differently.

19 What was your understanding of the purpose of  
20 these ACPAs?

21 A Well, I believe that the trustees were seeking  
22 approval of transactions that they were undertaking in  
23 the administration of the trust.

24 Q Okay. And having what effect, do you know?

1 A I'm sorry, having what --

2 Q What effect would that have had if that were  
3 the case?

4 A They can only -- a beneficiary can only consent  
5 to the extent that information is provided, and as we've  
6 talked about with each of the ACPAs we've discussed,  
7 there is insufficient information included for a  
8 beneficiary to be able to reach a reasonable, informed  
9 conclusion as to whether or not it is in their best  
10 interest.

11 Q Let me show you an Exhibit 476.

12 It's already admitted, Your Honor.

13 THE COURT: Yes.

14 BY MR. SPENCER:

15 Q I want to ask you a question about this.

16 This is a letter from -- an email from  
17 Mr. McQuaid to Todd Jaksick, June 4, 2013, and in the  
18 middle of the bigger paragraph, it starts with "One thing  
19 to keep in mind, the less detailed and vague these  
20 agreements are, the less protection they afford you down  
21 the road should someone have a change of heart."

22 Do you see that?

23 A I do.

24 Q Would you agree with that? What is your



1     **thought on that?**

2             A   Well, I believe what he is trying to say is  
3     that --

4             MR. LATTIN:  Objection.  Speculating.

5             THE COURT:  Hold on, please.

6             MR. LATTIN:  I apologize.

7             THE COURT:  So there was an objection.  The  
8     witness framed his answer as what I believe the author  
9     was attempting to say.  You can't speculate as to the  
10    state of mind as to the author.

11            The question is, do you agree or disagree with  
12    that statement?

13            THE WITNESS:  I agree with this statement as a  
14    general statement, yes.

15    BY MR. SPENCER:

16            **Q   And you understand Mr. McQuaid is an attorney**  
17    **speaking to his client Todd as trustee?**

18            A   Correct.

19            **Q   And information that could have been included**  
20    **was the ownership interest in Incline?**

21            MR. LATTIN:  Objection.  Speculation.

22            THE COURT:  Overruled.

23            THE WITNESS:  The information that would have  
24    been required is that which I've already spoken to, which

1 includes the nature of the conflict of interest, the fact  
2 that it's a self-dealing transaction, the fact that  
3 little or nothing was paid for it, the fact that it  
4 violates the purpose of the issue trust. All of those  
5 things are not --

6 THE COURT: Would you speak into the  
7 microphone, please, sir. Pull it closer to you.

8 THE WITNESS: Yes, sir. I'm sorry.

9 THE COURT: Thank you.

10 THE WITNESS: Each of those things would need  
11 to be included in order for it to have any reasonable  
12 chance of being effective.

13 BY MR. SPENCER:

14 Q And full disclosure is what you're describing?

15 A Yes.

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

17 THE COURT: Thank you. I don't know who wishes  
18 to go first.

19 MR. ROBISON: I'll volunteer, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. ROBISON:

23 Q Good morning, Mr. Wallace.

24 A How are you, sir?

1 Q I'm fine. Thank you.

2 I had the pleasure to take your deposition.

3 A You did.

4 Q And you recall that I kept asking you to just  
5 answer my question and not volunteer information?

6 A I recall your saying a number of things, yes,  
7 sir.

8 Q And is that one of the things you recall me  
9 saying?

10 A I did say that a number of times.

11 Q I'm going to ask you, Mr. Wallace, to listen  
12 carefully to my questions and to answer just my questions  
13 without arguing your case. All right?

14 A And I will give you the same answer to that  
15 that I did at the time. I will answer the questions to  
16 the best of my ability including the information that I  
17 think is necessary to respond.

18 Q Then we'll seek court intervention.

19 A Right.

20 Q Thank you.

21 So Wendy's paying you \$600 an hour?

22 A Yes, that's correct.

23 Q And she started paying you when?

24 A Oh, I don't have those dates. Let's see. I

1 believe that I was contacted initially in December of  
2 2018.

3 Q And is that when you started working on this  
4 case?

5 A Yes.

6 Q At the hourly rate of \$600 --

7 A \$600 an hour is what I charge, yes, sir.

8 Q I wasn't finished.

9 You started charging \$600 per hour the moment  
10 you started working on this case?

11 A No, sir.

12 Q Did you work at a lower rate?

13 A No, sir.

14 Q When did you start charging the \$600 per hour?

15 A After I had fully reviewed the pleadings in the  
16 case to be sure that I had no conflicts.

17 Q Now, you're from Houston; correct?

18 A I'm from Houston.

19 Q You don't have anything to do with interests at  
20 Lake Tahoe like real estate interests?

21 A Oh, no, sir.

22 Q And you're not familiar with the real estate  
23 market at Lake Tahoe?

24 A Not specifically, no, sir.

1           **Q   You're not an appraiser?**

2           A   No, sir.

3           **Q   You're not a valuation expert?**

4           A   I'm involved -- I've been involved in the  
5   preparation of valuation experts -- valuation opinions.  
6   I'll really a consumer of those but am very much -- have  
7   been very much involved in the preparation as well.

8           **Q   Well, I have your résumé here.  It doesn't say**  
9   **that you've ever testified as a valuation expert.**

10          A   I don't have everything that I've ever done in  
11   my résumé, sir.

12          **Q   Well, then have you testified as a valuation**  
13   **expert?**

14          A   Yes, I have.

15          **Q   On the values of personal property?**

16          A   Personal property?

17          **Q   Yes, sir.**

18          A   Real estate, gas.  Real estate, oil and gas and  
19   stocks and bonds.  Oh, stocks and bonds would be personal  
20   property, so I guess, yes.

21          **Q   So no stocks and bonds valued in this case?**

22          A   Not in this case, no.

23          **Q   We don't have any oil that's been valued in**  
24   **this case; correct?**

1 A I don't believe so, no, sir.

2 Q No minerals?

3 A No, sir.

4 Q So you --

5 A Well, that's not accurate. I think we have  
6 water rights that are involved in this case.

7 Q Are you a water right expert?

8 A I am not.

9 Q Have you ever opined on water right issues?

10 A No, sir.

11 Q All right. You don't feel qualified to do  
12 that, do you?

13 A I'm not issuing any opinions on water rights,  
14 no, sir.

15 Q Now, you're aware, are you not, that Wendy  
16 hired a Nevada accountant as her expert?

17 A I will accept your word for that. I don't --  
18 yes, I did -- I do believe I knew that.

19 Q Don't accept my word, please, for anything.

20 Did you know that Wendy has hired a Nevada  
21 Certified Public Accountant as her expert on accounting  
22 issues?

23 A I was aware of that, yes.

24 Q And of course you have read, have you not,

1     **Mr. Campagna's testimony?**

2             A    I have, yes.

3             **Q   And you are aware that the Nevada Certified**  
4     **Public Accountant that Wendy hired says that Mr. Riley's**  
5     **accountings submitted in this case comply with Nevada**  
6     **statutory requirements; correct?**

7             MR. SPENCER:  Objection.

8             THE COURT:  So I understand the objection.  The  
9     witness will answer the question asked.  The question  
10    itself is not evidence.  Mr. Witness may answer the  
11    question.

12            THE WITNESS:  Would you repeat the question,  
13    please?

14            MR. ROBISON:  May I have it read back?

15            THE COURT:  Yes.

16            (The record was read by the reporter.)

17            THE WITNESS:  I don't recall that one way or  
18    the other.

19    BY MR. ROBISON:

20            **Q   Let me read some testimony for you from**  
21     **Mr. Campagna, the Nevada CPA, which is on page 37 of his**  
22     **deposition.**

23            "QUESTION:  Okay.  All right."

24            MR. SPENCER:  Your Honor, I'm going to object.

1 It's improper use of a deposition for impeachment.

2 THE COURT: Would you like to be heard?

3 MR. ROBISON: Yes, I would.

4 Wendy hired an accountant to testify about the  
5 compliance by Kevin Riley and the trustees with Nevada  
6 statutes, and he opined that --

7 THE COURT: Hold on. Hold on. Hold on. This  
8 is going in a different direction that I want to go in  
9 front of the jury.

10 MR. ROBISON: It's actually in evidence  
11 already.

12 THE COURT: How did it arrive in evidence?

13 MR. ROBISON: I asked Mr. Todd Jaksick if he  
14 was at Mr. Campagna's deposition, and Mr. Todd Jaksick  
15 related the fact that Mr. Campagna testified under oath,  
16 as I've suggested.

17 THE COURT: So there's a difference between  
18 introducing to the jury the fact that an expert witness  
19 was identified and is now not participating in trial for  
20 whatever reason, but bringing in the specific details of  
21 deposition testimony without the opportunity to  
22 cross-examine is problematic.

23 MR. ROBISON: They have the opportunity to  
24 cross-examine. They're the one that withdrew Campagna as



1 an expert, not us.

2 MR. SPENCER: Your Honor, we decided not to  
3 call him based upon timing, so we could get the trial  
4 done. He's giving an implication that we did it for a  
5 reason which is not true. This is an improper use of a  
6 depo.

7 THE COURT: I'm sustaining the objection. I'm  
8 not allowing excerpts from the witness's deposition  
9 transcript, although the general concept of a different  
10 opinion generally without details may be used as a  
11 cross-examination question.

12 BY MR. ROBISON:

13 Q Mr. Wallace, you're aware that I examined  
14 Mr. Campagna about the trustee's compliance with  
15 NRS 164.135, are you not?

16 A I reviewed the deposition, yes.

17 Q And you're aware that Mr. Campagna disagrees  
18 with you with respect to compliance with NRS 164.135?

19 A That may or may not be true. I just don't  
20 recall.

21 Q You don't recall?

22 A Not from Mr. Campagna's deposition, no, sir.

23 Q Have you talked to the CPA from Nevada about  
24 what Nevada requires in terms of compliance with the

1     **Nevada statutes?**

2             A   I have not spoken with Mr. Campagna, no, sir.

3             **Q   You just read his deposition?**

4             A   Yes, sir.

5             **Q   And you realize that your opinion is different**  
6     **than his with regard to the trustee's compliance with**  
7     **Nevada law?**

8             A   My recollection of the testimony, it was with  
9     respect to the form of the accounting. My opinion is  
10    based on its compliance or its ability to fulfill that of  
11    a fiduciary accounting, and I think those are two  
12    different things.

13            **Q   That's why I pulled out the deposition, because**  
14     **on three different occasions he says substance, not form;**  
15     **correct?**

16            A   Sir, I don't recall his deposition. I read it  
17    a long time ago.

18            MR. ROBISON: May I refresh his recollection?

19            THE COURT: I think it's impermissible. No.

20    BY MR. ROBISON:

21            **Q   Are you telling this jury, then, sir, that**  
22     **Mr. Campagna only testified that the filings complied**  
23     **with the form required by Nevada statute?**

24            A   I'm not here to tell the jury anything about

1 Mr. Campagna's testimony because that's not my role or  
2 place.

3 Q You do recognize, however, that he might have  
4 better and more sophisticated qualifications than  
5 yourself, as a CPA qualified to practice in Nevada?

6 A I have no idea, sir. I'm sorry.

7 Q Do you know why Wendy hired a Nevada CPA to  
8 opine on the competence of the filings in this case?

9 A No, sir, I do not.

10 Q Have you discussed that with counsel?

11 A No, sir, I have not.

12 Q Did counsel disclose to you that Wendy had  
13 hired another expert to testify about the sufficiency of  
14 the accountings?

15 A I'm sorry. I didn't follow the question.

16 Q Thank you.

17 Did counsel inform you that Wendy had hired a  
18 different expert, an accountant, to opine on the  
19 sufficiency of the accounting submitted?

20 A Are you speaking about Mr. Campagna?

21 Q I'm talking about counsel. Did counsel tell  
22 you that Wendy hired a CPA?

23 MR. SPENCER: Your Honor, may I request a  
24 sidebar?

1 MR. ROBISON: I'll withdraw the question. I  
2 want to move on.

3 THE COURT: All right.

4 BY MR. ROBISON:

5 Q Now, you came to my office and you told me that  
6 Sam Jaksick owned Bronco Billy's; correct?

7 A I think he owned an interest in Pioneer Group  
8 is my recollection. I don't recall exactly what the  
9 question or the answer that you're referring to is.

10 Q Do you recall your report?

11 A I do recall my report, yes.

12 Q And in that report you opined in part that  
13 Jaksick owned the Pioneer Group; correct?

14 A Well, he owned an interest in the Pioneer  
15 Group.

16 Q That's not what your report says. It indicates  
17 here that after Todd got 6 percent and after Stan got  
18 6 percent, the family trust owned 88 percent.

19 A No, sir, that's not what I testified to.

20 Q I know that's not what you testified to, but  
21 that's in your report; correct?

22 A I don't recall specifically. I remember  
23 speaking to the 6 percent, the 6 percent interests that  
24 were given to Stan and Todd.

1           **Q Well, what is your understanding, then, of**  
2   **Mr. Jaksick's ownership in the Pioneer Group?**

3           A My understanding is that he owned an interest.  
4 I believe I testified earlier that it was in the  
5 neighborhood of 37 percent of the interest in Pioneer  
6 Group is my recollection.

7           **Q Where, then, did you get the information in**  
8   **your report that he owned 88 percent?**

9           A What I was speaking to there is that there were  
10 6 percent interests that were given to Todd and Stan. My  
11 understanding at the time that I wrote that is that it  
12 was 6 percent of the interest owned by Sam, so a gift of  
13 6 percent to Todd, 6 percent to Stan is 12 percent. I  
14 subtracted that from 100 percent, and the remainder was  
15 88 percent, and that's what I was speaking to.

16          **Q 88 percent of the Pioneer Group?**

17          A 88 percent of the interest that Sam Jaksick  
18 owned.

19          **Q So you're aware, are you not, the trustees,**  
20 **particularly Todd, was receiving the advice of an**  
21 **attorney from Colorado on how to proceed with this?**

22          A I'm generally aware there was Colorado counsel,  
23 yes.

24          **Q Do you know who Roger Morris is?**

1           A I don't recall the name, but that may be the  
2 Colorado counsel.

3           Q He's the gaming counsel that was hired by the  
4 trustees to help them navigate through this Bronco  
5 Billy's sale.

6           A Yes, I knew that they did have counsel.

7           Q And do you fault Todd for relying on Roger  
8 Morris?

9           A No, sir. I don't have the experience in that  
10 to be able to have an opinion one way or the other.

11          Q Do you fault Roger Morris for suggesting that  
12 they be licensed?

13          A I have no fault with Roger Morris because it is  
14 not an area of my expertise.

15          Q What do you understand Mr. Morris's advice to  
16 be to the co-trustees with respect to Bronco Billy's?

17          A My understanding is that his advice was that  
18 they needed to own a certain percentage of the total  
19 stock outstanding in order to qualify for a gaming  
20 license and that the trustees of the trust needed to hold  
21 a Colorado gaming license in order to hold that stock as  
22 trustee.

23                 Where I'm confused and don't know is whether or  
24 not the beneficiary of a trust must also have a Colorado

1 gaming license. I just don't know the answer to that.

2 Q Have you read Wendy's affidavit with regard to  
3 the Bronco Billy's transaction?

4 A I believe so.

5 Q And she goes through several paragraphs about  
6 her understanding of her father's desires with respect to  
7 the Pioneer Group stock.

8 A I don't recall the affidavit in detail so I'm  
9 not able to tell you what I recall from it other than I  
10 did -- I do believe that I looked at it.

11 Q Have you interviewed Wendy?

12 A Wendy and I have talked, yes.

13 Q What did you talk about?

14 A Talked about her -- I wanted to know whether or  
15 not her son won the championship game, and she told me  
16 that unfortunately they lost by one in the fourth  
17 quarter. We talked generally about her relationship with  
18 her father, her relationship with her brothers, and  
19 that's pretty much the extent of it.

20 Q Did you talk to her about the ACPAs?

21 A No.

22 Q Did you talk to her about the discussions she  
23 had with the co-trustees relative to each ACPA?

24 A I have tried to limit my review to the

1 testimony and evidence in the case, so I didn't spend a  
2 lot of time talking to her about that, no.

3 Q Is your answer that you did not talk to her  
4 about the information disclosed to her at meetings  
5 concerning the ACPAs?

6 A I did not. I let the ACPAs -- they are what  
7 they are, and I took them at face value.

8 Q Did you talk to Wendy about the discussions she  
9 had with Kevin Riley concerning disclosures?

10 A Again, I didn't -- I didn't believe that going  
11 out and getting third-party information was part of my  
12 role. My role was to evaluate the testimony and evidence  
13 in this case, and that's what I did.

14 Q Did you talk to Wendy about the information  
15 imparted to her by Kevin Riley concerning the financial  
16 affairs of the estate?

17 A No, sir. I thought I just said no.

18 Q I was hoping you said no, but did you talk to  
19 Wendy about the personal conversations that she had with  
20 Stanley about his disclosures?

21 A I did not go out and solicit third-party  
22 conversation information. I did not believe that was  
23 appropriate.

24 Q Is your answer no.



1 A No, I did not.

2 Q Did you talk to Wendy about the conversations  
3 that she had with Todd Jaksick about the financial  
4 affairs of the estate?

5 A No, sir.

6 Q So she has never told you that she's been  
7 misinformed about anything?

8 A No, sir. Again, I didn't believe those  
9 third-party conversations were appropriate.

10 Q And she has never told you the details of her  
11 basis for accusing Stanley, Kevin, Michael, and Todd of  
12 fraud?

13 A No, sir. We've not had a conversation around  
14 that.

15 Q And she's never told you the details that  
16 support, according to her, her accusations that these  
17 trustees conspired with each other to harm her?

18 A We have not had conversations in that regard,  
19 no.

20 Q Have you reviewed the deposition testimony in  
21 this case?

22 A Yes, I have.

23 Q All of the depositions?

24 A It's hard for me to say all. I believe I've

1 reviewed all, but there are many volumes of many  
2 depositions. It's possible I missed some. Some came in  
3 after my deposition.

4 **Q Have you reviewed those?**

5 A I have. Well, I've reviewed McQuaid, LeGoy,  
6 and I believe there was one more that I've reviewed after  
7 my deposition.

8 **Q Who is Mr. LeGoy?**

9 A He is with your firm, Maupin Cox, and is  
10 counsel -- has been counsel for the trust.

11 **Q I'm not with that firm.**

12 A I apologize. I thought you were.

13 **Q It's a compliment. Thank you. I should**  
14 **aspire.**

15 **Do you understand Mr. LeGoy to be an**  
16 **estate-planning attorney in the state of Nevada?**

17 A I believe that to be true, yes, sir.

18 **Q Best Lawyers in America? Have you checked him**  
19 **out?**

20 A I've seen his deposition, and I think he  
21 brought some of these things out, so yes.

22 **Q So Bob LeGoy is one of the Best Lawyers in**  
23 **America on estate planning; correct?**

24 A I have no idea.

1           Q Well, it's in his deposition, his  
2   qualifications.

3           A That does not make it true, sir.

4           Q What do you mean?

5           A I have no idea what his qualifications are  
6   beyond what was brought out in the deposition. Whether  
7   he's the best lawyer in America, I don't know.

8           Q Do you know what Best Lawyers are, treatises  
9   that identify the Best Lawyers of America?

10          A Is that one of those magazines that comes out  
11   with --

12          Q No. It's a peer-reviewed book.

13          A No, I am not familiar with it.

14          Q Are you in it?

15          A No, not to my knowledge.

16          Q Okay. Well, Mr. LeGoy is.

17          A Good.

18          Q And he's an estate-planning lawyer; correct?

19          A That's what he testified to, yes, sir.

20          Q And he's the one, his firm prepared many of the  
21   ACPAs.

22          A They prepared, I believe, seven to ten is my  
23   recollection.

24          Q And you have problems with those ACPAs in terms

1 of the adequacy of their disclosures?

2 A Yes, I do.

3 Q And Brian McQuaid, you're aware of his role in  
4 this case?

5 A I am, yes, sir.

6 Q He's an estate-planning lawyer in Nevada?

7 A Yes, sir.

8 Q And he has provided legal advice to Todd,  
9 Stanley, Kevin, and Michael concerning their  
10 administration of the trust; correct?

11 A That is correct, yes.

12 Q As has Mr. LeGoy?

13 A Correct.

14 Q Now, Todd has the right to rely on somebody  
15 with the skills that Mr. LeGoy possesses, does he not?

16 A Todd has the right to hire and engage attorneys  
17 under the terms of the trust agreement and listen to  
18 them, yes.

19 Q Well, it would be imprudent for a trustee of a  
20 trust the magnitude of Sam's not to hire professionals;  
21 correct?

22 A I believe that he should have counsel. I agree  
23 with that, yes, sir.

24 Q And he should have trust administration counsel

1 the caliber of Brian McQuaid and Bob LeGoy?

2 A Again, I have some very deep differences with  
3 some of the things that Mr. McQuaid and Mr. LeGoy said,  
4 so I'm not sure that I agree with that as a statement.

5 Q That he doesn't have the right to rely on  
6 counsel?

7 A That's not what the question -- that's not my  
8 understanding of the question.

9 Q Let me back up and rephrase, and I apologize to  
10 you, sir.

11 Do you believe that Todd had the right to rely  
12 on the qualifications and representations of Bob LeGoy?

13 A Yes, I do.

14 Q And do you believe that Todd had the right to  
15 rely on the representation and advice of Brian McQuaid?

16 A I believe that he had the ability to rely on  
17 those, yes.

18 Q And do you believe that Todd Jaksick had the  
19 right and duty to rely on accounting advice given to him  
20 by Kevin Riley?

21 A I believe that he had the ability to rely on  
22 what Mr. Riley did, yes.

23 Q And you believe, do you not, Mr. Wallace, that  
24 it would be improper, a shortcoming on Todd's behalf, if

1 he did not rely on advice of counsel and accounting  
2 advice?

3 A No, sir, I don't agree with that as a  
4 statement.

5 Q You think Mr. Jaksick, Todd Jaksick, could have  
6 done this by himself, helped administer this estate?

7 A That's not what I said, no, sir.

8 Q Do you think Mr. Jaksick should have  
9 administered this estate without the advice of  
10 professionals?

11 A That was not my testimony.

12 Q I'm asking a question, sir.

13 A No, sir, I do not believe that.

14 Q You think he should rely --

15 A I believe he should have outside counsel.

16 Q Please let me finish, and I apologize to the  
17 court and reporter.

18 It's true, is it not, sir, that in your opinion  
19 Todd Jaksick should have hired professionals to help him  
20 administer this estate?

21 A He did and he should have, yes.

22 Q And he's within his full right, power, and duty  
23 as a trustee to rely on the professional advice?

24 A To the extent that the advice is credible, yes,

1 he should rely on it, but he should listen to it and  
2 consider it and then make an independent call as to  
3 whether to rely on it or not. He should not rely on it  
4 automatically.

5 **Q Should he hire another lawyer to check on the**  
6 **validity and competence of the first lawyer's advice?**

7 A I think he did that.

8 **Q How so?**

9 A Well, I think he had Bob LeGoy, I think he had  
10 Pierre Hascheff, and I think there was a third lawyer  
11 whose name I'm not recalling right now.

12 **Q When did Pierre stop working for the Jaksick**  
13 **family?**

14 A I don't recall the year. There were multiple  
15 attorneys that he engaged was my point.

16 **Q Let's be straight on this, Mr. Wallace.**  
17 **Bob LeGoy prepared the issue trust?**

18 A Correct.

19 **Q In 2007?**

20 A Correct.

21 **Q And in that document he articulates Sam**  
22 **Jaksick's intent?**

23 A The document -- he does that both in the  
24 document itself as well as a letter that he wrote to the

1 family which spells out specifically what the purpose of  
2 the trust is.

3 Q Let's stay with the trust, as we call it, the  
4 bible or the rule book; correct? The SSJ Issue Trust;  
5 correct?

6 A Yes, sir.

7 Q That is an articulation of Sam Jaksick's  
8 intent?

9 A It is a source of information for Mr. Jaksick's  
10 intent, that is correct.

11 Q And if you read that document, you can discern  
12 in some respects what Sam Jaksick intended?

13 A I would -- maybe we're differing over language  
14 a little bit. His purpose is what I try to discern, not  
15 necessarily his intent, but that may be semantics.

16 Q All right. And that issue trust designates  
17 Todd and only Todd as a trustee?

18 A It does that, correct, sir.

19 Q And that's Sam's decision?

20 A That's correct.

21 Q And you're aware that Todd never volunteered  
22 for that position? It was given to him by his father?

23 A I don't know what conversations they may or may  
24 not have had. I don't know. I know he is the trustee.



1 Q You read the depositions?

2 A I did read the deposition, yes, sir.

3 Q And in the deposition it clearly states Todd  
4 didn't volunteer for that, that's something his father  
5 wanted him to do; correct?

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

7 Q And you don't fault Todd for agreeing to be the  
8 sole and exclusive trustee of the issue trust, do you,  
9 sir?

10 A No, sir.

11 Q And that's ominous? That's a very serious  
12 responsibility; correct?

13 A Being a trustee of any trust is a very serious  
14 responsibility, yes, sir.

15 Q Same with the family trust. You're aware that  
16 Todd didn't volunteer for that position; that's something  
17 that his father wanted him to do?

18 A He's the trustee -- co-trustee of the family  
19 trust, yes.

20 Q And that's what his father desired?

21 A Presumably that is true, yes.

22 Q And the option that was given -- let me back  
23 up.

24 The creation of Incline TSS, that was Sam's

1     **idea; correct?**

2             A   That was Todd's testimony.  Again, I was not  
3     involved in the conversation with Sam, so I don't know  
4     that for sure.

5             Q   Do you have information from third parties that  
6     it wasn't Sam's idea to create Incline TSS?

7             A   No, sir.  I never thought about it one way or  
8     the other.

9             Q   All right.  So you don't dispute that it was  
10    Sam's idea to create Incline TSS, Ltd.?

11            A   I do not, no.

12            Q   And you don't dispute it was Sam's idea to have  
13    Todd's trust own 100 percent of Incline TSS because of  
14    Stanley's divorce?

15            A   I believe you're mixing a couple of different  
16    things there that I'm not sure are directly connected, so  
17    I'm going to disagree with your statement.

18            Q   All right.  Do you know that Stanley was  
19    originally appointed as co-manager of Incline TSS?

20            A   I believe that it's true, yes.

21            Q   All right.  But he, Stanley, did not continue  
22    to be a co-manager of Incline TSS; agreed?

23            A   I believe that is -- that is true, I believe.

24            Q   And why was he removed, sir?

1           A   Because he was involved in a divorce, so he was  
2   not going to hold an interest in the property is my  
3   understanding.

4           **Q   While the divorce was pending?**

5           A   Again, that's what the testimony shows, yes.

6           **Q   Right. And you have to rely on testimony to**  
7   **formulate your opinions in this case?**

8           A   No, sir. I have to evaluate the testimony in  
9   the context of the overall information and draw  
10  conclusions with respect to it.

11          **Q   Did you rely on the testimony in this case?**

12          A   I relied on some of the testimony, yes, sir.

13          **Q   Did you just pick and choose what you wanted to**  
14  **rely on?**

15          A   That which I believe to be credible based upon  
16  the evidence, the correspondence, and the discovery, yes.

17          **Q   And so are you an expert on credibility?**

18          A   No, sir. But as an expert, I have to evaluate  
19  the testimony and draw conclusions as to how accurate I  
20  believe it to be.

21          **Q   All right. So getting back to the initial**  
22  **option, that was Sam's idea; correct?**

23          A   Again, I wasn't involved in the conversations.  
24  I do know that that's what occurred.

1           **Q But you read Pierre's deposition?**

2           A I testified in my deposition that --

3           MR. ROBISON: Your Honor, can I get the witness  
4 to just answer my questions?

5           THE COURT: Not yet. I think the colloquy is  
6 still within bounds. Overruled.

7           THE WITNESS: I testified in my deposition that  
8 I did not give Pierre's testimony with respect to Sam's  
9 intent much credibility because I thought he had a  
10 conflict of interest. So, no, I did not rely on that  
11 testimony.

12 BY MR. ROBISON:

13           **Q That wasn't my question. My question was**  
14 **simply, did you read Pierre's depositions?**

15           A I don't believe that was your question. Yes, I  
16 did read his deposition.

17           **Q And so you discounted his testimony because you**  
18 **believe it's not credible?**

19           A That's an overstatement of my testimony. What  
20 I testified to was that I discounted his testimony with  
21 respect to Sam's intent because of the conflict of  
22 interest that I believe that he had.

23           **Q Do you dispute Pierre's testimony that it was**  
24 **Sam's idea to create the option in favor of Incline TSS?**

1           A   That would be Sam's intent, and, again, I  
2    didn't -- I know what occurred, I know where we ended up,  
3    and I know there was such an option, but I did not give  
4    any credibility to Mr. Hascheff's testimony in that  
5    regard. I looked at the end result.

6           **Q   Did you discount or assume that Pierre was not**  
7    **telling the truth when he said it was Sam's idea to**  
8    **create the option in favor of Incline TSS?**

9           A   I did not draw any conclusions with respect to  
10   the truthfulness or nontruthfulness of his testimony. I  
11   discounted his testimony with respect to Sam's intent  
12   because I believed he had a conflict of interest.

13          **Q   You know that Sam signed the option; correct?**

14          A   Yes, he did.

15          **Q   And that's his signature on the option;**  
16   **correct?**

17          A   Correct. Well, I don't -- I'm taking it at  
18   face value that it is. I'm not in a position to dispute  
19   that one way or the other.

20          **Q   So as far as you're concerned as an expert in**  
21   **this case, Sam signed an option allowing Incline TSS to**  
22   **purchase the Incline house?**

23          A   That's correct, yes, under certain terms and  
24   conditions.

1 Q And that was in 2010?

2 A Correct.

3 Q All right. Have you read the deposition of  
4 Wendy's other expert, Gary Stolbach?

5 A I have, yes.

6 Q And have you relied on Mr. Stolbach's testimony  
7 in any way whatsoever?

8 A No, sir.

9 Q Did you see that part of his testimony where  
10 Mr. Stolbach said it really wasn't Sam's intent to create  
11 the option?

12 MR. SPENCER: Objection, Your Honor. Improper  
13 use of deposition --

14 THE COURT: Sustained.

15 BY MR. ROBISON:

16 Q What use did you make of Mr. Stolbach's  
17 deposition?

18 A None.

19 Q And Mr. Campagna's?

20 A None.

21 Q So we go through 2010. Incline TSS has an  
22 option to buy the Incline house; correct?

23 A Correct.

24 Q And in 2011 Sam conveyed the Incline house from

1 the family trust to SSJ LLC?

2 A Correct.

3 Q Sam and Todd were co-managers of that limited  
4 liability company?

5 A That's my recollection, yes, sir.

6 Q And that was Sam's idea?

7 A Again, it is what occurred. I don't know whose  
8 idea it was. I'm not in a position --

9 Q Who was the sole owner of SSJ LLC?

10 A The family trust.

11 Q All right. Now, I want to stop right there in  
12 2011 when SSJ LLC gets title to the house.

13 Are you with me?

14 A Yes, sir.

15 Q Now, at that point in time Sam can do anything  
16 he wants with that house, can't he?

17 A I agree, yes, sir.

18 Q He can sell it; right?

19 A Yes.

20 Q And for that matter he can change his 2000  
21 trust any way he wants to?

22 A Slight correction. It's 2006, the second  
23 amendment. Is that what you're referring to?

24 Q No. I'm talking about the 2006 restated.

1 A You said 2000. That's why I wanted --

2 Q I apologize. 2006 restated trust agreement  
3 that Sam signed.

4 A Yes, sir. He may change that.

5 Q From 2006 through the end of his life, he could  
6 have revoked that family trust in its entirety; correct?

7 A That is correct, yes.

8 Q He could have changed it; correct?

9 A He could have, yes, sir.

10 Q He could have changed the disposition as to who  
11 gets what?

12 A He did on a couple of different occasions.  
13 Yes, he definitely could.

14 Q He could have. And that's pretty customary in  
15 estate planning, isn't it?

16 A It is with a grantor trust, yes, sir.

17 Q We call them a grantor or a settlor; correct?

18 A Yes, sir.

19 Q And that's the person who creates the trust?

20 A The settlor is the person who creates the  
21 trust, that's right.

22 Q And that settlor, until that person dies, has  
23 the right to make any disposition to any child or  
24 grandchild he or she sees fits to do?



1           A   Well, that's a broad statement.  With respect  
2   to this trust, yes, that's an accurate statement.

3           Q   And Sam's not required to give his three  
4   children his estate equally, is he?

5           A   No, sir.

6           Q   He can show preference to one beneficiary as  
7   opposed to the other beneficiary?

8           A   That's correct.

9           Q   And that's why Wendy wound up with a life  
10   estate as opposed to what Stan and Todd wound up with;  
11   correct?

12          A   He can certainly treat his children  
13   differently, and he did in this case.

14          Q   And Wendy only got a life estate?

15          A   She got a trust for her lifetime, yes.

16          Q   And who are the trustees of her trust?

17          A   Todd, Stan, and currently Mr. Kimmel.

18          Q   I'm sorry?

19          A   Todd, Stan, and Mr. Kimmel.

20          Q   Are the trustees of her trust?

21          A   Of the family trust.  I'm sorry, did I  
22   misunderstand your --

23          Q   Her subtrust, who are the trustees of her  
24   subtrust?

1 A At least Todd and Stan.

2 Q So they, for her life, administer what she gets  
3 for maintenance, support, and education?

4 A Within the context of the trust, administration  
5 of the trust, yes.

6 Q And they have powers under that trust document  
7 to give or not give?

8 A To give or not give what? I'm sorry.

9 Q Benefit to Wendy.

10 A No, sir. I don't believe -- I think that's an  
11 overstatement. I don't believe that to be accurate.

12 Q They have to honor the document first, do they  
13 not?

14 A Correct.

15 Q And that says provide for the support,  
16 maintenance, and welfare of Wendy for her life?

17 A That's a different statement from what you said  
18 a few minutes ago. That is what they're charged with,  
19 yes, sir.

20 Q And then what's left after Wendy passes goes to  
21 her estate?

22 A Correct.

23 Q But she doesn't own anything from the family  
24 trust?

1 A No. It's in trust.

2 Q Right. To be administered by Todd and Stan?

3 A Yes.

4 Q All right. And you know why Sam did that;  
5 correct?

6 A I'm not going to speculate as to why Sam did  
7 anything. That is what happened.

8 Q You didn't read anything in the depositions  
9 about why Sam did that?

10 A I believe -- well, I just know that he did it.  
11 I was not particularly concerned with why.

12 Q All right. I appreciate that.

13 But were you familiar with some of the  
14 financial problems that Wendy had incurred during her  
15 life?

16 A Wendy may be the devil incarnate, she may be  
17 the second coming of the archangel. That was irrelevant  
18 to me. What is --

19 THE COURT: Hold on. Hold on. Excuse me.

20 Can you please read the last question?

21 (The record was read by the reporter.)

22 THE COURT: The witness will answer the  
23 question.

24 MR. ROBISON: I'm sorry?

1 THE COURT: The witness will answer the  
2 question.

3 MR. ROBISON: Thank you, Your Honor.

4 THE WITNESS: I am aware of some of the things  
5 that there is testimony surrounding, yes.

6 BY MR. ROBISON:

7 Q So move forward into the year 2012.

8 At that point in time SSJ LLC owns the  
9 Lake Tahoe house?

10 A Correct.

11 Q And the issue trust at that time owns interests  
12 in Home Camp?

13 A Among other entities, I believe that to be  
14 true, yes.

15 Q What other entities?

16 A I would have to look at the accounting to see a  
17 list of the assets. I thought it was more than just Home  
18 Camp, but I could be wrong.

19 Q And what's Home Camp own?

20 A I don't -- I did not look at the underlying  
21 assets for each of these individual entities. My  
22 recollection is that there is a 20,000-acre ranch that is  
23 a part of Home Camp.

24 Q That's owned by Pronghorn; correct?

1           A   Sir, I'm not here to testify as to which entity  
2   owned what of the real property. I don't know the answer  
3   to that.

4           Q   I'm talking about the interests in the issue  
5   trust, which you have analyzed; correct?

6           A   I've looked at the issue trust, yes.

7           Q   You know that Pronghorn owns Eagleville, do you  
8   not?

9           A   I do not know. You're putting words in my  
10   mouth. No, I do not know the various ownership entities.  
11   That was not part of the purview of my --

12          Q   You said something to the effect that the issue  
13   trust has interest in the ranches up in Northern Nevada  
14   and California.

15          A   I don't think I testified to that, no.

16          Q   What does it own, then?

17          A   It owns an interest in various entities is what  
18   I testified to, I believe.

19          Q   Okay. What entities?

20          A   I don't recall specifically. I remember Home  
21   Camp, and I remember there were several, but I don't  
22   recall the names.

23          Q   What's Todd got to do with the entities that  
24   own these various ranches?

1           A   In some cases he's the controlling member of  
2   the entity that owns them.

3           Q   Which one?

4           A   That wasn't a part of my review.  I can't  
5   answer that question.  I don't know.

6           Q   Well, you indicate in your report that you've  
7   analyzed multiple fiduciary roles that Todd has, and  
8   that's as managing member of various entities, so that is  
9   within your assignment.

10          A   No, sir, that's not an accurate statement.  I  
11   said that he has a number of -- that he has a number of  
12   roles that he fulfills, a list of roles, and I said that  
13   there are irreconcilable conflicts of interest among the  
14   roles that I have listed.  That is what my report says.

15          Q   I'm going to go through that list for the jury.  
16               Co-trustee of the Samuel Jaksick Family Trust;  
17   correct?

18          A   That's a true statement, yes.

19          Q   Sam put him in that position?

20          A   Yes.

21          Q   Trustee of the SSJ Issue Trust?

22          A   Yes.

23          Q   Sam put him in that position?

24          A   Yes.

1           Q   Managing member of SSJ LLC, Sam put him in that  
2   position; correct?

3           A   Presumably.

4           Q   Well, Sam was co-manager; right?

5           A   I know that.

6           Q   So SSJ is managed by both Sam and Todd?

7           A   They are both managing managers, that's  
8   correct.

9           Q   Managing member of Incline TSS, Ltd., Sam put  
10   Todd in that position?

11          A   I don't know the -- I don't know whether he did  
12   put him there or not.

13          Q   Are you telling this jury you don't know how  
14   Todd became manager of Incline TSS?

15          A   No, sir, that's not what I'm saying. I'm  
16   saying he is the manager of Incline TSS.

17          Q   And that was Sam's decision; correct?

18          A   I don't know whether it was Sam's decision or  
19   not.

20          Q   Beneficiary and possible trustee of the TBJ SC  
21   Trust. Do you believe Todd is a beneficiary of that?

22          A   I think I said possible beneficiary. I believe  
23   there is an issue -- there is an issue trust and there is  
24   a children's trust that are the two entities that own --

1           **Q** What you said, Mr. Wallace, on page 4 is  
2   beneficiary of the TBJ SC Trust.

3           **Is that your belief?**

4           **A** I believe that to be true. I believe that he  
5   is a beneficiary of the issue trust and that his children  
6   are beneficiaries of the children's trust.

7           **Q** I'm talking about the TBJ SC Trust, sir.

8           **A** And, again, I've heard your question now three  
9   times. I'm telling you I believe he's a beneficiary of  
10   his issue trust and that his children are the beneficiary  
11   of his children's trust.

12          **Q** I'm not talking about the issue trust. I'm  
13   talking about the TBJ SC Trust.

14          **Do you know what that is?**

15          **A** If that's the children's trust, I believe his  
16   children are the beneficiaries of that.

17          **Q** But yet you state that he is?

18          **A** I did not have those trust agreements. That  
19   was based on -- what I had was deposition testimony where  
20   he testified that they owned it, and that was my  
21   interpretation.

22          **Q** And number 6 says beneficiary and possible  
23   trustee of the TBJ Investment Trust.

24          **What's the investment trust?**



1           A I believe that's the issue trust, his issue  
2 trust.

3           Q Well, it's not. His children have an issue  
4 trust. Are you aware of that?

5           A Again, I did not have these trust agreements.  
6 I was basing this -- it is accurate that that is the  
7 ownership of Incline TSS. As to who the beneficiaries of  
8 the trust are and what the terms are, I didn't have those  
9 documents so I don't know.

10          Q Well, Mr. Wallace, you say "Todd serves in  
11 multiple fiduciary roles which have resulted in  
12 irreconcilable conflicts of interest, acts of  
13 self-dealing, breaches of fiduciary duty. These roles  
14 include, but are not limited to the following," and you  
15 list eight different roles Todd had, and now you're  
16 telling us you don't really know what his role was;  
17 correct?

18          A That's not true, sir. That's not what I'm  
19 testifying to at all. I said I do not know the terms of  
20 the two trusts that make up the ownership of Incline TSS,  
21 but he was the manager of Incline TSS after his father  
22 died. That's the fiduciary role that I'm talking about.

23          Q You're talking about --

24          THE COURT: Everyone, please. Let's all stand

1 for a moment.

2 (A brief recess was taken.)

3 BY MR. ROBISON:

4 Q Do you know who the beneficiaries are of the  
5 TBJ SC Trust?

6 A No, sir. I do not have those trust agreements.

7 Q Do you know who the beneficiaries are of Todd's  
8 investment trust?

9 A I do not have those trust agreements, so I have  
10 no way of knowing.

11 Q Do you know who the trustees are?

12 A I believe Todd is the trustee is my  
13 understanding.

14 Q Do you believe that Todd is the trustee of his  
15 kids' issue trust?

16 A I don't have the agreement so I can't answer  
17 that question.

18 Q I want to turn your attention, if we could,  
19 please, to Exhibit 10, which is the issue trust.

20 If you would blow up section 1, Description of  
21 Trust Property, please.

22 You've reviewed this document; correct, sir?

23 A I have, yes, sir.

24 Q Now, with respect to that first paragraph, I'm

1 looking at specifically the second sentence that starts

2 "The Trustee may."

3 Do you see that?

4 A Yes.

5 Q "The Trustee may in the Trustee's discretion  
6 invest the cash in one or more policies of life insurance  
7 insuring the life of the grantor..."

8 The grantor is Sam?

9 A Correct.

10 Q "...and any other type of investment selected  
11 by the Trustee"; correct?

12 A Yes.

13 Q So the trustee, Todd, has the discretion to  
14 make investments; correct, sir?

15 A The trustee does have discretion within the  
16 context of the instrument to make investments, that's  
17 accurate.

18 Q And then if we move forward to page 6,  
19 paragraph B of the issue trust, it covers what happens in  
20 the grantor's death, sir.

21 Would you blow up paragraph B, please. Page 6  
22 of Exhibit 10, paragraph B.

23 "In the event of the grantor's death, the  
24 Trustee must collect the proceeds of any life insurance

1 policy."

2 Correct?

3 A Yes.

4 Q And that would include the \$6 million policy on  
5 Sam's life?

6 A That's what it was, yes, sir.

7 Q And it goes on to say "that are then owned by  
8 the trust and insure the life of the grantor. The  
9 proceeds of such life insurance policies together with  
10 any other property of the trust estate are then to be  
11 administered and distributed pursuant to the following  
12 paragraphs."

13 And that's B1 through B3; correct, sir?

14 A That's what it says, yes, sir.

15 Q And Todd had the right to then invest the  
16 insurance proceeds?

17 A Within the confines of the trust agreement,  
18 yes, sir.

19 Q And he had the right to invest in real estate;  
20 correct?

21 A No, sir. You're using the word "right." He  
22 had the power. He has the power under the terms of the  
23 trust to make certain kinds of investments within the  
24 confines of the purpose of the trust as defined in the

1 paragraph that we looked at earlier involving the Prudent  
2 Investor Act.

3 Q Let's go to Roman numeral IV, Trustee  
4 Provisions, on page 10, bottom paragraph, A.

5 This is that part of the trust agreement that  
6 provides in part -- to give Todd discretion; correct,  
7 sir?

8 A No, sir. I don't believe that's what that --

9 Q If we go to the next page, it refers to Todd  
10 specifically, top paragraph, please, on page 11 of  
11 Exhibit 10.

12 Do you know why Todd was selected as the  
13 trustee of this trust?

14 A I do not.

15 Q Do you know why none of the other children were  
16 nominated as a potential successor trustee of this issue  
17 trust?

18 A I have no idea.

19 Q Did you not learn anything about that in your  
20 review of the depositions in this case?

21 A It may have been discussed. Again, it was not  
22 something I was focused on because Todd is the trustee  
23 and that's the only thing that I was focused on.

24 Q And Sam provided that Todd could be paid a

1 trustee's fee for administering this trust; correct?

2 A I believe that's true, sir.

3 Q That is a customary provision in a trust such  
4 as this?

5 A In some it is. In some family members do not  
6 receive compensation. It can go both ways.

7 Q And he's required, as a result of this rule  
8 book, to provide annual accountings?

9 A That's correct, yes, sir.

10 Q And this issue trust now has how many  
11 beneficiaries?

12 A Well, the beneficiaries are -- it's a difficult  
13 question to answer because they are not entitled to any  
14 distributions, but the beneficiaries are Todd, Wendy, and  
15 Stan.

16 Q And the issue? And their issue?

17 A And the issue ultimately, that's correct.

18 Q Who are the issue, then?

19 A I don't know all of their names, but there's  
20 Luke, Lexi. I believe Stan has -- I believe he testified  
21 yesterday that he had two kids and perhaps --

22 Q He's got three.

23 A Okay. The children.

24 Q So the three children of Sam and the children

1 of those three children are the beneficiaries of this  
2 issue trust?

3 A As of today, that's correct.

4 Q And there are 12?

5 A I'm sorry. Does that total 12? Okay.

6 Q Do you know?

7 A Do I know if --

8 Q How many issue there are of Sam that are  
9 beneficiaries of the SSJ Issue Trust.

10 A The issue trust -- I just went through them.  
11 There's the children of Sam and their issue.

12 Q And that's my question.

13 Do you know how many beneficiaries there are  
14 right now alive?

15 A I didn't keep count as you went through the  
16 names. There were --

17 Q But the duties are owed by Todd as trustee to  
18 all 12 of those alive beneficiaries?

19 A That's correct.

20 Q Share and share alike and impartiality, all of  
21 the duties that you've talked about Todd must honor to  
22 all 12?

23 A Yes, sir, that's accurate.

24 Q And he can't show preference to anybody?

1           A No, sir, that's not an accurate statement. The  
2 duty of impartiality, as I testified to earlier, does not  
3 require that everybody be treated equally. It requires  
4 that their interest be considered and decisions made  
5 impartially among the beneficiaries. It does not mean  
6 everybody gets the same thing.

7           Q Are you suggesting that Todd should buy, with  
8 the proceeds from the life insurance, Wendy a house?

9           A I don't think I said anything along those  
10 lines.

11          Q Wendy doesn't get preferential treatment under  
12 this issue trust, does she?

13          A I believe that's what I just said.

14          Q Thank you.

15                 Now, on the paragraph K on page 14, this is  
16 where we get into trustee powers; correct?

17          A I'll have to look at K to be sure.

18          Q Do you need the book, sir?

19          A No. I can see it once it's put up.

20          Q All right.

21          A Yes, that is correct, and then there's a long  
22 list beyond that.

23          Q So this is something that Sam said Todd had the  
24 power to do?



1           A   That he has the power, and those powers are  
2   exercised in the context of the overall trust agreement.

3           **Q   And so Sam's intent is that Todd will have**  
4   **these powers, assuming they're not abused; correct?**

5           A   As long as they're exercised in accordance with  
6   the remainder of the trust, that's accurate, yes, sir.

7           **Q   And the specific term is that he cannot act in**  
8   **bad faith in exercising these powers?**

9           A   He certainly cannot exercise in bad faith, I  
10   agree with that.

11          **Q   That's what the trust says?**

12          A   That is one element, as I recall, of the  
13   exculpatory provision.

14          **Q   That Todd has no liability unless he acts in**  
15   **bad faith in exercising these powers; correct, sir?**

16          A   It's not in exercising those powers.   It's in  
17   administering the overall trust.

18          **Q   And in exercising these powers?**

19          A   I would need to look at the specific language  
20   to be sure.

21          **Q   So the number one power of the trustee, Todd,**  
22   **is to invest and manage the trust assets as a prudent**  
23   **investor; correct?**

24          A   That's correct.

1           **Q And does that Prudent Investor Rule apply to**  
2   **the ranches?**

3           A It applies to the assets of the trust.

4           **Q And they are?**

5           A They are entities as opposed to actual direct  
6 interests in the underlying ranches, which is why I  
7 qualified my answer.

8           **Q And so Todd must be prudent in how he handles**  
9   **the entities in which this issue trust has an ownership?**

10          A Yes, that's certainly a true statement.

11          **Q And those entities are which?**

12          A I testified a few moments ago I don't have  
13 them.

14          **Q How has he acted as manager with respect to**  
15   **those entities that you don't know the identity of?**

16          A I am not -- I have not been critical of his  
17 management of individual entities that I'm not listing  
18 for you.

19          **Q Has he done a good job?**

20          A I have no idea. It wasn't part of my overall  
21 review. I have not seen information relative to his  
22 administration specifically of any of the entities.

23                 With respect to the issue trust, what I am  
24 critical of is the transaction involving Incline TSS.

1           Q I got that, but I want to talk about the good  
2 parts, and that is, Todd is the sole trustee of the issue  
3 trust that owns what, 49 percent of Home Camp?

4           A I believe that to be true, yes.

5           Q And Home Camp owns Pronghorn?

6           A Again, sir, I'm not here to testify as to which  
7 entity owns what.

8           Q Let's just be clear.

9           As far as Todd's administration of this trust  
10 with respect to Home Camp, Pronghorn and we'll call it  
11 the ranches, he's done a good job, hasn't he?

12          A I'm not in a position to testify in that regard  
13 one way or the other.

14          Q You're not here to give him any accolades, are  
15 you?

16          THE COURT: Hold on. Were you finished with  
17 your answer?

18          THE WITNESS: I believe so, yes, sir.

19          THE COURT: Go ahead, please.

20 BY MR. ROBISON:

21          Q You're not here to bestow any compliments on  
22 Todd, are you?

23          A I didn't look at those -- any transactions  
24 involving those entities, so I'm not in a position to be

1 able to make a comment.

2 Q But you're a fiduciary duty expert. Is that  
3 what you are?

4 A Among other things, yes, sir.

5 Q And you didn't look at how Todd has honored his  
6 fiduciary duties with respect to Home Camp and Pronghorn  
7 and those entities that are owned in part by the issue  
8 trust?

9 A I did not because I didn't have information  
10 relative to those assets.

11 Q Did you ask for it?

12 A No.

13 Q Why?

14 A Because there were not issues, as I understand  
15 it, that fell under the purview of what I was asked to  
16 review.

17 Q So Wendy is not paying you \$600 an hour to  
18 analyze Todd's role as administering these assets outside  
19 of the Tahoe house; correct?

20 A Outside of the what? I'm sorry.

21 Q Incline TSS.

22 A The transaction that I have looked at with  
23 respect to the issue trust is with respect to  
24 Incline TSS.

1           Q With respect to this paragraph 1 on the powers  
2 that Sam gave Todd, I want to go three-quarters down the  
3 paragraph where it starts "The Trustee's investment power  
4 is not affected by the fact that the Trustee or an  
5 affiliate of the Trustee may receive an investment,  
6 management, administration or other form of any entity in  
7 which the trust assets are invested."

8           That includes Incline TSS; correct?

9           A Sir, I heard you read, but I'll need you to  
10 blow it up for me to be able to look at it.

11          Q All right.

12           Mark, it's going to be ten lines up on page 14,  
13 the sentence starting on the right-hand side "The  
14 Trustee's investment power."

15          A And the question is?

16          Q Todd is given the power to invest the issue  
17 trust's money in entities in which he has an interest?

18          A Yes, he does have that power.

19          Q I'm sorry. I apologize.

20           Sam authorized him to invest issue assets into  
21 maybe companies that he managed?

22          A He gave him the power to invest in those  
23 subject to the remainder of the trust terms and  
24 conditions.

1           Q   Right.  And do you have any reason to believe  
2   that Sam didn't know what he was doing when he gave Todd  
3   that power?

4           A   I believe that he knew exactly what he was  
5   doing or at least his attorney did.

6           Q   And Todd was also given the power by Sam to  
7   invest issue trust assets into limited liability  
8   companies; correct?

9           A   He has the power to invest in those.  That's  
10   subject to the remaining terms and conditions of the  
11   trust.

12          Q   And the investment in Incline TSS, Ltd. is  
13   covered by that particular provision; correct?

14          A   The type of entity that was acquired by Todd  
15   does not have anything to do with whether it's a good,  
16   bad or indifferent transaction.

17          Q   I'm talking about powers.

18          A   He had the power to buy that type of entity,  
19   yes, sir.

20          Q   If we look at paragraph 2 on page 15 -- Mark,  
21   please blow that up -- in 2007 Sam gave Todd the  
22   following power in paragraph 2 of Exhibit 10, page 16:  
23   "The Trustee may organize, participate, invest in and  
24   contribute trust assets to all forms of legal entities,

1 specifically included but not limited to corporations,  
2 partnerships, both general and limited, and limited  
3 liability companies."

4 That was a power given to Todd by Sam?

5 A He has the power to invest in those types of  
6 entities subject to the remaining terms and conditions of  
7 the trust.

8 Q And if we look at paragraph 3 -- please blow  
9 that up on the same page -- Todd was given the power by  
10 Sam "to continue to hold any property, including any  
11 shares of the Trustee's own stock, and may operate at the  
12 risk of the trust estate in any business the trustee  
13 receives or acquires as long as the Trustee considers it  
14 advisable [as read]."

15 A Let me read that, please.

16 Q I'm sorry. I butchered that pretty bad.

17 A Yes. I believe what confuses me is "including  
18 any shares of Trustee's own stock." That may be  
19 contemplating a corporate fiduciary. I'm not sure.

20 Q Are you aware of any stock holdings by the  
21 issue trust?

22 A Not that -- well, yes. They have stock  
23 holdings in some of the entities that are owned is my  
24 understanding.

1 Q Stock, corporate stock.

2 A They have positions.

3 Q Pardon me?

4 A They have positions.

5 Q No, sir. Really, are you aware of any stock  
6 owned by the issue trust?

7 A I do not know whether the entities involved are  
8 corporate entities where they own, for example,  
9 49 percent of the stock or whether they're partnerships  
10 where they have a 49 percent partnership share.

11 Q If we look at paragraph 5, this power given to  
12 Todd by Sam says that Todd "may hold securities in other  
13 property in the Trustee's name as Trustee under this  
14 trust agreement, in the Trustee's own name or in the name  
15 of a nominee, or the Trustee may hold securities  
16 unregistered," etcetera; correct?

17 A That's a pretty standard provision, yes, sir.

18 Q All right. That gives Todd power to hold  
19 things in his name as opposed to the issue trust;  
20 correct?

21 A "May hold securities or other property in the  
22 Trustee's name" --

23 Q That would be Todd's name?

24 A -- "as Trustee under this agreement."



1 He can hold it in his name as trustee is how I  
2 read that.

3 Q He can own it in his name?

4 A As trustee.

5 Q As trustee of the issue trust? I think we  
6 agree. I'm going to move on.

7 Can you look at paragraph 10, please?

8 Sam gave Todd the power to purchase property at  
9 its fair market value as determined by the trustee;  
10 correct, sir?

11 A Yes.

12 Q So Todd has the right to determine the value of  
13 the real property that the issue trust invests in?

14 A That is -- that is a misstatement because it is  
15 the exercise of discretion, and discretion is not  
16 absolute. Discretion is subject to review.

17 Q Now, the trustee of the issue trust has the  
18 power to loan money from the issue trust to others;  
19 correct?

20 A Yes. Within the confines of the trust  
21 agreement.

22 Q Yes. And the trustee, Todd, has the power to  
23 borrow money on behalf of the trustee?

24 A That's correct.

1 Q Excuse me. The trust itself?

2 A That's correct.

3 Q Now, finally, sir, paragraph 17 authorizes the  
4 trustee, Todd, to hire lawyers to help him. That's a  
5 customary provision, is it not, sir?

6 A It is, yes.

7 Q And as we said, it is advisable for the trustee  
8 to do so in complicated matters?

9 A Certainly advisable, yes, sir.

10 Q And then paragraph 18, "The Trustee may  
11 withhold from distribution anything that he deems fit";  
12 correct?

13 A I'm sorry. Say that again, please.

14 Q Read paragraph 18 and tell us what you think  
15 that means.

16 A I believe what this is addressing is the  
17 trustee of the issue trust has the ability to loan money  
18 to the Sam Jaksick estate to pay estate taxes. That's  
19 the only kind of distribution that I can think of because  
20 distributions are not permitted to the other  
21 beneficiaries.

22 Q Let's step back for a moment before the lunch  
23 break, and I want to walk through kind of a hypothetical.

24 So we go to December of 2012. That's when the

1 option owned by Incline TSS was exercised; correct, sir?

2 A Yes.

3 Q And Incline TSS promised to pay SSJ LLC  
4 \$7,250,000?

5 A Correct.

6 Q In the note?

7 A Yes.

8 Q So there's a promise to pay; correct?

9 A That's correct, yes.

10 Q Like if we go down and buy a car and we have it  
11 financed, that's a promise to pay for the car?

12 A Right.

13 Q All right. Or we buy a house and we borrow  
14 money from the bank to buy the house, when we sign a  
15 promissory note in favor of the bank, it's a promise to  
16 pay; correct?

17 A Yes, sir.

18 Q And there's seller financing on many  
19 transactions where the seller will finance the entire  
20 purchase; correct?

21 A I'm sorry. We're getting a little far afield.  
22 This hypothetical --

23 Q Seller financing?

24 A Yes. You can certainly finance cars and real

1 estate and -- maybe I've lost you.

2 Q If a seller like me sells property to somebody,  
3 say, like you, the seller has the right to sell that  
4 under 100 percent financing? In other words, you don't  
5 owe me cash, but you have to pay me \$100,000 over ten  
6 years?

7 A Yes, sir, that's true. Subject to the terms of  
8 the note or whatever.

9 Q Nothing wrong with that?

10 A No.

11 Q All right. So Sam dies before -- this is a  
12 hypothetical -- before Incline TSS gets the house. Okay?

13 A Okay.

14 Q Say the end of December 2012.

15 You're aware it was listed for sale at  
16 \$12,500,000 shortly thereafter?

17 A I know that it was listed, yes. I didn't  
18 realize that it was twelve five.

19 Q So just assume twelve five.

20 Sam dies. The family trust owns that property  
21 and the option has not been exercised.

22 Are you with me?

23 A Yes.

24 Q So that's a \$12 million asset that's going to

1     **be subjected to federal estate tax?**

2             A   That's an overstatement. I'll agree with you  
3     that it may be subject to federal estate tax.

4             **Q   It is far worse than an overstatement. It's**  
5     **inaccurate.**

6             **You first take off the debt; correct, sir?**

7             A   There would be an offset for the debt.

8             **Q   So we take off that \$6.3 million loan, which is**  
9     **going to leave about \$6.2 million that is subjected to**  
10    **federal estate tax?**

11            A   It may be subject to federal estate tax.

12            **Q   And that federal estate tax is 40 percent;**  
13    **correct?**

14            A   If it is subject to federal estate tax, but in  
15    your hypothetical you're leaving out the exclusion that  
16    is available to the decedent and also the use of the  
17    marital deduction trust that was provided for in the  
18    family trust.

19            **Q   Just taking the value of the house, are you**  
20    **aware of the fact that there would be a federal estate**  
21    **tax in this estate as of December 2012?**

22            A   I do not know whether that's an accurate  
23    statement or not. There may or may not be depending on  
24    the exclusion available to Sam and the exclusion

1 available to his wife.

2 Q And you don't know how much of the exclusion he  
3 and his wife had used up by that time?

4 A I do not, no.

5 Q So if they had used up their exclusion, there  
6 would be 40 percent federal estate tax on that  
7 \$6.2 million; correct?

8 A In your hypothetical, that is an accurate  
9 statement, yes.

10 Q And you read Pierre's deposition where he was  
11 trying to avoid that by accomplishing this transfer to  
12 Incline TSS?

13 A Well, they certainly made the transfer to  
14 Incline TSS. Whether it was the best thing to do or not,  
15 that's certainly not my opinion, but that's what they  
16 did.

17 Q That took the house out of the estate so  
18 there's no federal estate tax assessed against the equity  
19 in the house.

20 A That's a true statement, but it also may have  
21 gone through the administration of Sam's estate and still  
22 not been subject to estate tax.

23 Q You don't know that?

24 A No, sir. I know that Sam had provided through

1 the family trust --

2 Q But you know --

3 A -- for -- may I finish?

4 Q I'm sorry. I apologize. Hurry up.

5 A Excuse me?

6 I know that Sam had provided through the family  
7 trust for a marital trust and for a family trust and that  
8 it is a typical situation to minimize federal estate  
9 taxes.

10 Q But you read Kevin Riley's deposition. He  
11 explained that in detail, did he not?

12 A He talked about it, yes.

13 Q And that there would be a substantial saving of  
14 federal estate tax by transferring that house to  
15 Incline TSS?

16 A To the extent that it was taxable in his  
17 estate. I don't believe that Kevin was in a position to  
18 make that projection --

19 Q Well, he testified to that.

20 A -- based on the information that was available  
21 at that point in time.

22 Q And you've done no investigation in that  
23 regard, have you, sir?

24 A No, sir. I'm saying that if this asset -- I

1 believe it is in the best interest for this asset to have  
2 remained in the family trust.

3 **Q Not knowing what the federal estate tax would**  
4 **be?**

5 A As opposed to what happened to it, I believe  
6 that they would have been far better off for it to be in  
7 the family trust where it could have been sold or  
8 administered, but in any event would have been available  
9 to make distributions to the beneficiaries of the trust  
10 as opposed to locked up in the issue trust where no  
11 distributions can be made.

12 **Q It could be sold. It could be sold right now.**

13 A That doesn't make distributions available to  
14 the beneficiaries.

15 **Q Well, if it's --**

16 A They cannot make distributions out of the issue  
17 trust to the beneficiaries.

18 **Q If it sold right now -- you put the value of**  
19 **18 million on it; right? So if it sold right now for**  
20 **\$18 million -- correct? -- you pay the bank off,**  
21 **2.4 million, and you've got a profit of about 15-1/2**  
22 **million dollars, if it's sold right now, that goes in the**  
23 **issue trust; correct?**

24 A And is not available for distribution to the



1 beneficiaries.

2 Q But can be used by the trustee to buy houses  
3 for the kids, to provide for the kids, and it stays in  
4 the trust for 365 years?

5 A It is locked up in a way that is not of benefit  
6 to the beneficiaries of the trust, which was clearly  
7 Sam's intent under the way the house was treated in the  
8 family trust.

9 Q You are aware of the emails that exist in  
10 evidence in this case that Sam wanted that house in the  
11 issue trust, sir?

12 A You'd have to show me the emails. That does  
13 not ring a bell, but it also is not relevant, I don't  
14 believe, to the discussion.

15 Q I got it.

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

20 We have a little bit of business to do before  
21 you return to the jury room, so please be prepared for a  
22 1:35 entry to the court.

23 We'll stand for our jury.

24 (The jury exited the courtroom.)