

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE CONNIE J. STEINHEIMER,

Respondents,

and

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Real Party in Interest.

Case No.

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PETITIONERS' APPENDIX,

VOLUME 35

(Nos. 5802-6045)

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6	September 23, 2010 email between Garry M. Graber and P. Morabito	Vol. 12, 1855–1857
7	September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire	Vol. 12, 1858–1861
8	September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010	Vol. 12, 1862–1863
9	September 20, 2010 email from Garry M. Graber RE: Call	Vol. 12, 1864–1867
10	September 20, 2010 email from P. Morabito to Dennis and Yalamanchili RE: Attorney client privileged communication	Vol. 12, 1868–1870
11	September 20, 2010 email string RE: Attorney client privileged communication	Vol. 12, 1871–1875
12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Answer to Plaintiff's First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”)	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300
40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
59	State of California Secretary of State Limited Liability Company – Snowshoe Properties, LLC; File No. 201027310002 (filed 09/29/2010)	Vol. 17, 2517–2518
60	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 17, 2519–2529
61	PROMISSORY NOTE [Superpumper, Inc. (“Maker”) promises to pay Compass Bank (the “Bank” and/or “Holder”) the principal sum of \$3,000,000.00] (dated 08/13/2010)	Vol. 17, 2530–2538
62	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 17, 2539–2541
63	Page intentionally left blank	Vol. 17, 2542–2543
64	Edward Bayuk’s Answers to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 17, 2544–2557
65	October 12, 2012 email from Stan Bernstein to P. Morabito RE: 2011 return	Vol. 17, 2558–2559
66	Page intentionally left blank	Vol. 17, 2560–2561
67	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 17, 2562–2564
68	Snowshoe Petroleum, Inc.’s letter of intent to set out the framework of the contemplated transaction between: Snowshoe Petroleum, Inc.; David Dwelle, LP; Eclipse Investments, LP; Speedy Investments; and TAD Limited Partnership (dated 04/21/2011)	Vol. 17, 2565–2572

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Statement of Undisputed Facts (cont.)		
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor's commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
Exhibit to Objection to Recommendation for Order		
Exhibit	Document Description	
1	Plaintiff's counsel's Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
Exhibit to Opposition to Objection to Recommendation for Order		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)	Vol. 18, 2749–2752
Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)		Vol. 18, 2753–2758
Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2759–2774
Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2775–2790
Exhibits to Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment		
Exhibit	Document Description	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)		
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883
11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)		
17	PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito ("Borrower") promises to pay Consolidated Western Corp. ("Lender") the principal sum of \$939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of \$492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937
20	Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)		
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981
Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants' Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
Exhibits to Defendants' Motions in Limine		
Exhibit	Document Description	
1	Plaintiff's Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst's Responses to Defendant Snowshoe Petroleum, Inc.'s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst's Responses to Defendant, Salvatore Morabito's Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich		
Exhibit	Document Description	
1	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
Exhibits to Opposition to Defendants' Motions in Limine		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibit to Defendants' Reply in Support of Motions in Limine		
Exhibit	Document Description	
1	Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)	Vol. 20, 3218–3236
Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)		Vol. 20, 3237–3250
Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich		
Exhibit	Document Description	
1	Excerpt of Matrix Report (dated 10/13/2010)	Vol. 20, 3251–3255
2	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 20, 3256–3270
3	November 9, 2009 email from P. Morabito to Daniel Fletcher; Jim Benbrook; Don Whitehead; Sam Morabito, etc. RE: Jan Friederich entered consulting agreement with Superpumper	Vol. 20, 3271–3272
4	Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 20, 3273–3296
Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3297–3299
Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3300–3303
Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)		Vol. 20, 3304–3311

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)		Vol. 20, 3312
Stipulated Facts (filed 10/29/2018)		Vol. 20, 3313–3321
Defendants’ Points and Authorities RE: Objection to Admission of Documents in Conjunction with the Depositions of P. Morabito and Dennis Vacco (filed 10/30/2018)		Vol. 20, 3322–3325
Plaintiff’s Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)		Vol. 20, 3326–3334
Clerk’s Trial Exhibit List (filed 02/28/2019)		Vol. 21, 3335–3413
Exhibits to Clerk’s Trial Exhibit List		
Exhibit	Document Description	
1	Certified copy of the Transcript of September 13, 2010 Judge’s Ruling; Case No. CV07-02764	Vol. 21, 3414–3438
2	Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)	Vol. 21, 3439–3454
3	Judgment; Case No. CV07-0767 (filed 08/23/2011)	Vol. 21, 3455–3456
4	Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)	Vol. 21, 3457–3481
5	November 30, 2011 Settlement Agreement and Mutual Release	Vol. 22, 3482–3613
6	March 1, 2013 Forbearance Agreement	Vol. 22, 3614–3622

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCPP 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898
57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for \$1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
74	Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014)	Vol. 24, 3994–4053
75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
76	March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075
82	Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4076–4077
83	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc.	Vol. 24, 4078–4080
84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
103	Superpumper Note in the amount of \$1,462,213.00 (dated 11/01/2010)	Vol. 25, 4192–4193
104	Superpumper Successor Note in the amount of \$492,937.30 (dated 02/01/2011)	Vol. 25, 4194–4195
105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197
106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
109	Compass Term Loan (dated 12/21/2016)	Vol. 25, 4205–4213
110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
111	Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016)	Vol. 25, 4215–4244
112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
113	Superpumper Financial Statement (dated 12/31/2007)	Vol. 25, 4250–4263

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
114	Superpumper Financial Statement (dated 12/31/2009)	Vol. 25, 4264–4276
115	Notes Receivable Interest Income Calculation (dated 12/31/2009)	Vol. 25, 4277–4278
116	Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010)	Vol. 25, 4279–4284
117	Superpumper 2010 YTD Income Statement and Balance Sheets	Vol. 25, 4285–4299
118	March 12, 2010 Management Letter	Vol. 25, 4300–4302
119	Superpumper Unaudited August 2010 Balance Sheet	Vol. 25, 4303–4307
120	Superpumper Financial Statements (dated 12/31/2010)	Vol. 25, 4308–4322
121	Notes Receivable Balance as of September 30, 2010	Vol. 26, 4323
122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344

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Exhibits to Clerk's Trial Exhibit List (cont.)		
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352
133	April 5, 2011 email from P. Morabito to Vacco	Vol. 26, 4353
134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
135	August 7, 2011 email exchange between Vacco and P. Morabito	Vol. 26, 4360
136	August 2011 Lovelace letter to Timothy Halves	Vol. 26, 4361–4365
137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
140	November 28, 2011 email chain between Vacco, S. Morabito, and P. Morabito RE: \$560,000 wire to Lippes Mathias	Vol. 26, 4369–4370
141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
144	April 24, 2012 email from P. Morabito to Vacco RE: SPI Loan Detail	Vol. 26, 4377–4378

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
145	September 4, 2012 email chain between Vacco and Bayuk RE: Second Deed of Trust documents	Vol. 26, 4379–4418
147	September 4, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4419–4422
148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
149	December 6, 2012 email from Vacco to P. Morabito RE: BOA and the path of money	Vol. 26, 4427–4428
150	September 18, 2012 email chain between P. Morabito and Bayuk	Vol. 26, 4429–4432
151	October 3, 2012 email chain between Vacco and P. Morabito RE: Snowshoe Properties, LLC	Vol. 26, 4433–4434
152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655
159	September 14, 2012 email from Vacco to P. Morabito	Vol. 27, 4656–4657

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Exhibits to Clerk's Trial Exhibit List (cont.)		
160	October 1, 2012 email from P. Morabito to Vacco RE: Monday work for Dennis and Christian	Vol. 27, 4658
161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
162	April 24, 2013 email from P. Morabito to Vacco RE: BHI Trust	Vol. 27, 4660
163	Membership Interest Purchases, Agreement – Watch My Block (dated 10/06/2010)	Vol. 27, 4661–4665
164	Watch My Block organizational documents	Vol. 27, 4666–4669
174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman's Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13- 51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
179	Gursey Schneider LLP Subpoena	Vol. 28, 4676–4697
180	Summary Appraisal of 570 Glenneyre	Vol. 28, 4698–4728
181	Appraisal of 1461 Glenneyre Street	Vol. 28, 4729–4777
182	Appraisal of 370 Los Olivos	Vol. 28, 4778–4804
183	Appraisal of 371 El Camino Del Mar	Vol. 28, 4805–4830
184	Appraisal of 1254 Mary Fleming Circle	Vol. 28, 4831–4859
185	Mortgage – Panorama	Vol. 28, 4860–4860
186	Mortgage – El Camino	Vol. 28, 4861
187	Mortgage – Los Olivos	Vol. 28, 4862
188	Mortgage – Glenneyre	Vol. 28, 4863

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Exhibits to Clerk's Trial Exhibit List (cont.)		
189	Mortgage – Mary Fleming	Vol. 28, 4864
190	Settlement Statement – 371 El Camino Del Mar	Vol. 28, 4865
191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
192	2010 Declaration of Value of 8355 Panorama Dr	Vol. 28, 4867–4868
193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants' SSOF in Support of Opposition to Plaintiff's MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879
222	Kimmel – January 21, 2016, Comment on Alves Appraisal	Vol. 28, 4880–4883
223	September 20, 2010 email from Yalamanchili to Morabito	Vol. 28, 4884
224	March 24, 2011 email from Naz Afshar RE: telephone call regarding CWC	Vol. 28, 4885–4886
225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006
233	BMO Account Tracker Banking Report October 1 to October 31, 2010	Vol. 29, 5007–5013
235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076

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244	Assignment Agreement for \$939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102
257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155

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Exhibits to Clerk's Trial Exhibit List (cont.)		
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358
272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744
300	September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication	Vol. 33, 5745–5748
301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
Minutes of October 29, 2018, Non-Jury Trial, Day 1 (filed 11/08/2018)		Vol. 35, 5802–6041
Transcript of October 29, 2018, Non-Jury Trial, Day 1		Vol. 35, 6042–6045
Minutes of October 30, 2018, Non-Jury Trial, Day 2 (filed 11/08/2018)		Vol. 36, 6046–6283
Transcript of October 30, 2018, Non-Jury Trial, Day 2		Vol. 36, 6284–6286
Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018)		Vol. 37, 6287–6548
Transcript of October 31, 2018, Non-Jury Trial, Day 3		Vol. 37, 6549–6552
Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018)		Vol. 38, 6553–6814
Transcript of November 1, 2018, Non-Jury Trial, Day 4		Vol. 38, 6815–6817
Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)		Vol. 39, 6818–7007
Transcript of November 2, 2018, Non-Jury Trial, Day 5		Vol. 39, 7008–7011
Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018)		Vol. 40, 7012–7167
Transcript of November 5, 2018, Non-Jury Trial, Day 6		Vol. 40, 7168–7169

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)		Vol. 41, 7170–7269
Transcript of November 6, 2018, Non-Jury Trial, Day 7		Vol. 41, 7270–7272 Vol. 42, 7273–7474
Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018)		Vol. 43, 7475–7476
Transcript of November 7, 2018, Non-Jury Trial, Day 8		Vol. 43, 7477–7615
Minutes of November 26, 2018, Non-Jury Trial, Day 9 (filed 11/26/2018)		Vol. 44, 7616
Transcript of November 26, 2018, Non-Jury Trial – Closing Arguments, Day 9		Vol. 44, 7617–7666 Vol. 45, 7667–7893
Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
Exhibits to Plaintiff’s Motion to Reopen Evidence		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Plaintiff's Motion to Reopen Evidence (cont.)		
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs' First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035
1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence		
Exhibit	Document Description	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019)		Vol. 47, 8097–8102
Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)		Vol. 47, 8106–8110
Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence		
Exhibit	Document Description	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
Defendants' Response to Motion to Reopen Evidence (02/06/2019)		Vol. 47, 8129–8135
Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019)		Vol. 47, 8144
Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence		Vol. 47, 8145–8158

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
[Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019)		Vol. 47, 8159–8224
[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019)		Vol. 47, 8269
Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8270–8333
Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8334–8340
Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
Exhibit to Memorandum of Costs and Disbursements		
Exhibit	Document Description	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
Exhibits to Application for Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff's Application for Attorney's Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff's Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
3	Defendant's Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
Exhibits to Plaintiff's Opposition to Motion to Retax Costs		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68		

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibit	Document Description	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637
	Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)	Vol. 49, 8638–8657
	Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)	Vol. 50, 8658–8676
	Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60	
Exhibit	Document Description	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial	Vol. 50, 8776–8777
	Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)	Vol. 50, 8778–8790
	Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68	
Exhibit	Document Description	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution		
Exhibit	Document Description	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution		
Exhibit	Document Description	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Plaintiff's Objection (cont.)		
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment		
Exhibit	Document Description	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs		
Exhibit	Document Description	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141
Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)		Vol. 52, 9142–9146
Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)		Vol. 52, 9147–9162

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon		
Exhibit	Document Description	
1	March 3, 2011 Deposition Transcript of P. Morabito	Vol. 52, 9163–9174
2	Mr. Bayuk’s September 23, 2014 responses to Plaintiff’s first set of requests for production	Vol. 52, 9175–9180
3	September 28, 2015 Deposition Transcript of Edward Bayuk	Vol. 52, 9181–9190
Reply to Plaintiff’s Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)		Vol. 52, 9191–9194
Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)		Vol. 52, 9195
Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 52, 9196–9199
Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim		
Exhibit	Document Description	
1	Plaintiff’s Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204
2	Bayuk and the Bayuk Trust’s proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Notice of Submission of Disputed Order (cont.)		
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240
Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9241–9245
2	Defendant's comments on Findings of Fact	Vol. 53, 9246–9247
3	Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9248–9252

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)		Vol. 53, 9253
Order Denying Claim of Exemption (filed 08/02/2019)		Vol. 53, 9254–9255
Bayuk’s Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9256–9260
Bayuk’s Notice of Appeal (filed 08/05/2019)		Vol. 53, 9261–9263
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9264–9269
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal (filed 08/05/2019)		Vol. 53, 9270–9273
Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal		
Exhibit	Document Description	
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)	Vol. 53, 9274–9338
2	Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 53, 9339–9341
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 53, 9342–9345
4	Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCF 68 (filed 07/10/2019)	Vol. 53, 9346–9349

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		Vol. 53, 9350–9356
Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)		Vol. 53, 9357–9360
Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)		Vol. 53, 9361–9364
Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
Exhibit to Notice of Entry of Order Denying Claim of Exemption		
Exhibit	Document Description	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Motion to Make Amended (cont.)		
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Motion to Make Amended (cont.)		
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito’s Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
Exhibits to Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff’s Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Errata (cont.)		
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs		
Exhibit	Document Description	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk's Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Bayuk's Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030
Exhibits to Bayuk's Notice of Appeal		
Exhibit	Document Description	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
Exhibit to Notice of Entry of Order		
Exhibit	Document Description	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
District Court Docket Case No. CV13-02663		Vol. 57, 10063–10111
Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon, Case No. CV13-02663 (filed 08/25/2020)		Vol. 58, 10112–10121
Exhibits to Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon		
Exhibit	Document Description	
1	Writ of Execution, Case No. CV13-02663 (filed 07/21/2020)	Vol. 58, 10123–10130
2	Superior Court of California, Orange County Docket, Case No. 30-2019-01068591-CU-EN-CJC	Vol. 58, 10131–10139
3	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/2005)	Vol. 58, 10140–10190

CASE NO. CV13-02663

**TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy
Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC.,
EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST,
SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

10/29/18

NON-JURY TRIAL – DAY ONE

HONORABLE
CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

J. Schonlau

(Reporter)

Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, present with counsel, Teresa Pilatowicz, Esq., Erika Turner, Esq., and Gabrielle Hamm, Esq. Defendant Edward Bayuk present, individually and as representative for Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe Petroleum, Inc., and Defendant Salvatore Morabito present, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc., with counsel, Frank Gilmore, Esq.

9:12 a.m. Court convened.

Appearances made for the record, including Chris Kemper, Esq., counsel for the Herbst Family present in the gallery.

Court noted that respective counsel have provided the Court with a set of stipulated findings of fact in this case. Court directed respective counsel to identify the remaining facts in their originally provided Findings of Fact, Conclusions of Law that remain at dispute after the noon recessed.

Defendant's Motion in Limine by counsel Gilmore; presented argument; objection and argument by counsel Pilatowicz; reply argument by counsel Gilmore. **COURT ENTERED ORDER** denying Motion with leave to renew if testimony supports renewal of such Motion.

Plaintiff's Motion in Limine to Exclude Testimony of Jan Friederich by counsel Pilatowicz; presented argument; objection and argument by counsel Gilmore; reply argument by counsel Pilatowicz. **COURT ENTERED ORDER** holding ruling in abeyance pending testimony of Mr. Friederich. Testimony may not go beyond the testimony presented in his deposition. Should the Plaintiff believe his testimony is going beyond, an objection must be raised. Court further directed respective counsel to provide Mr. Friederich's deposition to the Court for review and utilization during testimony.

Counsel Turner presented opening statement

Counsel Gilmore presented opening statement.

EXHIBITS 1 – 299 previously marked.

EXHIBITS 1 – 3, 8, 20, 25, 28, 38, 39, 42 – 58, 60 – 67, 71 – 73, 80 – 87, 90 – 92, 103 – 106, 108 – 123, 125 – 127, 131, 137, 155 – 158, 163, 164, 174, 179 – 194, 196 – 198, 223, 224, 229, 241, 244, 258, 263 and 278 ordered admitted into evidence based on stipulation of respective counsel.

Respective counsel advised the Court that redactions to Exhibits 42, 72, 126,

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE TWO

APPEARANCES-HEARING

CONT'D TO

10/29/18

NON-JURY TRIAL – DAY ONE

J. Schonlau
(Reporter)

156 and 185 – 189 have been provided to the Clerk.

Respective counsel further stipulated that all testimony will be elicited from each witness at one time so that certain witnesses will not have to be called multiple times.

10:35 p.m. Court recessed.

10:53 p.m. Court reconvened with respective counsel and parties present.

***Deposition of Jan Friederich taken March 29, 2016 opened and published.

Rule of Exclusion invoked by counsel Gilmore.

Timothy Herbst called by counsel Pilatowicz, sworn and testified.

EXHIBIT 5 offered by counsel Pilatowicz; objection by counsel Gilmore; ordered admitted into evidence with caveat should it be deemed irrelevant based on additional testimony.

Witness Herbst further direct examined.

EXHIBIT 6 offered by counsel Pilatowicz; objection by counsel Gilmore; objection overruled and ordered admitted into evidence.

Witness Herbst further direct examined.

EXHIBIT 7 offered by counsel Pilatowicz; limited objection by counsel Gilmore; objection sustained with stipulation of counsel that an involuntary bankruptcy petition was filed by Herbst.

Witness Herbst further direct examined.

EXHIBITS 21, 22 and 23 offered by counsel Pilatowicz; objection by counsel Gilmore; objection overruled and ordered admitted into evidence based on the documents being Orders entered by the Bankruptcy Court and judicial notice can be taken.

Witness Herbst further direct examined.

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE THREE

APPEARANCES-HEARING

CONT'D TO

10/29/18

NON-JURY TRIAL – DAY ONE

J. Schonlau
(Reporter)

Witness Herbst further direct examined; cross-examined.

EXHIBIT 280 offered by counsel Gilmore; no objection by counsel Pilatowicz;
ordered admitted into evidence.

Witness Herbst further cross-examined.

EXHIBIT 279 offered by counsel Gilmore; objection by counsel Pilatowicz;
objection sustained.

Witness Herbst further cross-examined; redirect examined; recross-examined;
excused.

12:01 p.m. Court recessed until 1:15 p.m.

1:18 p.m. Court reconvened with respective counsel and parties present.

Edward Bayuk called by counsel Turner, sworn and testified.

EXHIBIT 35 offered by counsel Turner; no objection by counsel Gilmore;
ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

EXHIBIT 88 offered by counsel Turner; objection by counsel Gilmore; objection
overruled and ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

3:04 p.m. Court recessed.

3:25 p.m. Court reconvened with respective counsel and parties present.

EXHIBIT 77 offered by counsel Turner; objection by counsel Gilmore; objection
overruled and ordered admitted into evidence.

Witness Bayuk, heretofore sworn, resumed stand and was further examined by

PAGE FOUR

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

APPEARANCES-HEARING

CONT'D TO

10/29/18

J. Schonlau
(Reporter)

NON-JURY TRIAL – DAY ONE

counsel Turner.

EXHIBIT 79 offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence with the caveat that William Leonard establishes its authenticity during his testimony.

Witness Bayuk further examined by counsel Turner.

EXHIBIT 128 offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

EXHIBIT 136 offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence not for the truth of the matter asserted by as to the state of mind at the time.

Witness Bayuk further examined by counsel Turner.

EXHIBIT 144 offered by counsel Turner; objection by counsel Gilmore; objection sustained.

Witness Bayuk further examined by counsel Turner.

EXHIBIT 144 re-offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence with the caveat that William Leonard establishes its authenticity during his testimony.

Witness Bayuk further examined by counsel Turner.

Discussion ensued regarding the Court's request of counsel regarding the Stipulated Findings of Facts. **COURT** directed counsel to highlight in color the stipulated portions of each one of their Findings of Facts and Conclusions of Law.

5:25 p.m. Court recessed until 9:45 a.m. on October 30, 2018.

10/30/18

9:45 a.m.

**Ongoing
Non-Jury
Trial – Day
Two**

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4185

JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

WILLIAM A. LEONARD, JR.)	
TRUSTEE OF THE ESTATE OF PAUL)	
A. MORABITO,)	
)	
Plaintiff,)	CASE NO. CV13-02663
)	DEPARTMENT NO. 4
vs.)	
)	
SUPERPUMPER, INC. ET AL,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

MONDAY, OCTOBER 29, 2018, 9:00 A.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
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A P P E A R A N C E S

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EDWARD BAYUK	106			

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1 RENO, NEVADA; MONDAY, OCTOBER 29, 2018; 9:00 A.M.

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3
4 THE COURT: Thank you. Please be seated. Good
5 morning. This is the time set for William Leonard Trustee
6 versus Superpumper, et al. We are ready to set this trial and
7 begin. The record should reflect who is present. I would
8 like you to go ahead and make your appearance.

9 MS. TURNER: Good morning, Your Honor. Erika Pike
10 Turner together with Teresa Pilatowicz. We call her Teresa
11 P., and Gabrielle Hamm from the law firm of Garman, Turner
12 Gordon. We are here on behalf of the Plaintiff who is here,
13 William Leonard, the Trustee appointed by the Bankruptcy Court
14 for the bankruptcy estate of Paul Morabito. In the courtroom
15 is Timothy Herbsts and the Herbst counsel, Chris Kemper.

16 MR. GILMORE: Good morning Frank Gilmore on behalf
17 of all of the defendants. To my left is Sam Morabito,
18 formally Salvatore, but he goes by Sam, the brother of Paul
19 Morabito. This is Edward Bayuk. They are the principals of
20 Snowshoe Petroleum, the defendant and also the principals of
21 Superpumper. Edward Bayk is the Trustee and Grantor of the
22 Edward Bayuk Living Trust.

23 THE COURT: Okay. Thank you. So we have a set of
24 stipulated facts which have not been admitted yet, but I do

1 have them, so the clerk tells me they are pending being
2 approved. So you all have agreed to those facts?

3 MR. GILBERT: That is correct. We were expecting a
4 file-stamped copy at some point this morning.

5 THE CLERK: They were e-mailed at 8:58 this morning.
6 They have now been approved.

7 THE COURT: Okay. So, Plaintiff, you are in
8 agreement?

9 MS. PILATOWICZ: Correct, Your Honor.

10 THE COURT: Okay. Thank you. Based upon your
11 stipulation, you all have given me proposed Findings that
12 included factual findings. I would like you to identify, you
13 don't have to do it right now, maybe after the noon hour,
14 those facts that you have not agreed to that you have provided
15 to me previously. That would help to me to know which things
16 are factual issues that are still in contention. We'll do that
17 after lunch.

18 MS. TURNER: Understood, Your Honor.

19 THE COURT: That brings us to the Motions in Limine.
20 We have Motions in Limine that were filed and the Motion to
21 exclude Mr. Friederich shall we start with defendants' Motion
22 in Limine?

23 MR. GILMORE: That will be acceptable to us, Your
24 Honor.

1 THE COURT: Okay. You may proceed.

2 MR. GILMORE: Based on the Court's Instruction in
3 the Pretrial conference, I will limit my argument. I know the
4 briefs well cover this issue. I will address what I believe
5 to be the most pertinent issues with respect to the
6 defendants' motion.

7 THE COURT: Okay.

8 MR. GILMORE:. Limited argument and we can get going
9 with this trial. Defendants' Motion in Limine raises a
10 singular issue. The Complaint, the operative pleading in this
11 case raises a number of accusations, some of which are
12 directly leveled at my clients and some which don't have
13 anything to do with my clients. But all assert an exchange of
14 assets between Paul and some other person. Some cases, Paul,
15 my client -- I will say for the record there are two Morabitos
16 that will be discussed at length. One, Paul Morabito, the
17 Chapter 7 debtor and his brother, Sam. I will probably refer
18 to them as Paul and Sam. No disrespect Sam Morabito. Sam
19 prefers it, if that is acceptable to the Court. It is easier
20 than having to say it every time. I would appreciate that
21 latitude.

22 THE COURT: That's fine.

23 MR. GILMORE: In the operative Complaint, as I said,
24 there is a paragraph which sets forth a number of alleged

1 allegations some of which address my clients, some which do
2 not. We had several years of discovery that you know involved,
3 as this Court has seen, dozens of depositions. 125,000 pages
4 of e-mails just between the lawyers and Paul Morabito. That
5 doesn't even include my clients' e-mails. And tens of
6 thousands of other pieces of documents including documents
7 that were involved in the original 2007 Herbst litigation with
8 Paul Morabito in which my clients had a very limited roll.

9 The point is the discovery in this case was
10 expansive. The claims that were originally pled in this case
11 were expansive, and the rules require understand 16.1, it is
12 very definitive, a Plaintiff asserting damages against
13 defendants has an obligation to break down and identify and
14 explain the computation of any category of damages which the
15 Plaintiffs intend to come to trial and attempt to prove
16 against my clients. The Plaintiffs did not do that. The rule
17 requires it and they did not do it. The Plaintiffs'
18 disclosures with respect to damages on a few of but not all of
19 their supplemental 16.1 production, there were five in total
20 from the Plaintiff, the only thing they identified in those
21 disclosures with respect to damages was they intended to come
22 to trial and prove damages not to exceed -- or not to be under
23 8.5 million dollars. That's it. So when we performed the
24 discovery, the only thing the Defendants know about everything

1 that was alleged in the Complaint, everything that was done in
2 the discovery, everything that had any bearing on this case
3 related to the 2007 Herbst case. All of those things put
4 together, we are supposed to ascertain the computation of
5 their category of damages as well, we'll prove it at trial but
6 it is going to be more than eight and a half million dollars.

7 In the last couple of years the Supreme Court has
8 addressed this issue and made it very clear. If you want to
9 come into trial and try to prove damages against Defendants,
10 they are entitled to know how you computed those damages and
11 what those damages are. In fact, the allegations that are
12 alleged in the Complaint, only a fraction of those are going
13 to be tried today or this week. Many of those were abandoned,
14 had no bearing on this case to begin with. The point is the
15 16.1 requirement is an affirmative obligation to tell my
16 clients exactly what they are intending to be defending in
17 this trial. The Supreme Court says why they are required to do
18 that is because the Defendants need to know for purposes of
19 exposure, for purposes of settlement, for purposes of
20 understanding the breadth of the case exactly what their
21 facing at trial. That wasn't done. The Plaintiffs can't
22 dispute that it wasn't done. Instead, the Plaintiffs oppose
23 the Motion in Limine and say, well, we hired experts to
24 appraise these properties. Well, that is by and large

1 irrelevant now because the Plaintiff isn't bring anybody here
2 to challenge the valuation. In fact, in their stipulated
3 facts, the values are basically stipulated with respect to all
4 but two properties. So that is an irrelevant point. But more
5 importantly, the Plaintiffs say there were only three sets of
6 transfers that they are pursuing in this case. Only three.
7 They break it down very clearly not only in their Opposition
8 but they refer the Court to the Motion for Summary Judgment.
9 The transfers involve three discreet sets of transfer and not
10 anything else. So my Reply said, fine, we grant you that you
11 hired experts that appraised these property values. And I
12 understand the Supreme Court Juris Prudence, if you hire
13 experts and we hire experts, and they have competing
14 valuations, we can reasonably expect to have to face those
15 valuation issues for purposes of trial.

16 But what about all the other allegations in the
17 Complaint that are not addressed by the expert valuation? Why
18 are we defending those? The primary thrust of my motion, Your
19 Honor is to require-- is to enter an Order in Limine
20 preventing the Plaintiff from putting in evidence of any
21 damages which were not disclosed pursuant to 16.1. That is my
22 request. But I also recognize for purposes of the property
23 valuations, I recognize, and I won't argue today, that those
24 property valuations caught us by surprise. But there are other

1 transfers for which there are no valuation. There is no
2 valuation with respect to the card lock properties in eastern
3 Nevada. No discussion. They don't break down any form of
4 damages under 16.1 telling us what they think those values
5 should be or why those damages are included. So we are here
6 to guess as to all of those exchanges which were not part of
7 the property valuations or the appraisals. We are here to
8 guess exactly what the damages model is. That is the basis
9 for the Motion in Limine.

10 If the Court has any questions for me on that issue,
11 I reserve a minute in case it is necessary to respond.

12 THE COURT: All right. Thank you.

13 MS. PILATOWICZ: Good mornning, Your Honor.

14 THE COURT: Good morning.

15 MS. PILATOWICZ: Your Honor, the Plaintiff made
16 clear in his Complaint and initial disclosure what the
17 Plaintiff was seeking in this case. He's continued to make it
18 clear throughout the discovery, throughout pleadings,
19 throughout expert testimony. The only transfers identified in
20 the Complaint that aren't part of trial are a six million
21 dollars transfer that went offshore to an entity called Seth
22 and Trustees that is part and parcel of the fraud we are not
23 seeking to recover that from the Defendants. And they are
24 aware of that. The only other issue is a \$600,000 note that

1 now has become part of the Bankruptcy Court and is being dealt
2 with in that case. What were seeking are limited to what the
3 Defendants have identified. There is one asset I will get
4 into a little more, that is part and parcel of the Superpumper
5 transaction that I think is the only place where the
6 Defendants are contending there might still be an issue.

7 So first, Your Honor, I want to start with this is a
8 fraudulent transfer case. And typical in these cases what the
9 Trustee is seeking is to undo the transfers, recovery of the
10 fraudulently transferred properties. If that can't be done or
11 if the equities provide, a judgment can be granted, a judgment
12 in the amount of the value of the transfers. So that is where
13 we get to an issue of damages in this case. What was clear in
14 the 16.1 initial disclosures, what has been clear throughout
15 discovery and what was clear in the Complaint is what the
16 transfers were. And we were seeking to recover them. We go
17 to expert testimony when it becomes necessary on values and
18 things like that to get to the amount of what the Judgment
19 should be. And as the Defendants have acknowledged, there has
20 been expert testimony. There has been expert disclosures.
21 There have been depositions. You will hear from multiple
22 experts. And, initially, we believe that amount exceeded 8.5
23 million dollars. That was our best guess when we did the 16.1
24 disclosure. That has now be refined to be more than that, but

1 that information has been provided. This isn't a case like the
2 cases that Defendants cite in their pleadings, a personal
3 injury case where we are talking about medical bills or a lost
4 profits case where we are talking about business information
5 that is being held by the Plaintiff that the Defendants don't
6 have access to. This is a case where have been fraudulent
7 transfers. This is a case where the Defendants participated
8 in the fraudulent transfers. This is a case where the
9 Defendants are the gatekeepers of the information and the
10 gatekeepers of the damages information. We had to pry it from
11 them and we filed a Motion to Compel. There have been Motions
12 to Compel that have been granted, and all that information has
13 been disclosed. All of that information is in the hands of
14 both parties. There is no secret what it is that we seek
15 today. We set forth to undo the transfers to Bayuk and
16 Salvatore Morabito as laid out in the Complaint. The
17 transfers of the real properties, the Los Olivos property, the
18 El Camino property and the Panorama property. The transfers
19 of the property through the Bayuk equity interest and the
20 transfer of the Superpumper equity interest which includes
21 transfer of an asset you will hear about called Raffles which
22 in the transfer of that asset, there was \$420,000 that was
23 distributed to Sam or to, I am sorry, I believe to Bayuk and
24 \$350,000 transferred to Sam within a week of the Judgment.

1 There is no secret what the amount of damages we are
2 seeking to recover in that is. There is \$750,000 that went
3 out. We are trying to undo the transfer and get the \$750,000
4 back. I believe that that is the only, only asset based on
5 the argument and the Reply that the Defendants have any issue
6 with today. And as set forth in our proposed Findings and
7 Conclusions of law and I mentioned earlier, that is part and
8 parcel of the Superpumper transaction. Again, there is no
9 secret as to what we are seeking.

10 Your Honor, I do want to address two cases cited in
11 the Reply because we didn't have a chance to address those.
12 The holdings or what they are represented to hold isn't
13 entirely accurate and supports the Plaintiff's position in
14 this case. The first case is Darbin Enterprises v. Travelers
15 Casualty Insurance which is available at 2018 West Law 1448240
16 an unpublished Nevada case. The Defendants contend that it
17 says if Plaintiff didn't comply with the 16.1 obligation,
18 which we don't have here. Plaintiff did comply. Even if he
19 didn't, they contend that case says you can grant sanctions
20 that they request. That is not what that case says. What
21 happened in that case was there was no 16.1 disclosures in a
22 business dispute case and there was no expert disclosed. So
23 the court granted summary judgment prior to trial. The Court
24 looked at the Plaintiff and said you don't have anyway to

1 prove your damages at trial. That was the basis for upholding
2 the Summary Judgment. The actual case had more of a nuance.
3 It dealt with whether surprise in terminating a deposition
4 would allow for Rule 60B relief. But when it came to
5 discussing the initial disclosures, how that played into the
6 Summary Judgment the finding was, because there were no expert
7 disclosures, the Plaintiff couldn't prove the case, therefore,
8 Summary Judgment was granted. That certainly is not what we
9 have here. We have multiple experts you will be hear that
10 have been disclosed, and multiple experts that have been
11 disposed.

12 In the case of Freeman very Fisher, again, that was
13 a case based on a business dispute, a loss profits case.
14 There wasn't an issue with the 16.1 disclosures. What happened
15 in that case was the Defendants filed a Motion in Limine, and
16 after the Motion in Limine was filed, the Defendants filed --
17 or the Plaintiff filed their expert report disclosure, expert
18 report. That was another case where the issue was the
19 Defendant had no information as to what the damages being
20 sought were. There were never any expert disclosures. That
21 is not the case here. There has been, as Defendants conceded
22 years of discovery, multiple pages, multiple depositions,
23 multiple expert reports. The damages are, what the Plaintiff
24 is seeking including damages since the fraudulent transfers

1 can't be undone have been disclosed in the Complaint, have
2 been disclosed in the 16.1 disclosures and have been disclosed
3 over and over and over in discovery and in the pleadings that
4 have been filed in this case.

5 Your Honor, if you have any questions, I am happy to
6 answer them.

7 THE COURT: Okay. No questions.

8 MR. GILMORE: Your Honor, everything she just
9 explained about her case was available to her at the close of
10 discovery. Everything. There is nothing that she's learned
11 after discovery closed in this case for which she hadn't filed
12 a supplemental 16.1 disclosure which could not have been
13 explained. Everything that she just said. She didn't give
14 any excuse why they didn't do it. She could have given the
15 excuse well, we didn't know the rule. We missed that. In all
16 the things we could have done to prepare for trial that is one
17 of the things we forgot. The excuse you got was we should have
18 been able to figure it out because we did four years of
19 discovery, disclosed, and this is not an exaggeration,
20 hundreds of thousands of pages of discovery, hundreds of
21 thousands. And the hours and hours and hours of depositions.
22 And after all of that was done, discovery closed, and right
23 when discovery closes, the obligation is to produce a 16.1
24 report that says now we have done everything we know,

1 everything we need to know for trial, here is what case we
2 plan on putting against your Defendants. They didn't do it.
3 They can't deny they didn't.

4 In the Opposition to the Motion in Limine, I would
5 like to read from page 5 because this is the essence of my
6 claim. Page 5 of the Opposition to my motion says: To be
7 clear, and as previously disclosed, Plaintiff seeks to void
8 and recover three sets of transfers. One, it says first the
9 Laguna real properties. The Laguna real properties are
10 residences, two residences that have an adjoining backyard.
11 That is first. And the Opposition identifies the value at
12 this point in time. My expectation was they still were
13 challenging the values of these property. That is why they
14 entered the numbers. That is not going to happen at trial.
15 The point is, they say the first series of challenges that
16 they are making is the Laguna real property. Second in bold
17 italics they say debtor had a 50 percent interest in Baruk
18 properties. Baruk like the mine Barrick. That is two
19 commercial properties in Laguna Beach. Those values were
20 exchanged through experts. And, third, Defendant had an 80
21 percent in Superpumper. Superpumper was the Arizona gas
22 stations. Then the Opposition says Plaintiff's Motion for
23 Partial Summary Judgment specifically identified these
24 different sets of transfers. Those are the transfers we are

1 going to trial on today. That is their filing and response to
2 my Motion in Limine. This should have been in the 16.1. This
3 Opposition is a mea culpa, well, maybe we did, maybe we
4 didn't, but here now you have it. Take a look at their
5 proposed Findings of Fact. It doesn't challenge only these
6 three sets of transfers. There are lots more, ones that could
7 have come from the discovery, could have come from the 2007
8 Herbst trial could have come from anywhere. Could have come
9 from any of the hundreds of thousands of pages we did in
10 discovery. Their Opposition says be prepared for three sets
11 of transfers. Then the trial prep materials introduce dozens
12 and dozens of exhibits that have nothing to do with those
13 three sets of transfers.

14 So what are we trying in this case? Are we trying
15 just these three? To be clear in previously disclosed,
16 Plaintiff seeks to void three sets of transfer. They are
17 going ask you for damages on more than three. And they are
18 going to infer, because of all the things Paul did, nobody is
19 going to dispute my clients had nothing to do with, that those
20 should be talked about and discussed in this case. That is why
21 the Motion in Limine was filed.

22 Lastly, we served Interrogatories in this case as
23 you would expect. We said please set forth and describe all
24 the damages you have incurred as a result of the alleged

1 transfers. The first response was objection, we can't answer
2 that. Then once the Trustee got involved, their response was
3 the Trustee has been damaged in the amount at least in the
4 total fraudulent transfer up to eighty-five million plus
5 attorney's fees and costs. No supplement. To be determined at
6 trial. No supplement. So we are supposed to come to trial
7 with Interrogatories that say you are going to guess. It is
8 going to be a bunch of transfers, at least eighty-five million
9 dollars and no 16.1 supplement.

10 So my request is and the cases I cited, the Freeman
11 case, are not for the facts. They are for the remedy. Rule
12 37 says if you don't disclose 16.1 damages, you don't get to
13 offer it at trial. They admit there is three sets of
14 transfers. Now they going to come into trial and try to offer
15 damages on all kinds of damages in addition to the three. My
16 request under the Freeman case, Rule 37 and others, is this
17 Court should not permit presentation of evidence for damages
18 purposes which does not fall within those three sets of
19 transfers. Thank you.

20 THE COURT: Thank you. The Court has reviewed the
21 Motion in Limine, Opposition and Reply. I have also taken
22 into consideration your arguments today. Because I think that
23 the remedy that is being requested by the defense is the most
24 strenuous remedy available, and because I believe this could

1 have been raised sooner rather than in a Motion in Limine, I
2 am going to deny your request. If, as we go, if something
3 specific hits you, the defense, and you say wait a minute,
4 Judge, there is no discovery on this before, please bring that
5 to my attention and I will consider excluding the testimony on
6 a case by case basis.

7 Then we also have the Motion to Exclude Jan
8 Friederich as an expert.

9 MS. PILATOWICZ: Thank you, Your Honor. There are
10 multiple deficiencies that relate to the Jan Friederich
11 disclosure as an expert. Each deficiency on its own is
12 sufficient to grant the motion. It is incredibly obvious how
13 wrong the disclosure is and why Friederich must be excluded.
14 What happened, Defendants ultimately are seeking to use a
15 purported expert without following the requirement of the
16 rules disclosing any expert report which prejudices Plaintiff.
17 First, Friederich is not a non-retained expert. The classic
18 example of a non-retained expert is a treating physician,
19 someone who is testifying as to the facts of the case, their
20 own personal perception but has the expert credentials. This
21 is not what we have here. Friederich was specifically
22 contacted and retained to provide a rebuttal to the McGovern
23 report. The McGovern report is Plaintiff's expert report on
24 the value of Superpumper. This is not a situation where

1 Friederich prepared a valuation during his time of employment
2 with Superpumper and is here to testify to it. He wasn't
3 disclosed with initial expert disclosure. He wasn't disclosed
4 with valuation non-retained expert then. He was retained to
5 provide expert opinion on why he believes McGovern's expert
6 report is wrong. It was made clear in the case of Parks v.
7 Blanchett cited in our moving papers, that even in the case of
8 a classic non-retained expert, a treating physician, the
9 treating physician may not include information obtained from
10 other sources nor can the doctor opine on any medical reports
11 or opinions received from other doctors. That is exactly what
12 Defendants are seek to use Friederich for here.

13 Let's look a little closer at what Friederich seeks
14 to offer expert opinions on. One, how fuel sales should be
15 measured. Two, the industry standard for EBITA. Three, what
16 a buyer will or will not want to acquire in a sale. Fourth,
17 impact of contingent liability on valuation in 2010. When you
18 look at the Opposition we see it has been expanded more. We
19 hear Friederich is supposed to be testifying to things such as
20 "industry and market specific factors that bear on any
21 potential arms length transaction between a buyer and seller."
22 And, "ow gas stations are valued by industry experts." These
23 are not percipient testimony related to the facts of this
24 case. These are general conclusions you would typically see

1 in an expert report from an expert who is opining on what the
2 industry standards are. The reason why it is important how an
3 expert is disclosed as a retained expert or non-retained is
4 because of the requirement a report be produced, and that
5 report is required to include information such as opinions,
6 the basis therefore, data and information considered and
7 exhibits to be used to support the testimony. That wasn't
8 done here. And that prejudices the Plaintiff.

9 Further more Friederich simply does not have the
10 expertise for what he's purported to testify to. Again, he was
11 not named as an expert to opine on valuation in the initial
12 disclosures because he hadn't completed a valuation. He's been
13 named as a rebuttal expert to rebut McGovern's report. James
14 McGovern is a qualified certified public accountant, certified
15 valuation analyst for the National Association of Certified
16 Valuation Analysts. Friederich has none of those
17 qualifications. While he may have some industry experience,
18 there is nothing in his background that can suggest whether
19 James McGovern, a certified business analyst expert qualified
20 in many courts including this one, properly valued the
21 business using the generally accepted methodology. The only
22 conclusion is Friederich is not a proper expert, and to the
23 extent he's a proper expert at all, he hasn't been properly
24 disclosed. Based on that, we request Friederich be excluded

1 as an expert and the motion be granted.

2 THE COURT: Okay. Thank you.

3 MR. GILMORE: In my Opposition -- I am sorry. In my
4 Opposition to the Plaintiff's Motion in Limine on Jan
5 Friederich, I established how exceedingly qualified this man
6 is. This man, it will be definitively established, this man
7 knows more about gas stations, how they operate, how they are
8 actually evaluated, arms length transactions than anybody this
9 Court will hear from including my clients. That is point
10 number one. Mr. Friederich, the depth of his experience in the
11 actual market place cannot be questioned. In fact, in the
12 motion in the Reply they didn't really attempt to challenge
13 his qualifications because they knew how qualified he was.
14 They have taken his deposition. They know the extent of
15 education. They know he has an advanced economics degree.
16 They know he worked in the gas station and C-store business
17 his entire life. He is a man of advanced age. That is
18 undisputed. The only question is not really whether he's
19 experienced enough. The question is whether or not he should
20 have been identified as a non-retained expert or as a retained
21 expert. The evidence is undisputed that Mr. Friederich was
22 hired by Superpumper in 2009 a year or more before these
23 alleged transfers, a year or more before the Herbst judgment,
24 and he was hired specifically to oversee and direct operations

1 of Superpumper. He was the de facto operations manager. So
2 what does the rule say about retained expert versus
3 non-retained expert? Well, Plaintiff doesn't focus on the
4 rule. They just explain their interpretation of what a
5 non-retained expert should be. But the rule is very clear and
6 supports our designation. 16.1(a)(2)(b) requires a witness who
7 is "retained or specially employed to provide expert
8 testimony," to be a non-retained expert-- a retained expert with
9 a report. Jan Friederich doesn't fall under that category. He
10 was in not retained or specially employed. He works for
11 Superpumper. He's one of their managers. He understands and
12 deals with the operations. How can he be any different than
13 the treating physician? The treating physician is somebody
14 who is not involved in the dispute but has underlying personal
15 knowledge of the facts. Jan Friederich has underlying personal
16 knowledge of the facts that predate this dispute by several
17 years. On the other hand, James McGovern, he's a hired gun,
18 doesn't have any personal knowledge of anything that happened
19 in this case. He learned everything he knows about this case
20 from reading the file. He's a retained expert retained
21 specifically for the purpose of giving testimony. Jan
22 Friederich was already working for Superpumper. His position
23 is, wait a minute, James McGovern says all these things about
24 gas stations. He doesn't know anything about gas stations. If

1 he did, he would have talked about the impact of fuel price
2 period gallon on valuation, how EBITA really works. He would
3 have talked about buyers in fair market transactions only
4 acquire operating assets. They don't buy all of these balance
5 sheet assets. So he was not specifically retained to value the
6 company. He was already retained by Superpumper and he was
7 asked to provide his personal knowledge of these facts. He has
8 personal knowledge of the financial condition and performance
9 of this company that predates this lawsuit and supposed to
10 offer his informed opinions which are informed not only by his
11 expertise but his personal knowledge.

12 His opinions and observations are informed by his
13 expertise and his personal, personal exposure to these facts.
14 In a situation understand 16.1(a) (2) (b) where the witness is
15 testifying based on their personal experience and will offer
16 opinions based on their personal experience and expertise, the
17 are the classic quintessential non-retained expert.

18 The secondary point they raise, well, he's going to
19 come into court and argue and testify to all kind of things
20 that are beyond his summary of his opinions that are shown in
21 the disclosure. That is yet to be seen. Mr. Friederich can sit
22 here and this Court can understand exactly what he's
23 testifying. If the Court believes he's going beyond the scope
24 of his testimony that was identified in the disclosure, the

1 Court can say I am not going to hear that. But that is not a
2 basis to exclude it just because the Plaintiff think he might
3 be talking about things they don't want him talk about. The
4 classically non-retained expert is that person who has
5 sufficient expertise to assist the Court in complicated
6 factual matters but also is informed by personal knowledge.
7 And he has personal knowledge. That was borne out by the
8 papers. Any questions?

9 THE COURT: No. Thank you. Counsel.

10 MS. PILATOWICZ: Thank you, Your Honor. Just
11 briefly. I want to make sure the record is clear. Friederich
12 is not a current employee of Superpumper. He was retained
13 back years ago. In this case, what happened was after McGovern
14 produced his report, Defendants I presume contacted him. He
15 was certainly provided with McGovern's report, and he's being
16 presented to provide rebuttal opinions on an expert valuation.
17 You heard Defendants acknowledge that what he did when he was
18 with Superpumper, he oversaw the operation. He didn't perform
19 valuations. He's not here to testify to any facts regarding
20 the operation. He's here to provide a rebuttal report to a
21 valuation expert. That requires disclosure consistent with
22 Rule 16.1, then an expert report be produced. That wasn't
23 done. That is why he needs to be excluded. Thank you, Your
24 Honor.

1 THE COURT: Thank you. It is my understanding that
2 Mr. Friederich's deposition was taken, and you have that; is
3 that correct?

4 MS. PILATOWICZ: That is correct, Your Honor.

5 MR. GILMORE: Right.

6 THE COURT: I think this is a little closer call for
7 me with regard to whether or not he was properly disclosed. I
8 have not reviewed his entire deposition, so I don't know
9 anything more than the excerpts both counsel have provided to
10 me in the pleadings. However, in spite of the fact he does
11 appear to be giving expert opinions that may be beyond his
12 employment as a non-retained expert, I am going to withhold
13 ruling on that until his testimony.

14 In addition I will order, however, that his
15 testimony may not go beyond his deposition. So we have no
16 report, but at least we have a deposition that Plaintiff has
17 been in receipt of for some time. And so the testimony can't
18 go beyond that deposition. No other opinions. And then if
19 there is an opinion that you believe is improper, you may
20 raise that as we go. Who has Mr. Friederich's deposition?

21 MR. GILMORE: We both do. I believe it is not in
22 the binders.

23 MS. PILATOWICZ: It is not in the binder. It was
24 contemplated he would testify live. We have the originals and

1 copies.

2 THE COURT: I would like you to lodge the originals
3 with the Court so I will have them. I might even review them
4 before his testimony so I have an opportunity to kind of be
5 familiar with all of his appraisals as we move into the
6 testimony.

7 MS. PILATOWICZ: We will, Your Honor.

8 THE COURT: Thank you. That gets us to opening
9 statements of the Plaintiff. Ms. Turner

10 MS. TURNER: Good morning again. So this case goes
11 back to Judge Adams' oral rulings September 13, 2010 when he
12 declared his Findings and Conclusion adverse to Paul Morabito.
13 At the same time, he dismissed Ed Bayuk and Sam Morabito as
14 liable to the Herbsts. At the same time, he said Paul Morabito
15 engaged in fraudulent conduct, he's going to owe or be liable
16 to the Herbsts in excess of eighty million dollars with
17 additional proceedings to occur on punitive damages.

18 He said there is nothing here that gives me the
19 ability to put Ed Bayuk and Sam Morabito on that same
20 Judgment. That is important. We are here today fast forward
21 September 13th of 2010 until October 1 of 2010. That is
22 really the time period that most of the testimony and the
23 evidence is going to focus on, because Paul Morabito continued
24 his fraud. And on the eve receiving Judge Adams' oral ruling,

1 he took aggressive and intentional actions to move his assets
2 away from any place that could be easily attached by the
3 Herbsts, and he knew from the oral ruling that Ed Bayuk and
4 Sam Morabito was a good place to make these transfers. They
5 weren't going to be on the Judgment, so that was a quick place
6 to send his assets. Now we have three gather categories of
7 transfer, but they weren't simple. It wasn't just Paul
8 Morabito giving a dollar to his brother. Nothing was that
9 simple. Now to quote Brent Adams from his oral ruling, he
10 actually aptly quoted President Reagan who said there is
11 simplicity which lies beyond complexity. This is a fraud
12 case. It is rare anybody stands up and says I am a fraudster.
13 So this case is one that is built on circumstantial evidence.

14 We thank you in advantage for your patience. Any
15 time you put on a circumstantial evidence case, it is pieces
16 that relate to one another. Sometimes that can be laborious.
17 There are little pieces. It might not be known why that piece
18 is relevant until we see that second piece and we build this
19 picture of the continued fraud, and the purpose, the intent
20 that Paul Morabito started in the underlying case and
21 continued forward after receiving that oral ruling is I want
22 to deny value to the Herbsts. I want to deny value. If I am
23 liable, I am going to deny funds, the ability for the Herbsts
24 to actually execute on their judgment. That was after the

1 September 13, 2010 oral ruling from Judge Adams. That is
2 Exhibit 1 in the books. It is stipulated. It took until
3 October 11th to have a written Findings of Fact and
4 Conclusions of law. It was then August 23 of 2011 when the
5 final Judgment was entered that incorporated the punitive
6 damages, attorney's fees and costs. The final Judgment in
7 August 2011 was for over 140 million dollars grounded in
8 fraud. As a result of that fraud in the Judgment it was
9 nondischargeable. It was nondischargeable in bankruptcy.
10 That same Judgment we are here today because Paul Morabito
11 won't take responsibility for his actions. He breached his
12 contract and defrauded the Herbsts in the underlying case as
13 the result of the 2007 purchase of Berry-Hinckly. He's played
14 games to such an extent Mr. Herbst will describe he's been
15 completely frustrated in his collection attempts.

16 The Plaintiff in this case is now Mr. Leonard who is
17 a U.S. Trustee. He was appointed by the Bankruptcy Court to
18 chase the assets of Paul Morabito, bring them back in the
19 bankruptcy estate for the benefit of the creditors. He will
20 testify about that standing.

21 Within two days of the oral ruling, Paul Morabito
22 hired counsel to "protect his assets and/or escape liability
23 on account of the Judgment." There is going to be a lot of
24 testimony to describe the transactions and those categories of

1 transactions to Your Honor.

2 At the end of the day, there will be no real dispute
3 that the Plaintiff has a claim, that Herbsts had a claim at
4 the time of the transfers. The Herbsts are creditors. Now
5 the Plaintiff is standing in the shoes of Paul Morabito's
6 estate for the benefit of the creditors. There won't really be
7 a dispute that the subject transfers occurred. The real matter
8 to be discerned, the facts to be resolved, is whether those
9 transfer were for the purpose of hindering, delaying or
10 preventing collection. There is no question the Herbsts were
11 prevented, hindered and delayed from collection. We have to
12 look at the intent. We have look to Paul Morabito. We looked
13 at Paul Morabito, the debtor, for the answer, and it is a
14 resounding yes. Mr. Gilmore, in his argument a few moments ago
15 used an interesting word, "exchanges." This is about exchanges
16 for estates. Exchange is a word that implies a quality in
17 transfers. When you say exchange, the dollar's worth. A
18 Snicker bar is worth a dollar. That is what that implies.
19 That is not we have here. In these three categories of
20 transfers, we are going to see there was no quality in
21 exchange. In fact there was a mad scramble after the oral
22 ruling with transfers made to Mr. Bayuk and Sam Morabito where
23 values were affixed after the transfers sometimes changed. And
24 in exchange for the transfers of real assets, shares in

1 companies, real property, personal property, you had a sham
2 note transferred to Canada so the Herbsts couldn't attach the
3 debt payments.

4 You have further exchanges, and we are going to go
5 through all of these so that Your Honor can see at the end of
6 the day the simplicity lies beyond the complexity. We have
7 roughly a three month period of time where virtually all, all
8 of Paul Morabito's assets were transferred from Nevada
9 outside. The sole exception was the Reno house, not too easy
10 to transfer that interest, and that home was retained by Paul
11 Morabito as a purported exchange for much more valuable
12 property in California.

13 Now what we are going to have at the end of this
14 trial is a lot of facts that support a determination from this
15 Court there has been travesty of justice. Now the Motion in
16 Limine that was just resolved on what do we want at the end of
17 the day, what are we seeking at the end of the day,
18 unfortunately, it has been a moving target. I will use one
19 category of transfers that is at issue, that is Superpumper.
20 Superpumper is the eleven gas stations in Arizona. There was
21 a holding company, and that holding company was consolidated
22 with Apco, and you had a new company created out of New York
23 and had transfers of interest in exchange for notes, and you
24 had cash being provided to Sam and to Paul. At the end of the

1 day, there is no asset to be unwound, no transfers to be
2 unwound which will make us whole. And, of course, these
3 details are discovered over the course of the case.
4 Superpumper is not even in the name of the Defendants or their
5 affiliate anymore. They transferred the interest to Jan
6 Friederich after the fact. It is now being held by Jan
7 Friederich constantly getting further and further away from
8 us. That is why we now have no remedy but for money damages.

9 Your Honor, we'll make it perfectly clear at the
10 conclusion of the evidence how these three categories of
11 transfers should be unwound. Or, if they can't be unwound,
12 how damages should affix.

13 We appreciate your patience going through this
14 process. We really aren't interested in wasting anybody's
15 time. We'll only focus on what is relevant. Thank you.

16 THE COURT: Thank you.

17 THE COURT: Counsel.

18 MR. GILMORE: Thank you, Your Honor. What Plaintiff
19 makes clear in their opening statement is that this is a case
20 against Paul Morabito. Paul Morabito is on trial here, but
21 Paul Morabito is not a Defendant. Paul Morabito has no seat
22 here. Paul Morabito would not come into this state to
23 testify. He's not the Defendant. My clients are. Plaintiff
24 didn't suggest there is going to be evidence that address what

1 my clients intent was. This whole case should be about what my
2 clients intent was. What was their knowledge? What was their
3 value? What were they desiring to achieve? We could be in
4 this Court for weeks of the Plaintiff and their team of
5 lawyers and witnesses can come in and talk how bad of a guy
6 Paul Morabito is. Aside from establishing the fact there was a
7 Judgment, none of that quite honestly is relevant. If the
8 Plaintiff's theme of this case is that the facts present the
9 quintessential fraudulent transfer, all they have to do is
10 lump Paul Morabito with anybody else and there is guilt by
11 association. That is not what the statute permits. Rather,
12 the Plaintiff has to establish by clear and convincing
13 evidence. If this is is actually the quintessential
14 fraudulent transfer, they won't be able to do that against my
15 clients because these transfers were legitimate, done for
16 reasonable and fair value. There was an actual exchange. It
17 was not secret. It was wide open.

18 So the complexity of this case quite honestly is
19 going to be understanding how my clients if it into the big
20 picture of the Herbsts versus Paul Morabito grudge match that
21 has now been going on for over eleven years.

22 If Plaintiff suggests that is the quintessential
23 transfer, the first thing they should be able to provide is
24 evidence Paul Morabito intended to remove assets from, as the

1 statute says or the cases say, beyond the reach of the
2 creditor. The facts of the case will not support that theory.
3 In fact, it is undisputed the assets which Paul Morabito owned
4 were going to be the subject of these three categories of
5 transfers were already protected by Nevada law to which the
6 Herbsts were not going to have access. They were held either
7 in limited liability companies protected by Nevada law which
8 well predated the Herbst dispute. They were held in an S
9 corporation in Nevada which provides protection against
10 execution by creditors, or they were held individually as
11 tenants in common with Mr. Bayuk who was Paul Morabito's
12 partner. So the irony of this fact pattern is that the primary
13 premise of the facts that Plaintiff will attempt to assert is
14 that Paul Morabito took actions to remove these assets from
15 the reach of his creditors, whereas the undisputed fact is
16 that they were never within the reach of the creditor to begin
17 with. The best the Herbsts could have done was obtain a
18 charging order against assets my clients took which were
19 negative cash flow. Losing money. Those are the undisputed
20 facts.

21 Second, if the Plaintiff wants to prove the classic
22 fraudulent transfer, they would have to introduce evidence
23 where the transfer or receive some elicited benefit after the
24 transfer. The classic transfer is, hey, I have got a Ferrari

1 in my garage and a judgment creditor is breathing down my
2 neck, will you take my Ferrari and title it in your name. I
3 will keep it in my garage, drive it, still be the one to show
4 it off. That is the quintessential fraudulent transfer.
5 Plaintiff can't make that case with evidence, because the
6 assets that my clients received, the transfers that we are
7 talking about my clients received were negative cash flow
8 commercial operations, number one; or, two, they were personal
9 residences that don't provide any income at all. There is no
10 evidence that Paul Morabito ever received a dime from the
11 entities that he sold to my clients. Quite honestly, it is
12 impossible he could have because those entities did not spit
13 out any net positive income until after this case had already
14 started. So this is not and the facts do not support
15 allegation that the properties that my clients received, not
16 the big picture, not the big picture that Paul is a bad guy,
17 he did a bunch of bad things, but the facts surrounding what
18 my clients did. The business operations were not profitable in
19 the way they could have been diverted illicitly back to Paul
20 so he received the benefit. So the facts don't meet that
21 quintessential element of the transfer.

22 The third element of the quintessential fraudulent
23 transfer is the situation where the transfers were clearly
24 intended to divest himself of an asset to somebody who has no

1 reasonable explanation or rationale for receiving it. Those
2 facts can't be made out in this case either, Your Honor,
3 because the evidence is undisputed. Much of this evidence is
4 undisputed. It is simply a matter of being able to organize it
5 and understand it.

6 The undisputed evidence this case will show that
7 Paul Morabiot and Ed Bayuk have been business partners over 20
8 years over a number of different enterprises. These were not a
9 situation where the transfers are given to somebody who
10 doesn't have an explanation for why they have taken it. With
11 respect to the Superpumper, Sam was the operator. He was the
12 boots on the ground operator. It did make sense with him when
13 Paul has this death sentence of a Judgment against him, Sam
14 would say I'd like to take and buy my baby of Superpumper, so
15 I can own and operate it. This is not a situation Paul said
16 to somebody I need to you hold this asset for me, and the
17 recipient said I can't really explain why I have it, but,
18 okay, I will participate in the fraud. Those elements are not
19 present here, and those facts are not present here.

20 Fourth, the singular badge of fraud that can prove a
21 fraudulent transfer has to do with whether or not value was
22 exchanged. Nevada law is very clear. Does the value exchange
23 between the parties shock the conscience to such an extent you
24 really cannot objectively believe that this ws a fair or

1 legitimate transfer. Well, we did three years of discovery.
2 There were lots of experts hired. The facts are none of these
3 valuations are going to be disputed. The facts will show the
4 properties were appraised. They were valued. They were
5 transferred. There were deeds. There were contracts. And
6 the Plaintiff isn't going to come in here and argue those
7 values. Those values are stipulated with two exceptions, and I
8 will address that in a minute. So this is not the situation
9 where I buy my Ferrari for a dollar and try to pass it off as
10 a legitimate exchange. Plaintiff is not going to come in here
11 and challenge the values my client assigned to their assets
12 that they bought and sold.

13 Fifth, the classic fraudulent transfer involves a
14 backroom deal, underhanded agreements, under the cover secrecy
15 and subterfuge. There are no facts suggesting that occurred in
16 case. The transfers were done with MAI appraisers. There were
17 contracts created by lawyers, and everything that was
18 transferred was done by way of public record and filing. The
19 Deeds were all recorded. We are not talking about unrecorded
20 transfers of title. We are not talking about secret Deeds of
21 Trust. They were reported in the books of the County Recorder
22 of Washoe County where it mattered, in Oregon county where it
23 mattered and Arizona where it mattered. Anybody with a
24 computer anywhere in the world could have discovered these

1 transfers in five minutes of searching. This was not done
2 under the cover of secrecy and subterfuge. So that doesn't
3 support the classic fraudulent transfer.

4 Lastly, the class fraudulent transfer involves a
5 transfer to divest himself of his assets in order to make him
6 Judgment proof. That is probably the primary thrust of the
7 Plaintiffs' case. Certainly it was with their opening
8 statement. Well, Paul was never judgment proof, at least not
9 according to the Plaintiffs. At least not according to the
10 Herbsts. The facts are undisputed in this case. We will show
11 even after oral Judgment, even after alleged transfers, all of
12 them, not just the ones that involve my clients, but allegedly
13 all of them, the Herbsts filed a mega report, multiple,
14 multiple number of pages report in Judge Adams court. Their
15 profession forensic opinion was, that even after transfers,
16 Paul Morabito's net worth was over ninety million dollars.
17 That was the Herbsts filing that resulted months later in a
18 fifteen million dollar punitive damages award -- fifteen
19 million dollar punitive damages award. Fifteen million
20 dollars exceeds the value of all the transfers my client
21 received or participated in for that matter. That is the
22 Plaintiff's own report supported by literally dozens of pages
23 of analysis. So how is it that the Plaintiffs can now come in
24 stand in the shoes of the Herbsts and contend even though

1 their own expert opined he had a net worth of ninety million
2 dollars after the transfers, that now he's judgment proof and
3 they can't -- there is nowhere to look. I don't know what
4 exactly the Plaintiff will introduce to explain why a fifteen
5 million dollar punitive damage award is appropriate for
6 somebody who is allegedly judgment proof or had zero assets
7 even after exchange. Even so, notwithstanding the obviously
8 inconsistent position the Plaintiff will have to take in this
9 case, the fact is that the consideration that Paul received
10 for any assets in which he sold were a net neutral
11 consideration. The values aren't in dispute. So what are we
12 talking about? Well, because they can't challenge the values,
13 they are going to say, well, the exchange for those situations
14 where it wasn't cash, although the bulk of the exchange was
15 either cash or an undisputed fair value exchange for the real
16 estate positions, their position will be well, you, Paul
17 Morabito, received things we could not or did not collect
18 upon. Well maybe in 2017 they did or didn't, but that is not
19 relevant to this case. What is relevant is did the exchange
20 render Mr. Morabito able to pay his debts; or, the second
21 characterization, did it render him with fewer assets than he
22 had before which were subject to collection. Because it was a
23 fair exchange, at the worst case, the evidence will suggest,
24 that Paul Morabito received at least as much as he transferred

1 to my clients.

2 Your Honor, the evidence that will be presented will
3 not support a finding of fraudulent transfer.

4 The evidence will show that Paul, Sam and Mr. Bayuk
5 had a twenty year business relationship.

6 The evidence will show that amongst the three of
7 them, they each had their own role in those base operations.
8 It will become very clear to this Court what Paul's role was.
9 He's the big picture, the white board guy, big picture guy, a
10 million ideas a day guy. His lawyers will admit even in
11 documents which were previously attorney-client privilege some
12 of Paul's ideas are not based in reality. Some of those ideas
13 were not practical. My clients will admit the same, but also
14 acknowledge if he hits one in a hundred they made a lot of
15 money. That is what happened historically in this
16 relationship. They will testify when the Judgment was
17 rendered, they had two options: They could do nothing and
18 remain co-owned with all of these assets with Paul Morabito.
19 The bulk of them were not subject to execution. But they will
20 testify they knew what would happen if they did nothing. That
21 is they would be deeply embroiled in the morass which is the
22 Paul Morabito versus Herbsts lawsuit. Anybody with any
23 tangential connection to that dispute gets brought in as
24 evidenced by the size of the adversary actions in the

1 Bankruptcy Court. When Mr. Bayuk and Mr. Sam Morabito decided
2 their options were to do nothing or do something, doing
3 nothing was not the better option. The better option was to
4 disassemble their statutory protections that were already
5 available to them, take their fair share of their co-owned
6 assets the bulk of which they co-owned for years and in some
7 cases decades and leave Paul on an island as his lawyer said
8 ripe for the plucking so that Paul Morabito's assets could be
9 acquired by the Herbst, where before the transfer, they could
10 not have been. And Edward Bayuk and Sam Morabito, with the
11 possibility they would be able to extricate themselves from
12 the mess they were never supposed to be in in the first place.

13 The facts that the Plaintiff offered with respect
14 to the Judgment is not true. Judge Adams did not say what the
15 opening statement from the Plaintiff said. Judge Adams said
16 there are no facts suggesting there is any basis for liability
17 against these Defendants and they are dismissed. They were
18 not Plaintiffs. They were Counter-Defendants. They didn't
19 have a role in the fight to begin with. They had no role in
20 the trial. They were not supposed to be in the case, and they
21 were rightfully dismissed. So why should they continue to be
22 involved in the Herbsts morass simply because they co-owned
23 properties with Mr. Paul Morabito, and that is their position.

24 So the simpler version is there was a Judgment. The day

1 after Judgment there was a whole bunch of activity, and they
2 separated their assets so there is a fraudulent transfer.
3 With all due respect, the case is a lot more complicated than
4 that. We are not here to talk about Paul. We are here to
5 talk about these Defendants, what they owned, what they did,
6 what they wanted and what they asked for and what they knew.
7 At the end of this evidence, it will be established they had
8 good reasons for doing what they did. That they were advised
9 by counsel to do it in such a way as to avoid the appearance
10 of impropriety. They will testify they can't entirely separate
11 themselves from Paul Morabito nor would they want to for
12 reasons that led to the fact that they were business partners
13 and life partners. So this isn't a throw Paul Morabito under
14 the bus trial, but it is understanding that Edward Bayuk and
15 Sam Morabito had their own reasons for doing what they did and
16 it had nothing to do with the Herbsts. It had everything to
17 do with themselves.

18 The evidence will not challenge the values of the
19 properties with two exceptions. One of th exceptions is the
20 Reno house. There is a two million, 2.3 million dollar
21 disparity in the value of the Panorama house. The evidence
22 will show that Mr. Bayuk and Paul Morabito appraised that
23 property contemporaneously with the exchange. The appraiser
24 who will take the stand and testify went into the house,

1 evaluated it, appraised it, drew the comps and made a
2 determination. Six years later the Plaintiff hired an expert
3 who had no access to the property, did not ever view the
4 inside of the property, took hearsay statements from non
5 parties, non witnesses in determining the quality of the
6 property and then, despite the fact Dennis Banks and Darryl
7 Noble and a world renown interior designer will come in here
8 and say this house was amongst the nicest houses and finest
9 houses they had ever seen. The Plaintiff's appraiser will come
10 in and say it was sub standard quality. He says that because
11 he never saw the house. It was six years after the fact.
12 That will be the evidence on the Panorama house.

13 The evidence on the Superpumper property, the only
14 other property disputed in value, the original contemporaneous
15 expert, a gas station and C-store appraiser from Baltimore,
16 Maryland gave a valuation that is really close to Mr.
17 McGovern's valuation in terms of the value of the operating
18 assets. In fact, the value Mr. McGovern puts on the asset is
19 actually higher than the contemporary asset by The matrix
20 folks in Baltimore. The difference and the evidence will show
21 that Mr. McGovern inexplicitly added six and a half million
22 dollars to that value which he calls excess working capital
23 which are based from, and this is confusing, but it is simple
24 once the facts are understood, that there were shareholder

1 loans carried on the books of Superpumper. And those
2 shareholder loans represented advances that had been made over
3 the previous six or seven years to the shareholders of the
4 company. And although the evidence will show that the
5 auditors who provided audits of the Superpumper books deem
6 those assets to be non-current, Mr. McGovern simply switched
7 them from non-current to current to add them to the
8 Superpumper. Why does that matter? It matters when it comes
9 to the base value of the Superpumper assets. The valuations
10 are the same. They won't dispute that. But that wouldn't
11 have been good enough for the Plaintiff, so he assumed that
12 these non-current assets should be current. He added six and a
13 half million chunk value to the asset, and that is why we are
14 six and a half million dollars apart on the valuation because
15 of the shareholder note. The testimony will be from the
16 expert and the people with personal knowledge that no arms
17 length buyer would ever acquire a company where half of the
18 appraised value is non-operating assets in the form of prior
19 shareholder notes. The testimony will be which buyer in the
20 gas station industry would come in and say I will buy six and
21 a half million dollars worth of operating assets and six and a
22 half million dollars worth of your notes which are not secured
23 I guess I am supposed to buy at face value. The testimony
24 will be that valuation from Mr. McGovern including that six

1 and a half million dollars is patently absurd. Other than that
2 there is no dispute on the value.

3 The testimony will be that none of the
4 quintessential elements of the fraudulent transfers will be
5 proven in this trial. We don't get just to make suggestions
6 and inferences with respect to fraudulent transfers. We are
7 talking about fraud, clear and convincing evidence. The
8 evidence in this case, despite the Plaintiff's best effort to
9 characterize everything Paul Morabito has imputed to my
10 clients won't meet that standard.

11 At the end of the trial, my clients will ask the
12 Court to render a verdict in favor of the Defendants.

13 THE COURT: Thank you.

14 THE CLERK: Exhibits 1-299 marked previously prior
15 to trial.

16 THE COURT: Counsel, the clerk has notified me that
17 you have stipulated to many of the exhibits being admitted, so
18 I would like to get the stipulation on the record. Do you know
19 which ones you are stipulating to?

20 MS. TURNER: I have a list. We can follow along and
21 if there is any discrepancy, Mr. Gilmore would certainly
22 interrupt me. Is that fair?

23 MR. GILBERT: Yeah, sure.

24 MS. TURNER: We have Exhibits 1, 2, 3, 8, 20, 25, 28,

1 38, 39, 42 through 58, 60 through 67.

2 THE COURT: Just a minute. I have to catch up with

3 you.

4 MS. TURNER: Sorry. 71 through 73. 80 through 87.

5 90 through 92. 104 through 106.

6 THE COURT: What about 103?

7 THE CLERK: Did I forget to mark that?

8 THE COURT: I show 103 being stipulated to.

9 MS. TURNER: Yes. 103 to 106. 108 through 123.

10 THE COURT: Okay.

11 MS. TURNER: 125 through 127. 131, 137, 155 through

12 158. 163, 164, 174, then 179 through 194. 196 through 198. 223

13 through 224. And Mr. Gilmore's Exhibit 244 we would stipulate

14 to that as well.

15 THE CLERK: On Friday it was indicated the

16 Plaintiffs would stipulate to 229. And 241.

17 THE COURT: Is that still valid?

18 MR. GILMORE: I'm sorry 229 and 241.

19 THE CLERK: Mrs. Turner, what number did you add

20 today?

21 MS. TURNER: 244. Pardon me. That was an oversight.

22 THE CLERK: I have 244 as well marked on Friday.

23 THE COURT: What about 258?

24 MS. TURNER: Sorry. There were late additions 258,

1 263 and 278.

2 THE CLERK: I did not have 278 on Thursday.

3 THE COURT: Any others? Mr. Gilmore, did you have
4 any others you thought were stipulated to?

5 MR. GILMORE: No, Your Honor.

6 THE COURT: So those exhibits that we just noted are
7 all admitted.

8 (Exhibits 1,2,3,8,20,25,28,38,39,42- 8,
9 60-67,71-73,80-87,90-92,103,104-106,108-123,125-127,131,137,
10 155-158,163,164,174,179-194,196-198,223-224,229,241,244,258,
11 263,278 admitted in evidence.)

12 MS. TURNER: Thank you, Your Honor.

13 THE CLERK: Couple of other things we should put on
14 the record about the exhibits. Number 74, I have just
15 received a new number 74 which is just the Declaration of
16 Edward Bayuk instead of the whole opposition. And Declaration
17 so that will be switched out if everybody is in agreement.

18 MR. GILMORE: Correct.

19 MS. PILATOWICZ: Yes.

20 THE CLERK: And Mr. Gilmore also provided via
21 e-mail, I have not been able to print them, get them into the
22 computer, I mean in the binders, Exhibit 42. There was an
23 attachment that the bottom was cut off. He's given me the
24 same document with everything on it and I will switch those

1 out today. Also Exhibit 126 has been blown up for easier
2 reading and Exhibit 185 through 189 as well.

3 THE COURT: As to the blowups, they were which
4 numbers?

5 THE CLERK: They are not real blowups. They are
6 actual pieces of paper you couldn't read. They just made it
7 bigger.

8 THE COURT: And substituted --

9 THE CLERK: They will be substituted. I have not had
10 time.

11 THE COURT: What are the numbers?

12 THE CLERK: The attachment to number 42, Exhibit 26
13 and Exhibit 185 through 189.

14 THE COURT: So, counsel, you anticipate those have
15 been provided to the Court and those will be substituted?

16 MR. GILMORE: That is our expectation.

17 MS. PILATOWICZ: Yes.

18 THE COURT: That will be the order.

19 MS. PILATOWICZ: Your Honor, there is one other
20 exhibit, Exhibit 156 which I realized after it was marked
21 contained a Social Security number. We are providing a
22 redacted document to be replace in the exhibit book.

23 THE COURT: Is that the only one, 156?

24 MS. PILATOWICZ: That is the only one.

1 THE COURT: So, counsel, we will substitute out a
2 redacted version.

3 MR. GILMORE: That was my request, yes, Your Honor.

4 THE COURT: The redacted version will be provided to
5 the clerk. She'll return the one that has a Social Security
6 number. The redacted version will become 156 admitted.

7 THE COURT: Okay. Anything else? So, counsel, we
8 frequently give you a new exhibit list every day, but this one
9 is 70 pages long so keep your original, kind of mark on it. I
10 am not going to direct the clerk to print a new one every day.
11 By the end of the week she'll print a new one. Probably
12 Friday morning you will have a new one so you can make a
13 record if there are some issues.

14 MR. GILMORE: That is acceptable.

15 THE COURT: That is a lot of printing, a lot of
16 trees.

17 THE CLERK: We all had the same work copy on
18 Thursday except for some redactions. As soon as I can mark
19 those, they will all be admitted in the system now it is been
20 put on the record. I will provide you guys, I hope you don't
21 mind one set a side, then you can work from that set.

22 MR. GILMORE: If you just want to e-mail it to us
23 we'll take care of the print job. You don't have to print
24 three copies of 70 pages. I don't need a physical copy, just

1 an e-mail of today's update will be fine with me, if it is
2 okay with the Court.

3 MS. TURNER: That is fine.

4 THE COURT: Thank you. Okay. We are ready for
5 testimony; is that correct?

6 MS. TURNER: We are, Your Honor.

7 THE COURT: We should probably take a very short
8 recess before we begin that testimony.

9 MS. TURNER: Your Honor, one housekeeping matter that
10 I do want to make sure we are on the same page, I believe
11 there has been discussion with Mr. Gilmore, because this is a
12 bench trial, the idea is to promote efficiency. We intend to
13 put on our case in chief. I will use the example Mr. Bayuk
14 will be our witness. The Defendants can then go beyond the
15 scope in order to make things simpler where they present their
16 defense at the same time that they address our direct.

17 THE COURT: That was my understanding.

18 MS. TURNER: I just wanted to make sure the record
19 was clear that is what we would be doing.

20 THE COURT: With all witnesses?

21 MS. TURNER: All witnesses.

22 MR. GILMORE: I would agree with that. The one
23 limited, limited, limited exception would be in the situation
24 I might need to recall one of these witnesses as a rebuttal

1 witness in my case in chief. I don't quite frankly expect
2 having to do that. I don't really ever have done that to be
3 hones. But I want to make sure that reservation is included
4 in the stipulation.

5 THE COURT: Okay. All right. Let's take a short
6 recess then we'll be back on the record. Court's in recess.

7 (Short recess taken.)

8 MS. TURNER: Your Honor, before the break you asked
9 for the deposition of Jan Friederich. We found it during the
10 break if I could approach the clerk.

11 THE COURT: Yes.

12 MS. TURNER: Thank you.

13 THE CLERK: Deposition of Jan Friederich dated March
14 20, 2016 opened and published.

15 THE COURT: Okay. Thank you. Go ahead and call
16 your first witness counsel.

17 MR. GILMORE:: I am sorry, the Defendants invoke the
18 Rule of Exclusion.

19 THE COURT: The Rule of Exclusion has been invoked.
20 The bailiff will handle it if you have told him who your
21 witnesses are, otherwise you're each responsible for notifying
22 the witnesses of their obligation under the Rule of Exclusion.

23 MR. GILMORE: Thank you.

24 MS. PILATOWICZ: The Plaintiff calls Tim Herbst.

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THE COURT: You may proceed.

TIMOTHY HERBST

Called as a witness, having been first duly sworn,
took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. PILATOWICZ:

Q Good morning, Mr. Herbst. Can you please state your
name for the record?

A Timothy Herbst.

Q How are you currently employed, Mr. Herbst?

A President of Terrible Herbst Oil Company.

Q How long have you been in that position?

A About six, seven years. And before that I was
Executive Vice-President since '85.

Q Could you explain to the Court what the Terrible
Herbst Companies are?

A It is a chain of service stations, convenience
stores, car washes, ten minute lube facilities based in
Nevada, California, Arizona and a few in Utah.

Q How long has it been in existence?

A Oh, my grandfather started his business in 1938. It
has transformed into what it is today.

1 Q Where did your grandfather start the business?

2 A Chicago, Illinois.

3 Q Are you familiar with a gentleman named Paul
4 Morabito?

5 A Yes.

6 Q How are you familiar with him?

7 A We entered into an agreement to buy certain assets
8 up in Reno, the BHI Industries. I met him like 2006 or so.

9 Q After that initial meeting, when is the next time
10 you met him?

11 A Various times discussing a possible -- He was
12 looking for a company when I first met him, then afterwards he
13 wanted to know if we had an interest in looking at his
14 company.

15 Q Did the Herbsts have any interest in that?

16 A Yes, we did. We had an interest in the BHI assets.
17 Mr. Art Hinckley owned them and his family prior to
18 Mr. Morabito buying those assets.

19 Q At some point there was a sales transaction between
20 the Herbst company and Paul Morabito relating to BHI?

21 A That's correct.

22 Q Can you tell me about that?

23 A I believe we signed a Purchase and Sale Agreement, I
24 am not sure what they called it, in June and closed on it in

1 July.

2 Q What happened with that sale?

3 A Nothing good. Within, you know, days, Paul Morabito
4 made up the working capital and defrauded us out of millions
5 of dollars.

6 MR. GILMORE: It has been stipulated. Why are we
7 talking about the substance of the transaction if we
8 stipulated there was a Judgment that formed the basis of this
9 case?

10 THE COURT: Counsel, what is the relevance of this
11 inquiry?

12 MS. PILATOWICZ: Your Honor, the evidence of a
13 person's character can be admissible to prove intent and
14 motive under NRS 48.045. The underlying facts of the case
15 relate to Paul Morabito's fraud. Just establishing the
16 background of the Judgment.

17 MR. GILMORE: Let me get this straight. A person who
18 is not a party to this case, his character assassination, he's
19 not going to be able to defend himself in order to prove a
20 Judgment we ultimately stipulated to. I am failing to
21 understand the relevance.

22 THE COURT: Counsel, you know you're being a little
23 argumentative. You are not really giving me a believable
24 basis when you talk the way you just argued that. It is my

1 understanding Mr. Morabito was at one point a party to this
2 case before everyone stipulated to his removal from the case,
3 so your argument implied he's being precluded from
4 participating, and I don't think that was really the
5 circumstances. Now beyond that, his character and his
6 motivation could be relevant to show what your client's
7 motivations were. It is not definitive proof of your client's
8 motivation, but it could be part of the circumstances of
9 evidence, so I am going to allow some inquiry, however the
10 Judgment is the Judgment. We are all aware what Judge Adams
11 found including the fifteen million in punitive damages. I
12 think that is very clear how Judge Adams in this lawsuit felt
13 about Mr. Morabito's behavior and his character, so I don't
14 want to spend a lot of time rehashing that case.

15 MR. GILMORE: May I address one quick thing?

16 THE COURT: Yes.

17 MR. GILMORE: When the Trustee substituted in place
18 of the Herbsts, Mr. Morabito could not have been a party to
19 this case. So it wasn't as though we all voluntarily decided
20 to dismiss him. The Trustee cannot sue the debtor in an
21 adversary case.

22 THE COURT: By the way, I know this, I am
23 digressing, but I did want to ask you all what is the status
24 of the Department 6 case? I know it was appealed. Is it

1 still on appeal?

2 MR. GILMORE: No.

3 THE COURT: That was resolved by the Supreme Court?

4 MR. GILMORE: The appeal was voluntarily dismissed

5 pursuant to the settlement between Mr. Paul Morabito and

6 Herbsts.

7 THE COURT: That's right. I do remember that.

8 MR. GILMORE: There are no pending issues in

9 Department 6.

10 THE COURT: The bankruptcy is still open?

11 MR. GILMORE: Correct, it is.

12 THE COURT: Thank you.

13 MS. PILATOWICZ: Your Honor, if I can clarify the

14 record, a Trustee can sue a debtor. Mr. Morabito has been

15 named in other actions. The stipulation to dismiss was a

16 stipulation to dismiss. It wasn't a mandatory dismissal.

17 THE COURT: Okay. We'll move on, but I will allow

18 some inquiry. Again, I do not want to retry that case. You

19 can answer the question.

20 THE WITNESS: Can we go back and find out what it

21 was?

22 THE COURT: You can re-ask the question.

23 BY MS. PILATOWICZ:

24 Q The question what happened after the sale involving

1 Barry Hinckley?

2 A We found out that there was definitely error in
3 Paul's calculation of working capital to the tune of millions
4 of dollars. We obviously found he made up the numbers,
5 committed fraud on that. He also breached our Purchase and
6 Sale Agreement with certain other areas. It was just a mess,
7 absolute mess.

8 Q And if you could look behind you and pull Volume I.
9 It looks like it is the one closer to you on the first shelf.
10 Turn to Exhibit 2 in Volume I. Let me have you first turn to
11 Exhibit 1. Exhibit 1 is the transcript of the oral ruling
12 September 13, 2010 which has been admitted in evidence. Were
13 you in court the day the oral ruling was read?

14 A I believe we were.

15 Q Do you recall what was to happen after the oral
16 Judgment was read, what the next steps were?

17 A I believe once the oral judgment was read regarding
18 this, then there was a punitive damage portion of it.

19 Q Did you understand there would be Findings of Fact
20 entered and a Judgment?

21 A Yes.

22 Q If you can turn to Exhibit 2 which is titled
23 Findings of Fact, Conclusions of Law and Judgment which has
24 also been admitted, stipulated, admitted into evidence. Do

1 you recall seeing the Findings of Fact and Conclusions of Law
2 and Judgment?

3 A I'm sure I did.

4 Q Can you turn to page 10 of Exhibit 2? On page 10
5 there is a description or subheading for fraud in the
6 inducement. Are those the actions that you were discussing
7 before that related to the fraud and the purchase?

8 A That's correct.

9 Q And then if you could turn to Exhibit 3 which is
10 titled Judgment which has also been stipulated, admitted into
11 evidence. Did you see this Judgment before?

12 A Yes.

13 Q Before this Judgment was entered, did you come to an
14 understanding of what assets Mr. Paul Morabito had?

15 A I can't remember if I personally did, but we had a
16 well established law firm handling this case, and I'm sure
17 they did.

18 Q Did you have any understanding as to what the assets
19 were?

20 A I knew the house. I knew the Laguna stuff. I knew
21 certain -- there was Superpumper assets. I knew there had been
22 some bank accounts that had a significant amount of cash in
23 them. But to list them all out, I probably would leave that
24 up to the attorneys.

1 Q Did you learn at some point there were transfers of
2 assets?

3 A Yes.

4 Q When did you learn that?

5 A Probably when there was a forensic accountant,
6 somebody that looked into his net worth, it showed they had
7 been transferred.

8 Q Do you recall if that was after the Findings of
9 Fact?

10 A It was very, very close to the Judgment and all of
11 those dates. I believe they did it immediately.

12 Q You are referring to the transfers being close to
13 the--

14 A The date of the Judgment, absolutely.

15 Q I want to be clear. You didn't find out about them
16 close to the time of the Judgment?

17 A I didn't, no.

18 Q Did Mr. Morabito ever tell you assets were being
19 transferred?

20 A Absolutely not. He was pretty deceptive of anything
21 he said. He wouldn't say anything.

22 MR. GILMORE: Objection. Move to strike.

23 THE COURT: The comment about Mr. Morabito, that
24 really is not necessary.

1 THE WITNESS: I apologize.

2 THE COURT: I will strike that part of the answer.

3 BY MS. PILATOWICZ:

4 Q Did Mr. Bayuk ever tell you the assets were being
5 transferred?

6 A No.

7 Q Did Mr. Morabito ever tell you assets were being
8 transferred?

9 A No.

10 Q Were the Herbsts ever advised Promissory Notes were
11 going to be assigned to them?

12 A No.

13 Q At some point after the Judgment, Exhibit 3, there
14 were settlement discussions; is that right?

15 A Absolutely.

16 Q Tell me about those?

17 A Paul and us wanted to settle this case and move on
18 our way. We already lost millions and millions and millions
19 of dollars. All we wanted to do was put a cap on it, get out
20 of it, finish off taking care of all the landlords that Paul
21 in this unfortunate purchase and sale got us into. We wanted
22 to take care of them and move on and get everybody out as best
23 we could.

24 Q Was there ultimately a settlement?

1 A There was a settlement in principle, yes.

2 Q Was that settlement eventually documented?

3 A Yes.

4 Q Do you recall seeing that settlement?

5 A Yes.

6 Q Would you turn to Exhibit 5 in the binder in front

7 of you? I recognize it is a large document. Can you look

8 through it and tell me if that is the Settlement Agreement

9 that was entered into that we just discussed?

10 A Yeah, I believe it is.

11 MS. PILATOWICZ: Your Honor, I move for admission of

12 Exhibit 5.

13 THE COURT: Counsel.

14 MR. GILMORE: Object on the basis of relevance.

15 THE COURT: Counsel.

16 MS. PILATOWICZ: Your Honor, this goes to again the

17 continuing pattern of an intent by Paul Morabito to defraud

18 the Herbsts and delay collection of it.

19 THE COURT: I am going to admit it with the caveat

20 if it does not appear to be relevant based on evidence you

21 present connecting the named Defendants to Mr. Morabito's

22 actions, it could be stricken or not considered by the court.

23 MS. PILATOWICZ: Thank you, Your Honor.

24 (Exhibit 5 admitted in evidence.)

1 BY MR. PILATOWICZ:

2 Q Why did the Herbsts enter into a Settlement
3 Agreement?

4 A We wanted to settle the case. We wanted to -- We
5 already lost like I said millions and millions of dollars. We
6 still had a significant amount of more obligations to take
7 care of. This would have done it and put this thing behind
8 us.

9 Q Did the Herbsts have concerns about difficulties to
10 collect?

11 A It sounded like it would be a better option here for
12 us to collect it if we could get this. Like I said, we felt
13 we needed to go on our way and move down the road and finish
14 off handling all the obligations this unfortunate situation
15 put us into.

16 Q If you turn to page 2 of the Settlement Agreement.
17 Section I and J refer to certain fraudulent conveyance claims.
18 Do you have an understanding of what those were?

19 A Yeah.

20 Q What is your understanding?

21 A They were the fraudulent transfers we believe were
22 transferred. The transfer happened right after Judgment
23 regarding Superpumper and some of our assets that they moved
24 out of Paul's name into the Defendants' names.

1 Q The Herbsts intended in the Settlement Agreement to
2 preserve those claims?

3 A We felt that Paul was going to live up to his
4 obligations in the Settlement Agreement and thought he would
5 meet his obligations. He wanted to do it as much as we did.

6 Q Turn to page 3 of the Settlement Agreement and the
7 subsequent pages. It looks like there are certain obligations
8 and payments that are to be made by Paul Morabito, is that
9 your understanding of the Settlement Agreement?

10 A That's correct.

11 Q Were those obligations completed?

12 A No, they were not completed.

13 Q Tell me what happened?

14 MR. GILMORE: Sorry. We stipulate Mr. Morabito
15 defaulted under the Settlement Agreement. It is a stipulated
16 fact so we wouldn't have to go through this.

17 THE COURT: Do you need more evidence than what is
18 in the stipulation?

19 MS. PILATOWICZ: Your Honor, we do, because there
20 were other discussions outside the documents that led the
21 Herbsts to take the actions they took and rely on Mr. Morabito
22 and getting Mr. Morabito's intent and continuing pattern.

23 THE COURT: With the same caveat, the objection is
24 overruled.

1 BY MS. PILATOWICZ:

2 Q Mr. Herbst, the question was: Were the obligations
3 ultimately satisfied in the Settlement Agreement?

4 A No, they weren't.

5 Q What happened after the Settlement Agreement was
6 entered?

7 A He made good on certain payments and then it fell
8 apart.

9 Q What happened after that?

10 A He asked for forbearance.

11 Q Did the Herbsts agree to a forbearance?

12 A Absolutely, trying to get the thing back on track.

13 Q Do you know if the forbearance was documented?

14 A I believe it was.

15 Q Can you turn to page, I am sorry Exhibit 6 in Volume
16 I in front of you? Do you recognize Exhibit 6?

17 A Yeah, the Forbearance Agreement.

18 MS. PILATOWICZ: Your Honor, move for admission of
19 the Forbearance Agreement, Exhibit 6.

20 THE COURT: Any objection?

21 MR. GILMORE: Yes. The existence of the Forbearance
22 Agreement is a stipulated fact, but the Forbearance Agreement
23 contains a whole bunch of statements and other concessions
24 Mr. Morabito makes and has nothing to do with this case, so it

1 is irrelevant.

2 MS. PILATOWICZ: Your Honor, again the
3 representations and obligations that Mr. Morabito indicated he
4 would agree to in the Forbearance Agreement and defaulted on
5 and what the Herbsts' view of that was and reliance on it is
6 directly relevant to Mr. Morabito's intent and continued to
7 follow a pattern.

8 THE COURT: Objection overruled. Exhibit 6 is
9 admitted.

10 (Exhibit 6 admitted in evidence.)

11 BY MS. PILATOWICZ:

12 Q Now after Herbst had obtained a Judgment for fraud
13 and after Herbst had entered into a Settlement Agreement,
14 Mr. Morabito defrauded, on why did the Herbsts enter into a
15 Forbearance Agreement with Mr. Morabito?

16 A We wanted to give him time to get his house in order
17 to get us paid.

18 Q Can you turn to this document, it doesn't have a
19 page number, I am going to refer to the date stamp that
20 appears at the bottom right-hand corner. Starting at WL003105,
21 do you see that?

22 A Yeah.

23 Q Does that again set forth the obligations and the
24 payments Mr. Morabito agreed to undertake?

1 A I believe so. Did I get to the right one?

2 Q Are you at WL003105?

3 A Yeah.

4 Q Starting --

5 A I got it.

6 Q Did Mr. Morabito ultimately honor those obligations?

7 A No.

8 Q Tell me what happened?

9 A He just didn't fulfill any of the payments at all.

10 Q What steps did the Herbsts take next?

11 A Figured -- I believe we tried to push him into an

12 involuntary bankruptcy.

13 Q Was there a Confession of Judgment filed?

14 A Yes. We had the Confession of Judgment as part of

15 the Settlement Agreement.

16 Q Why did the Herbsts have a Confession of Judgment as

17 part of the settlement?

18 A It was just to keep him from -- keep his feet to the

19 fire in a dischargeable bankruptcy so his obligations would

20 survive because of the games he could possibly play after, you

21 know, the Settlement Agreement if it wasn't fulfilled.

22 Q Let me have you turn to Exhibit 4 in the book in

23 front of you. Going back a couple of exhibits. Is Exhibit 4

24 the Confession of Judgment the Herbsts parties had with the

1 court?

2 A Yes it is.

3 MS. PILATOWICZ: Move for admission of Exhibit 4.

4 MR. GILMORE: My only issue with Exhibit 4, Your
5 Honor, is that -- never mind. No objection on 4.

6 THE COURT: Okay. Exhibit 4 is admitted.

7 (Exhibit 4 admitted in evidence.)

8 BY MS. PILATOWICZ:

9 Q Mr. Herbst, I will ask you to take a look at page 13
10 of 15 of the Confession of Judgment and particularly
11 allegations 73 through 75. Can you read those for me? You
12 can read them out loud.

13 A In December 2006, CNC and Morabito told JH that BHI
14 was losing about \$600,000 a year. The company was losing
15 approximately \$1,000,000 a month.

16 These material misrepresentations were made to
17 fraudulently induce JH to purchase BHI.

18 It is established Morabito fraudulently induced JH
19 to purchase BHI.

20 Q Did the -- Was it important to the Herbsts that
21 Morabito acknowledge his fraud in the Confession of Judgment?

22 A Absolutely.

23 Q Why was that important?

24 A Just that he admitted to it. He actually did what

1 was found -- he was found guilty of.

2 Q After the Confession of Judgment was filed, I think
3 you referenced it was an involuntary Petition?

4 A U-huh.

5 Q What was your involvement in the involuntary
6 Petition?

7 A We gave counsel information and they provided the
8 Complaint.

9 Q Do you recall who the Petitioner and creditors? Do
10 you know what I mean?

11 A The three creditors?

12 Q Correct. Do you recall who the three creditors
13 were?

14 A The main three, yeah.

15 Q Who were the main three?

16 A I believe BHI, JH and maybe Jerry Herbst.

17 Q What is your connection with each of those
18 creditors?

19 A I am an officer of all three. Two.

20 Q Who is Jerry Herbst?

21 A Jerry Herbst is my father.

22 Q Did you have an understanding at the time of the
23 filing of the involuntary Petition that was being filed?

24 A I did.

1 Q An understanding it was being filed?

2 A Yes.

3 Q Can you turn to Exhibit 7 in the book in front of
4 you? Do you recognize Exhibit 7?

5 A Yup.

6 Q Could you explain what it is?

7 A It is the involuntary petition to try to enter
8 Mr. Morabito into an involuntary bankruptcy.

9 MS. PILATOWICZ: Your Honor, I move for admission of
10 Exhibit 7.

11 MR. GILMORE: We stipulate there was a bankruptcy.
12 The content of the Petition are not relevant to this case.

13 MS. PILATOWICZ: Your Honor, again the involuntary
14 Petition lays out the history, the fraud, the continuing
15 pattern of fraud that led the Herbsts to how we got to this
16 point.

17 MR. GILMORE: It is also a hearsay statement. These
18 are statements made by the Herbst lawyers which are filed out
19 of the court. They are offering their own hearsay statements
20 as the truth of the matters asserted therein.

21 THE COURT: Is that what your offering it for?

22 MS. PILATOWICZ: We are offering it for the fact it
23 was filed.

24 THE COURT: I am going to sustain the objection. We

1 have a stipulation acknowledging the Petition was filed.
2 BY MS. PILATOWICZ:
3 Q Why did the Herbsts file the involuntary bankruptcy?
4 A To help us, help the estate collect.
5 Q Have the Herbsts taken any actions with respect to
6 collection in the bankruptcy?
7 A I don't understand the question.
8 Q Did the Herbsts file a proof of claim?
9 A I am sure we did, yes.
10 Q Were you involved in the filing of the claim?
11 A Indirectly.
12 Q What was the basis for the proof of claim?
13 A I am not exactly sure how that all intertwines in
14 the proof of claim. I guess we would show what we were
15 entitled to.
16 Q Is it your understanding it was based on the
17 Judgment?
18 A The Confession of Judgment.
19 THE COURT: Just a second. You are interrupting your
20 attorney sometimes when she kind of gives you an idea.
21 THE WITNESS: I'm sorry.
22 THE COURT: Just like you just did me.
23 THE WITNESS: My wife is right.
24 THE COURT: Your wife's right. The court reporter

1 can only take one person at a time, okay? Don't say a word
2 until your lawyer has completely stopped talking and then give
3 the lawyer on the other side, Mr. Gilmore, a chance to speak.

4 Now you can rephrase your question. We'll see where
5 we go.

6 BY MS. PILATOWICZ:

7 Q Did you have an understanding as to what the
8 underlying basis for the proof of claim was?

9 A Yes.

10 Q What is your understanding?

11 A It was to bring back the fraudulent -- the
12 Confession of Judgment in there with the \$85,000,000
13 nondischargeable act.

14 Q Did the Herbsts take any other actions in the
15 bankruptcy with respect to collecting the \$85,000,000
16 Judgment?

17 A I don't believe so.

18 Q Did the Herbsts file any adversary actions?

19 A That I don't know.

20 Q Did the Herbsts seek to have the Judgment be
21 nondischargeable?

22 A It already was nondischargeable. If we had to do
23 something like that, I am sure the attorneys did.

24 Q Do you recall testifying in a trial earlier this

1 year?

2 A I haven't been in trial this year I don't believe.

3 Q Do you recall testifying in the bankruptcy court
4 with respect to whether the Confession of Judgment would be
5 dischargeable?

6 MR. GILMORE: Leading question.

7 THE COURT: Overruled.

8 THE WITNESS: I apologize. I don't-- I am not sure.
9 I don't remember if I was in bankruptcy testifying in
10 bankruptcy court or not.

11 BY MS. PILATOWICZ:

12 Q Do you know if the Herbsts have sought to have the
13 underlying Judgment deemed nondischargeable?

14 A I would say our attorneys would do everything
15 possible to keep that nondischargeable out there.

16 Q Do you recall seeing a Judgment in April of this
17 year regarding nondischargeability?

18 A Yes.

19 Q Would you turn to Exhibit 21 in the binder number
20 one in front of you, Volume I. I will ask you to look at
21 Exhibits 21, 22, 23 together, because they are related. Let
22 me know if you have seen those documents before?

23 A Yes, I believe I have.

24 Q When did you see these documents?

1 A Through our attorneys when they were filed.

2 Q Do you have an understanding of what the ultimate
3 determination of these documents was?

4 A I believe undischARGEABLE finding of the
5 \$85,000,000.

6 Q Is it your your understanding the Herbsts now have a
7 nondischARGEABLE?

8 A I believe so, yes.

9 MS. PILATOWICZ: Your Honor, move for Exhibits 21,
10 22, 23 which are the Judgment on the first and second causes
11 of action; the memorandum decision regarding Morabitos' motion
12 for revision of the interlocutory order granting partial
13 summary Judgment pursuant to Rule 54 of the Federal Rules of
14 Civil Procedure; the denial of Plaintiff's fourth cause of
15 action; and the amended Findings of fact, Conclusions of Law
16 in support of the Judgment regarding Plaintiff's first and
17 second cause of action.

18 THE COURT: Counsel.

19 MR. GILMORE: Paragraph 14 of our stipulated facts
20 we stipulate there was a challenge to the nondischARGEABILITY.
21 There was a nondischARGEABILITY order and it has been
22 appealed. So with that, I don't understand the relevance of
23 these documents other than to include things that Judge Zive
24 said which have no bearing on this case.

1 MS. PILATOWICZ: And, Your Honor, this Court can
2 take judicial notice of the relevant cases of related cases as
3 set forth in Mack vs. Estate of Mack, 125 Nev. 805. The
4 document in the other case establishes a relevant fact. Here
5 again we are talking about the continuing pattern of fraud of
6 Paul Morabito in an attempt to hinder, delay or defraud the
7 Herbsts which now, as the findings by Judge Zive established
8 continued as late as through April of 2018.

9 THE COURT: With regard to Exhibits 21, 22, 23, I
10 will take judicial notice of those documents entered in the
11 bankruptcy court. Whether or not there is relevant information
12 that relates to this case will be determined by me once I have
13 had an opportunity to review these documents. So if there is
14 no relevant information in those documents, then they will not
15 be considered. It is a little different, counsel, because you
16 have a Judge trying the case, we are not worrying about a jury
17 being led down the wrong path. With that said, Exhibits 21,
18 22, 23 are admitted.

19 (Exhibits 21, 22, 23 admitted in evidence.)

20 MR. GILMORE: Well may I then, if that is the
21 Court's order, may I add another objection for the record
22 which is now these documents have been offered by this witness
23 who has not testified he has any specific knowledge regarding
24 the content therein. They are just back dooring these

1 exhibits through a witness who doesn't really know their
2 content and can't speak to it.

3 THE COURT: I'm taking judicial notice. Unless they
4 are not accurate, you don't need a witness to authenticate
5 them. Are these document not accurate?

6 MR. GILMORE: I am not making an authentication
7 objection. It is a foundation objection.

8 THE COURT: You don't need to have a foundation.
9 You don't have to show any foundation. I am taking judicial
10 notice they are legitimate court documents. So is there any
11 issue with regard to the legitimacy of the exhibits?

12 MR. GILMORE: No, Your Honor. It was just for the
13 record.

14 THE COURT: Exhibits 21, 22, 23 are admitted.
15 BY MS. PILATOWICZ:

16 Q Mr. Herbst, do the Herbsts still have an outstanding
17 Judgement against Paul Morabito?

18 A Yes.

19 Q What is the status of that Judgment?

20 A It was, I believe it was -- it had been, what do you
21 call it, non-discharged.

22 Q Are the Herbsts seeking to collect on that Judgment?

23 A Absolutely.

24 Q Have they been able to collect on the Judgment?

1 A No.

2 Q Do you know the current outstanding amount of the
3 Judgment?

4 A I would say, the way I believe it was written,
5 \$85,000,000 minus anything that Paul had prior paid or made
6 good on.

7 Q Do you know approximately the amount the Herbsts are
8 trying to collect today on?

9 A It is probably south of 85,000,000, but not much.

10 MS. PILATOWICZ: Your Honor, if I could have a brief
11 moment.

12 THE COURT: Yes.

13 MS. PILATOWICZ: Your Honor, I have no further
14 questions.

15 THE COURT: Okay. Cross-examination. Are you doing
16 direct of this witness also or just cross?

17 MR. GILMORE: I didn't name him as a witness so it
18 would just be cross.

19 THE COURT: Okay. Thank you.

20

21 CROSS-EXAMINATION

22 BY MR. GILMORE:

23 Q Mr. Herbst, you testified that the Herbsts' lawyers
24 filed an involuntary petition to collect the debt against

1 Mr. Morabito, right?

2 A That's correct.

3 Q Have you ever spoken to Sam Morabito in your life?

4 A No.

5 Q So did it surprise you that Sam Morabito didn't call
6 you in September of 2010 and say hey, Mr. Herbst, let me
7 introduce myself, I want to tell you I am about to buy some
8 assets from my brother? Did that surprise you?

9 A No.

10 Q You didn't speak to Mr. Bayuk any time after the
11 commencement of the lawsuit, have you?

12 A No, I have not.

13 THE COURT: I am sorry, which lawsuit?

14 BY MR. GILMORE:

15 Q Good question. After the commencement of the 2007
16 Herbst-Morabito lawsuit?

17 A No, I have not.

18 Q In 2007, who were the parties to the lawsuit?

19 A It was BHI. JH. Jerry Herbst versus -- they were the
20 Defendants -- and Paul Morabito's company Consolidated
21 something or other.

22 Q Do you know who the Plaintiff was?

23 A The Plaintiff was Paul Morabito.

24 Q And in that lawsuit, the Herbst parties, and I an

1 just going to refer to JH, all those jointly if that is okay?

2 A That's fine.

3 Q The Herbst parties counter-sued Mr. Bayuk and Sam
4 Morabito, correct?

5 A That's correct.

6 Q What were the claims the Herbsts made against them?

7 A It was claims against all of them. I believe it was
8 inducement of fraud, breach of contract and various other
9 things.

10 Q So it is your testimony today the Herbsts sued
11 Edward Bayuk and Sam Morabito for fraud in that original case?

12 A I believe they would have been involved in it, yes.

13 Q I don't have a copy of that Complaint with me. Are
14 you aware, sir, today that pursuant to Paragraph 104 of the
15 counterclaim that the Herbsts filed against Sam Morabito and
16 Edward Bayuk the only claim was unjust enrichment? Are you
17 aware of that?

18 A No.

19 Q Do you know what unjust enrichment is?

20 A Not technically.

21 Q And the Plaintiff's lawyer asked you to turn and
22 examine Exhibit 1. You testified you were in the courtroom
23 when Judge Adams entered his oral ruling, right?

24 A Yes.

1 Q Will you turn to page 5 starting on line 20 Judge
2 Adams cited from the bench: There has been no evidence that I
3 recall of any kind creating any personal liability on the part
4 of the Plaintiffs, Edward Bayuk, Salvatore Morabito or Trevor
5 Lloyd and, therefore, any claims against them are hereby
6 dismissed?

7 A Yes.

8 Q Do you agree with me Judge Adams made a mistake when
9 he called Salvatore Morabito and Ed Bayuk were the Plaintiffs?

10 A No.

11 Q Is it your testimony Sam Morabito and Ed Bayuk were
12 the original Plaintiffs in the case or Counter-Defendants?

13 A I believe they were part of Paul's enterprise.

14 Q With all due respect, that wasn't my question. My
15 question is: Is it your understanding sitting here today as
16 the Herbsts representative testifying that Mr. Bayuk and
17 Mr. Morabito were original Plaintiffs in the 2007 litigation?

18 A Yes, I believe, they were.

19 Q And you don't dispute that Mr. -- or that Judge
20 Adams dismissed Mr. Bayuk and Sam Morabito from the 2007 case?

21 A I have a lot of respect for the Judge, but I
22 disagree with that personally.

23 Q And then you testified that approximately a month
24 later on October 12, 2010 the Herbsts received a Judgment in

1 their favor from Judge Adams, correct?

2 A That's correct.

3 Q After that Judgment, between that and the date that
4 the Settlement Agreement was signed, what effort did the
5 Herbsts undertake to collect their Judgment against
6 Mr. Morabito?

7 A That we had very good lawyers. We had -- I believe
8 they probably did everything in their power to do whatever was
9 necessary to collect at the time.

10 Q In other words, you don't know?

11 A I don't know.

12 Q When you testify that you believed that the Herbsts
13 had engaged in collection efforts, you can't give me any
14 specifics?

15 A I can't. I believe our attorneys, we had very good
16 attorneys, I believe they probably did everything in their
17 power to do something.

18 Q We are talking over each other. Please let me
19 finish, then I will let you finish. Okay. My question was:
20 You testified to Ms. Pilatowicz' question it was your belief
21 the Herbsts had, at the same time, had to collect their debt
22 right?

23 A That's correct.

24 Q But you can't tell me today anything the Herbsts

1 specifically did to collect that debt between the time of the
2 written Judgment and the settlement can you?

3 A I personally can't.

4 Q In fact, will you please turn to Exhibit 278 which
5 is in volume, probably Volume VII in your binder. You have to
6 turn back.

7 A Oh, I am sorry.

8 Q You can leave that one there. Just go grab Volume
9 VII off the shelf.

10 MR. GILMORE: Your Honor, this might be a good time
11 to turn on the E.L.M.O. and at the TVs.

12 THE COURT: Okay. Do you need the clerk to do that?

13 MR. GILMORE: I think we have got that. It is a
14 matter of turning the TV's on. We could have done this during
15 the break. I'm sorry.

16 BY MR. GILMORE:

17 Q Showing you what has been marked and admitted as
18 Exhibit 278, will you turn to 278 in that binder? Now you have
19 already testified that the Judgment which I believe is Exhibit
20 4 or 5 was entered on October 12, 2010, right?

21 A I agree.

22 Q Okay. Can you direct me -- Sorry. Let me lay some
23 foundation. This has been offered and admitted as the docket
24 in the 2007 Herbst litigation. Okay. I'll just represent to

1 you the docket is a reflection of all of the filings between
2 the parties, either side, that go to the Court file. Do you
3 have a general understanding of that?

4 A Not really.

5 Q So I will represent to you this is the complete
6 docket, the docket of the relevant time period with respect to
7 the 2007 Herbst litigation. Are you aware you of any filings
8 that the Herbsts made after their Judgment in an effort to try
9 to collect or execute their Judgment upon Mr. Paul Morabito?

10 A No, I do not know what our attorneys did.

11 Q You don't know and can't testify if the Herbsts ever
12 attempted to domesticate their Judgment in the State of
13 California, do you?

14 A Not in California.

15 Q You testified earlier that you had a general
16 understanding that there were some properties that were
17 transferred, right?

18 A Uh-huh.

19 Q Yes?

20 A Yes, sir.

21 Q Did you understand that some of those transfers were
22 properties that were located in the State of California?

23 A That's correct.

24 Q Can you testify as to any effort the Herbsts made to

1 try to domesticate that Judgment in California to execute upon
2 these properties?

3 A I believe they tried to file in California on those.
4 I believe they did further down. I'm not sure on the date,
5 but I believe they did. They may have.

6 Q What do you have to testify to that informs your
7 belief other than your supposition?

8 A Conversation with counsel.

9 Q Anything else?

10 A No.

11 Q After the Judgment was rendered in October but
12 before the settlement, do you know if your lawyers ever
13 obtained a Writ of Attachment?

14 A I do not.

15 Q Do you know if they obtained a Writ of Execution?

16 A I'm not sure.

17 Q Do you know if they ever served any debtor
18 Interrogatories?

19 A I'm not sure.

20 Q Do you know if they attempted to perform any
21 garnishment of Mr. Morabito's income?

22 A I'm not sure.

23 Q Are you aware that, pursuant to Nevada law,
24 immediately upon entry of Judgment the Herbsts had certain

1 rights under state law to attempt to collect the Judgment
2 against Mr. Morabito?

3 A Do I personally know the rights? I am not sure. I
4 don't remember.

5 Q You don't know?

6 A No.

7 Q You testified that you knew in early 2011 these
8 transfers had occurred, right?

9 A That's correct.

10 Q Do you know if your lawyers or anyone else on the
11 Herbsts' behalf ever attempted to seek some type of Writ of
12 Attachment with respect to any assets?

13 A I believe we were entering into a Settlement
14 Agreement to take care of Paul's obligation to us, and we
15 thought Paul would, you know, come through with it.

16 Q Let's talk about the year between the Judgment, when
17 the Judgment was entered, and the time of the settlement,
18 okay? So the first written Judgment was October 12, 2010. Do
19 you agree with me?

20 A Uh-huh.

21 Q Yes?

22 A I believe so.

23 Q The settlement was executed the first week of
24 December 2012, right? I am sorry, 2011.

1 A '11.

2 Q Your right. We had a little over a year between the
3 Judgment and the settlement, right?

4 A Yup.

5 Q So my question is: In that one year time period, did
6 the Herbsts ever attempt to seek a Writ of Attachment?

7 A We had great counsel. I'm sure they tried to do
8 whatever they could do. Do I remember, no.

9 Q You don't have any personal knowledge to testify
10 today?

11 A No.

12 Q Do you know whether the law permitted the Herbsts to
13 seize any of the assets that Paul had received in these
14 transfers?

15 A I do not know that.

16 Q Will you please turn to Exhibit 280. Let me know
17 when you're there.

18 A I'm there.

19 Q You testified earlier it was your understanding
20 there was a punitive damages award that was --

21 A That's correct.

22 Q -- entered against Mr. Morabito?

23 A That's correct.

24 Q Do you know the amount of the award?

1 A Roughly fifteen million dollars or somewhere around
2 there.

3 Q Do you understand the legal factors and factual
4 factors that go to determining what the appropriate amount of
5 punitive damages is?

6 A Not the math of it, no.

7 Q If I can direct your attention to Paragraph 5 of
8 Exhibit 280. Let me know when you're there.

9 A I believe I am there.

10 Q Are you aware that the Herbsts engaged Craig Greene
11 to do a net worth review of Mr. Paul Morabito pursuant to this
12 punitive damages issue?

13 A I remember the name, what he was supposed to do.

14 Q Are you aware Mr. Craig Greene's report was attached
15 as an exhibit to this stipulation Exhibit 280?

16 A That I'm not sure.

17 MR. GILMORE: Your Honor, I would offer Exhibit 280
18 into evidence.

19 THE COURT: Counsel.

20 MS. PILATOWICZ: Your Honor, I have no objection. I
21 just want to be clear what is being entered is what is in the
22 exhibit book. The attachments aren't included; is that
23 correct?

24 MR. GILMORE: Just what is included in 280 is being

1 offered at this time.

2 MS. PILATOWICZ: No objection.

3 THE COURT: Exhibit 280 is admitted.

4 (Exhibit 280 admitted in evidence.)

5 BY MR. GILMORE:

6 Q Now would you please to turn to 279. Let me know
7 when you're there.

8 A I am there.

9 Q Do you see the name at the top left of that document
10 Craig Greene?

11 A Yup.

12 Q When you testified earlier the Herbsts had hired a
13 forensic accountant to review Paul Morabito's net worth, you
14 were referring to Craig Greene, right?

15 A I believe so, yes.

16 Q Now I have handed you what is the exhibit to the
17 stipulation that is filed as Exhibit 280, okay? We have the
18 docket that can reflect that if you have any confusion about
19 that. Do you disagree with me?

20 A No.

21 Q You agree the Herbsts hired Craig Greene to examine
22 Paul Morabito's net worth in 2011, right?

23 A That's correct.

24 Q It was done pursuant to the punitive damages award

1 Judge Adams indicated he was willing to issue against Paul,
2 correct?

3 A That's correct.

4 Q So take a look at the cover page of 279 and let me
5 know if this refreshes your recollection with respect to the
6 status of the parties in this case. Do you see how
7 Consolidated Nevada --

8 A Yeah.

9 Q --and Paul Morabito are Plaintiffs?

10 A Uh-huh.

11 Q The Herbsts entities are the Defendants?

12 A That's correct.

13 Q At the bottom you see some new names, Edward Bayuk,
14 Salvatore Morabito and Trevor Lloyd, they are Counter-
15 Defendants, right?

16 A That's correct.

17 Q They weren't Plaintiffs, were they?

18 A No, they weren't.

19 Q So will you turn to page 37 of this report. I'm
20 sorry, before we talk about that page number, do you know what
21 Mr. Greene's ultimate conclusions were about the net worth of
22 Paul Morabito?

23 A Somewhere around 90 million dollars.

24 Q Would it surprise you if he said he believed Paul's

1 net worth was in excess of 90 million?

2 A Yeah.

3 Q Is that consistent with your understanding?

4 A Absolutely.

5 Q This report was signed by Mr. Greene. I am looking
6 for the page number.

7 MS. PILATOWICZ: Your Honor, I object to the use of
8 the exhibit until -- There has been no request to admit it
9 into evidence. We would object on the basis it is hearsay?

10 THE COURT: Okay.

11 MR. GILMORE: Your Honor, I am still laying the
12 foundation. This is a report that was prepared by an expert
13 retained by the Herbsts, so the objection that it is hearsay,
14 this is a statement of a party opponent. The Herbsts
15 originally filed this case against my clients. So in part on
16 the basis of what they had found from Mr. Greene, Mr. Greene's
17 report resulted in the ultimate finding of the punitive
18 damages. So I would argue not only is it pertinent and
19 adequate foundation, it is not hearsay. This is a report
20 prepared by an agent of a party opponent which is an exception
21 to the hearsay rule.

22 MS. PILATOWICZ: It is an out of court statement
23 offered to prove the matter asserted. It is an expert report.
24 The characterization of it that it was what led to the

1 findings of punitive damages is incorrect. It doesn't change
2 it is hearsay.

3 THE COURT: Why do you think a statement made by a
4 party opponent is hearsay?

5 MS. PILATOWICZ: Well, it is not a statement of a
6 party opponent. The party in this case is the bankruptcy
7 estate of Paul Morabito. Mr. Leonard is the Plaintiff.

8 THE COURT: Okay. You are saying it was a statement
9 of the Herbsts, may be adopted by the Herbsts parties but not
10 of the Plaintiff in this case?

11 MS. PILATOWICZ: Your Honor, I think an expert's
12 report analyzing factors, that information provided by the
13 expert are inherently hearsay.

14 THE COURT: I am going to sustain the object.

15 MR. GILMORE: May I respond to the issue on the
16 hearsay? This is -- The Herbst parties as the original
17 Plaintiffs in this case are in privity, direct privity with
18 the Plaintiff in this case. In fact, the Plaintiff in this
19 case is trying to prove the exact same claim.

20 THE COURT: I am ruling on the fact it is an expert
21 report. The hearsay quality of an expert report. I am not
22 ruling on the fact it is not a party in this case.

23 MR. GILMORE: I am sorry. Can you help me understand
24 the ruling?

1 THE COURT: An expert report is not an adopted
2 admission. You may have another way of getting this in, but
3 not by claiming it is an adoptive admission.

4 MR. GILMORE: Understood.

5 THE COURT: The objection was to the testimony
6 regarding 279. He was testifying to the content without it
7 being admitted, therefore, the discussion kind of morphed into
8 the admissibility of it. And I sustained the objection.

9 BY MR. GILMORE:

10 Q Is it consistent with your memory, Mr. Herbst, that
11 the Greene report was submitted to your lawyers on or about
12 May 12, 2011?

13 A If that is what it says, I am sure it was.

14 Q You don't have any evidence --

15 A No.

16 Q -- to dispute that, do you? Do you know whether
17 Mr. Greene was aware of these transfers that have been alleged
18 in this case when he prepared this report in May of 2011?

19 MS. PILATOWICZ: Objection. Calls for hearsay and
20 speculation.

21 MR. GILMORE: I am asking if he knows. He's the
22 Herbsts' representative testifying.

23 THE COURT: Okay. If he knows what Mr. Greene knew
24 at the time?

1 MR. GILMORE: Correct.

2 THE COURT: Do you know what Mr. Greene knew?

3 THE WITNESS: What he was thinking, no, I don't.

4 BY MR. GILMORE:

5 Q Are you aware that Brian Irvine-- Do you recognize

6 Mr. Irvine back in the gallery?

7 A Sure do.

8 Q He was one of the Herbsts lawyers in the 2007 case?

9 A That's correct.

10 Q Do you know if Brian Irvine took the deposition of

11 Darryl Noble in April of 2011?

12 A I can't remember.

13 Q Do you know who Darryl Noble is?

14 A No, I don't.

15 Q You did testify on direct examination that the

16 Herbsts were aware of these transfers at some point in time in

17 2011, right?

18 A That's correct.

19 Q In fact, you testified to the effect that my client

20 signed tolling agreements with respect to these alleged

21 transfers in the Paul Morabito settlement, right?

22 A I believe so.

23 Q Do you know whether the properties -- Let's focus on

24 the Laguna Beach properties. What is your understanding of

1 what properties in Laguna Beach were part of these transfers?

2 A There is a residence in Laguna Beach. It was a
3 compound of some sort. I don't know exactly what it was. I
4 have never been there.

5 Q Do you know whether the transfers that reflect these
6 alleged fraudulent transfers, whether they were recorded by
7 Deed or otherwise?

8 A No, I do not.

9 Q You don't know. Do you know if the Herbsts or anyone
10 on their behalf ever attempted to do a search of the property
11 records in Washoe County to determine whether any transfers
12 had been made?

13 A I would assume they did.

14 Q You don't know?

15 A I don't personally know.

16 Q So you are not here to testify as to whether they
17 did or didn't are you?

18 A No, I am not.

19 Q You are not here to testify whether these properties
20 were transferred by of way of Deed or otherwise, are you?

21 A No.

22 Q Are you here to testify as to whether or not the
23 Herbsts recorded their Judgment in any county records?

24 A I can't honestly tell you where the Judgment was

1 entered into. I believe Nevada, obviously, but California,
2 I'm not sure.

3 Q Mine is a more specific question. You don't know if
4 the Herbsts ever recorded their Judgment at the County
5 Records office, do you?

6 A You know, we have very, very good attorneys. I'm
7 sure they did whatever is in the best interest of the parties.

8 Q You don't know that?

9 A No.

10 Q You can't testify to that today, can you?

11 A No.

12 Q You don't know whether the Judgment was ever
13 domesticated in a foreign state, do you?

14 A No.

15 Q So you cannot today give me a specific example of
16 anything the Herbsts did to collect their Judgment between
17 October 2010 and the date of the Judgment, can you?

18 A No.

19 Q You don't deny Paul Morabito made payments pursuant
20 to the Settlement Agreement, do you?

21 A A few.

22 Q Do you know what the total amount of the payments
23 were?

24 A No.

1 Q So you're not here to testify as to the specifics of
2 those payments?

3 A Not the specifics.

4 Q You have heard the word Superpumper before?

5 A Yes, I have.

6 Q What does that mean?

7 A A group of service stations I believe in Scottsdale,
8 Arizona.

9 Q Do you know one of the allegations in this case is
10 that Superpumper was an asset that was fraudulently
11 transferred.

12 A Yes.

13 Q Do you know what the consideration that was
14 exchanged pursuant to that transfer was?

15 A No.

16 Q Are you here to testify today whether or not the
17 consideration that was exchanged for that transfer was
18 collectible under Nevada law?

19 A No.

20 Q You don't know that, do you?

21 A No.

22 Q Do you know what Nevada law permits a Judgment
23 creditor to execute upon with respect to a limited liability
24 company?

1 A No.

2 MS. PILATOWICZ: Objection. Calls for a legal

3 conclusion.

4 THE COURT: Sustained, but he doesn't know.

5 MR. GILMORE: I have nothing further.

6 THE COURT: Okay. Redirect.

7

8 REDIRECT EXAMINATION

9 BY MS. PILATOWICZ:

10 Q Did the Herbsts want to collect on the Judgment they

11 obtained in 2010?

12 A Absolutely.

13 Q Did they want to collect in 2011?

14 A Absolutely.

15 Q Do they want to collect today?

16 A Absolutely.

17 Q Would they accept a check from Paul Morabito today

18 if he wrote one today?

19 MR. GILMORE: Objection.

20 THE COURT: What was the objection?

21 MR. GILMORE: Relevance.

22 THE COURT: What is the the relevance?

23 MS. PILATOWICZ: Your Honor, there has been ample

24 indications the Herbsts were sitting on their rights not

1 wanting to collect. The evidence will show otherwise. The
2 Herbsts certainly would be willing to collect today if there
3 was a payment here.

4 THE COURT: I am going to sustain the objection.

5 BY MS. PILATOWICZ:

6 Q If the Herbsts were aware of the transfers at the
7 time they entered into the Settlement Agreement, why did the
8 Herbsts enter into the Settlement Agreement?

9 A We thought Paul was going to be good on his
10 obligations to the Settlement Agreement. We wanted to be a
11 party of it. He negotiated it. We thought he was going to
12 pay.

13 Q Did the Herbsts have a desire to spend more
14 litigation funds?

15 A We wanted it over, everything over. This is going
16 on eleven years. Enough is enough.

17 Q When the Herbsts entered into the punitive damages
18 stipulation, what assets did the Herbsts take into account?
19 Did the Herbsts make a distinction between other assets that
20 had been transferred and assets not transferred in determining
21 what assets they believed Paul Morabito had?

22 MR. GILMORE: Objection, foundation.

23 THE WITNESS: To determining what we were negotiating
24 the Settlement Agreement?

1 MR. GILMORE: Objection.

2 THE COURT: Okay. The witness doesn't understand the
3 question. I will let you rephrase the question then I will
4 see if there is an objection.

5 BY MS. PILATOWICZ:

6 Q Did the Herbsts consider the transferred assets at
7 the time of the Settlement Agreement, assets that were
8 ultimately Paul Morabito's assets?

9 MR. GILMORE: Objection, foundation.

10 THE WITNESS: We considered --

11 THE COURT: Wait. I don't understand. I am sorry.
12 I don't understand the question.

13 MS. PILATOWICZ: Fair enough, Your Honor. Let me
14 lay a little more foundation.

15 THE COURT: Okay. Thank you.

16 BY MS. PILATOWICZ:

17 Q In the Settlement Agreement there was a reference to
18 assets that the Herbst parties believed had been transferred.
19 Do you recall that?

20 A Yes.

21 Q Did the Herbsts consider those assets assets of Paul
22 Morabito after they were transferred?

23 A Yes.

24 Q Was that -- Did the Herbsts take those assets into

1 consideration when determining the amount of money they
2 believed Paul Morabito had to pay on the Judgment?

3 A Yes.

4 Q Why did the Herbsts enter into a stipulation for
5 punitive damages?

6 A We wanted to be compensated for the gross negligence
7 that Paul and Consolidated, the company did to us.

8 Q Did the Herbsts wish to pursue another trial on
9 punitive damages?

10 A No.

11 Q How much money would you estimate the Herbsts have
12 spent trying to collect the money that was taken by Paul
13 Morabito from 2007 through today?

14 MR. GILMORE: Objection. Objection. Relevance

15 THE WITNESS: Close to ten million dollars.

16 THE COURT: Wait a minute. I have to rule on it.

17 MS. PILATOWICZ: Your Honor, it again goes to the
18 issue of the extreme effort the Herbsts have taken to collect
19 on the Judgment.

20 THE COURT: Based on the cross-examination, I will
21 allow the question. I have overruled it. You can answer it.

22 THE WITNESS: I'd say close to ten million,
23 somewhere in that neighborhood.

24 ///

1 BY MS. PILATOWICZ:

2 Q And those efforts are continuing today?

3 A They are going to continue until we collect.

4 MS. PILATOWICZ: Nothing further, Your Honor.

5 THE COURT: Okay. Mr. Gilmore, did you have anything
6 else?

7

8 RECROSS-EXAMINATION

9 BY MR. GILMORE:

10 Q Just two questions. Turn to Exhibit 280, paragraph
11 5. The parties -- This is the Herbsts' lawyers' stipulation.
12 "The parties have conducted certain discovery concerning the
13 net worth of Plaintiffs." You are aware that your lawyers had
14 conducted discovery in anticipation of a punitive damages
15 trial, right?

16 A Rephrase.

17 Q You are aware that your lawyers, the Herbsts
18 lawyers, conducted punitive damages discovery in anticipation
19 of a punitive damages trial?

20 A Correct. I apologize. Yes.

21 Q Do you dispute the veracity of this statement: The
22 parties, meaning Paul Morabito and the Herbsts, based upon the
23 discovery as to the net worth of Plaintiffs, the Findings of
24 Fact, Conclusions of Law contained in Exhibit 1, that punitive

1 damages would be awarded by this Court after a hearing? Do
2 you dispute that?

3 A No.

4 Q Then there is a subsequent paragraph, then I will
5 conclude: That the parties have vastly different views as to
6 the net worth of the Plaintiffs. Plaintiffs retained Michelle
7 Salazar. Do you know anything about that?

8 A No.

9 Q And then: Defendants, meaning the Herbsts, retained
10 Craig Greene as their expert witness as to the net worth. Do
11 you dispute that?

12 A No.

13 Q Do you dispute: The parties recognize there are
14 disparate views of the Plaintiff that may impact the amount of
15 of punitive damages awarded by the court? Is that consistent
16 with your understanding?

17 A Yes.

18 Q Are you aware, that pursuant to these stipulations,
19 the parties entered into the stipulated amount of punitive
20 damages as fifteen million dollars?

21 A I understand.

22 Q Is it your opinion, Mr. Herbst, is it your belief,
23 Mr. Herbst, that that fifteen million dollars was arrived at
24 in part because of what Mr. Greene had reported in his report?

1 A I'm not sure how the math works, how the Judge
2 determines it.

3 Q I am not asking about the math. I am asking: Is it
4 your opinion one of the reasons why this stipulation occurred
5 is because of what Mr. Greene had put in his report?

6 A Could be.

7 MR. GILMORE: Nothing further.

8 THE COURT: Okay. May this witness be excused?

9 MS. PILATOWICZ: Yes, Your Honor.

10 THE COURT: You may step down. You are excused.

11 (Witness excused.)

12 THE COURT: It is my understanding Mr. Bayuk will be
13 our next witness, is that correct?

14 MS. TURNER: Yes, Your Honor.

15 THE COURT: Let's be in recess until 1:15.

16 (Whereupon the Court adjourned for the noon recess.)

17 THE COURT: Thank you. Please be seated. Go ahead
18 and call your next witness.

19 MS. TURNER: Yes, Your Honor. Mr. Bayuk.

20 THE COURT: You may proceed.

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EDWARD BAYUK

called as a witness, having been first duly sworn,
took the witness stand and testified as follows:

DIRECT EXAMINATION

MS. TURNER:

Q Good morning or good afternoon.

A Good afternoon.

Q If you could introduce yourself to the Court
reporter spelling your last name?

A Sure. Edward Bayuk. B-A-Y-U-K.

Q You are a named defendant in this case, yes?

A Yes.

Q And you lived here in Reno for many years?

A Yes. From 2005 to 2010.

Q And you left Reno in or about September 2010?

A About that.

Q And you changed your residence to California?

A Correct.

Q And you still reside in California?

A Yes.

Q What is your residential address?

A 371 El Camino Del Mar, Laguna Beach, California,
92651.

1 Q Now that property is at issue in this case. Is it
2 correct that the El Camino Del Mar home is actually adjacent
3 to another home where there is a shared extended residence?

4 A No. It is a separate APN. So in 2000 I moved from
5 Los Angeles to Laguna Beach, California and purchased with
6 Paul Morabito 371 El Camino Del Mar. So that is a separate
7 APN. And then 370 Los Olivos that you're speaking about is
8 another separate APN in Laguna Beach 926751 that was purchased
9 in 2005. I am sorry, 2006.

10 Q And when the Los Olivos home was purchased in 2006,
11 that is adjacent to your El Camino Del Mar home?

12 A 371 El Camino Del Mar is one street. Then there is
13 an alley called Golf and 370 faces, 370 Los Olivos is another
14 street. So when I purchased 370 Los Olivos in 2006 separate
15 APN, I took down the fence, and I did a major construction on
16 the house and all, so it is still separate today. I could put
17 up a fence and sell either one separately.

18 Q Before taking down the fence, so there are co-joined
19 backyards if you will?

20 A Yeah, you could say, yeah, it looks like a compound.
21 It is a block. It goes from one block to another block.

22 Q And does anybody else reside in the Los Olivos home?

23 A Presently Mr. Morabito and his boyfriend are there.
24 They spent last year, most of this year and last year in

1 London, England. His boyfriend, he got his Masters at King's
2 in London.

3 Q Because there is a couple of Morabitos we are going
4 to be referring to, when you are referring to Mr. Morabito, do
5 you mean Paul Morabito?

6 A Yes. Sorry.

7 Q How long has Paul Morabito been living in the Los
8 Olivos house?

9 A Like I said, this past year and the year before he
10 was in London a lot, so I don't know how many months or days.

11 Q Prior to going to London, did Paul Morabito reside
12 in the Palm Springs home?

13 A No. He resided -- well, he resided -- He had a
14 condo in Los Angeles, the Doheny building. He was there for
15 three years I think. Then he moved over to Kings. It is a
16 street above Sunset Boulevard. He lived there for about three
17 years, and then he went out-- I think he lost his house there.
18 Yeah, he lost the lease or whatever, and he moved. He was in
19 Palm Springs for about six months or so I think.

20 Q When was that in Palm Springs?

21 A I forget what year. I'd have to go check, look at a
22 calendar.

23 Q Does 2016 sound about right?

24 A Yeah. I think he moved out of the L.A. house in

1 '16, yeah.

2 Q When I refer to the Palm Springs home, that is the
3 Mary Fleming address?

4 A Correct.

5 Q Mary Fleming is another property that is going to be
6 at issue in this case. Now the El Camino Del Mar, Los Olivos
7 homes in Laguna Beach, California as well as the Mary Fleming
8 Palm Springs home, those are held in the name of the Edward
9 William Bayuk Living Trust, correct?

10 A Correct.

11 Q And is it your testimony that you reside in the El
12 Camino Del Mar home currently? You do not reside with Paul
13 Morabito who lives in the Los Olivos property that is also in
14 Laguna Beach?

15 A I haven't lived with Paul Morabito since around
16 2010. I see him a lot and I have dinner with him, but I, you
17 know, don't live with him.

18 Q Does Paul Morabito pay rent to you for the use of
19 the Los Olivos home?

20 A Him and his boyfriend did sign a lease with me.

21 Q When did they sign a lease?

22 A Good question. Probably around the time they were
23 there part time. I can get that for you.

24 Q So Mr. Morabito is your tenant and neighbor in

1 Laguna Beach, that's fair, right?

2 A Today right now, yeah.

3 Q Now let's go back in time a bit. You met Paul
4 Morabito in the '90's?

5 A I met Mr. Morabito, Paul Morabito in 1997.

6 Q And he became your business partner?

7 A No, not at the time. We were friends and started
8 dating, and then at some point in time I started doing some
9 work for him.

10 Q When you met Paul Morabito, you worked at GE, is
11 that correct?

12 A No. I started my career at General Electric in
13 Connecticut after graduating undergrad. I got hired into
14 their executive marketing program and actually interviewed
15 with a lot of companies while I was there. I actually got
16 vetted because I had gone through the process previously with
17 the CIA, and I got offered a job, got vetted by them. I didn't
18 take the job. They were a little pissed at me, but I stayed
19 with GE, and I was with GE for about seven years, and then
20 unexpectedly GE moved from Connecticut to California, then I
21 went to work for Rupp Schneider which is a competitor of
22 General Electric in power distribution products. So I stayed
23 in the industry, and those people moved me to California. So I
24 stayed in the industry. Both jobs I was in sales and

1 marketing other than the first two years with GE I was going
2 through their executive marketing program.

3 Q When you met Paul, you were employed with Schneider?

4 A I probably was finishing, yeah.

5 Q Now at some point in time you moved in with Paul
6 Morabito?

7 A Yes.

8 Q And lived with him. And that was a point in time
9 when gays couldn't get married, but did you have a domestic
10 partnership?

11 A No, we never had a domestic partnership.

12 Q So you lived with Paul Morabito and he was your
13 boyfriend?

14 A Correct.

15 Q And then in September 2010 you go and changed your
16 residency from Nevada where you lived with Paul?

17 A Correct.

18 Q Here in Reno, and you changed it to California?

19 A Correct. And, previously, it was California.

20 Q And it is your position that at that point in time,
21 September 2010, you no longer lived with Paul Morabito?

22 A Yeah. I mean he was moving. He was planning -- He
23 had found a place in Los Angeles, and I was moving back to
24 Laguna Beach to use those residences there. And I did go -- I

1 mean I went to see him a lot in Los Angeles. We are still to
2 this day good friends.

3 Q If you would go to Exhibit 35. That is the second
4 book from the right. Do you see it right there. That's it.
5 Exhibit 35. Now if you look at Exhibit 35?

6 A Yes.

7 Q You see the e-mail on the first page?

8 A Yes, I do.

9 Q And from Mark Lehman to you and others, and there is
10 an amendment to a residential lease attached. Do you see
11 that?

12 A Yes.

13 Q Do you recognize the e-mail and the attached
14 amendment to the residential lease set forth at Exhibit 35?

15 A Yup.

16 Q And that is your signature on the third page of the
17 exhibit, correct?

18 A This is the first amendment. There was one previous
19 to this.

20 Q Okay.

21 A So there were two leases. The original lease didn't
22 have my name on it, and I asked my name to be put on it due to
23 Paul in 2009 had a surgery, and he had a medical condition
24 that he was in the hospital, actually had one percent

1 survival, and he was in ICU in one hospital for two weeks, and
2 then I had him transferred to Cedars Sinai where he was there
3 for about six, eight weeks in ICU. So he was not medically
4 well through 2009. So from July 2009 until December, his
5 first car ride was December 13th, 2009. And he was very lucky
6 to get through what he went through, because he had two
7 emergency surgeries and all. So through this process, I asked
8 to be put on the second lease, because I wanted to have access
9 to the apartment. I actually -- yeah. And so I wanted to
10 make sure he was going to the doctors. I took him to the
11 doctors, went to a lot of medical appointments with him and
12 all. So that is why my name is on the lease.

13 Q Okay. If we can look here at this Exhibit 35. That
14 is your signature on the third page of the exhibit?

15 A Yes.

16 Q And that is dated September 27, 2010?

17 A Right.

18 Q As the tenant?

19 A Correct.

20 Q Your testimony is that it was your desire to be
21 added to the lease of this residence?

22 A Yes.

23 Q And if we go to the second page of this exhibit, the
24 residence is 9255 Doheny Road in West Hollywood, California,

1 is that accurate?

2 A Yes.

3 Q The purpose of the first amendment to the
4 residential lease, if you look down further on the second
5 page, it was to add Edward Bayuk as a tenant. That is
6 consistent with your testimony, correct?

7 A Yes.

8 MS. PILATOWICZ: Your Honor, I move to admit Exhibit
9 35.

10 THE COURT: Any objection?

11 THE WITNESS: I think the date of the first lease is
12 mentioned in that as well, too, just so you know, July 31st,
13 2010.

14 MR. GILMORE: No objection.

15 THE COURT: Exhibit 35 is admitted.

16 (Exhibit 35 admitted in evidence.)

17 BY MS. TURNER:

18 Q Now once you started dating Paul Morabito, you left
19 your employment with Schneider and started to work in
20 conjunction with Paul Morabito, correct?

21 A I did some projects for him, yes.

22 Q And eventually you went on the payroll of
23 Superpumper?

24 A Well, no.

1 Q I think I know why you're hesitating. The holding
2 company?

3 A The time period is wrong.

4 Q Okay.

5 A You are talking 1997, '98.

6 Q I am going too fast forward.

7 A You're a decade off.

8 Q So for -- Well, what period of time did you cease
9 working at Schneider?

10 A I left Schneider in 1997.

11 Q And you became an investor in conjunction with Paul
12 Morabito after that point in time?

13 A Well, I didn't invest with Mr. Morabito in 1997.

14 Q After that point in time?

15 A I became an owner in a company of Paul Morabito's I
16 think the year was 1999. But you'd have to get some
17 documents. I am going from memory.

18 Q Well in the years following 1997, you invested in
19 real estate and stock in companies, equity in companies in
20 conjunction with Paul Morabito?

21 A You just said 1997?

22 Q I said subsequent to 1997. In the years following?

23 A '99 and beyond.

24 Q Yeah. Okay.

1 A Okay.

2 Q That would be subsequent. After, right?

3 A Sorry. Sorry. Little slow sometimes.

4 Q There were many properties that you invested in with

5 Paul Morabito?

6 A Yes.

7 Q And there were many companies that you invested in

8 with Paul Morabito?

9 A Yes.

10 Q And at some point you lived with Paul Morabito in

11 Florida?

12 A Yes.

13 Q In L.A.?

14 A Yes.

15 Q Palm Springs?

16 A Palm Springs was a winter house. It was actually

17 purchased because we were wanting to develop that market, the

18 Palm Springs market. That is why we purchased the house. We

19 used it as an office.

20 Q Los Angeles?

21 A I lived -- I moved to Los Angeles from Connecticut,

22 so actually had quite a few places there.

23 Q Laguna Beach, we discussed that?

24 A Yes.

1 Q And Reno?

2 A Yes.

3 Q And when you moved to Reno, that was from Florida,
4 correct?

5 A No. I was living in Laguna Beach, California. I was
6 living at 371 El Camino Del Mar, and I was using Mary Fleming
7 in the wintertime.

8 Q What brought you to Reno?

9 A We had been doing business in Reno since 1999. We,
10 in 1999, Q Lube was purchased by Penzoil, and there was a
11 problem, because we had a market in Austin, Texas. We had a
12 market in Colorado Springs. And Penzoil wanted to -- There
13 was a couple of franchisees that were in conflict. We were one
14 of the biggest ones in conflict. So they were trying to -- I
15 got with Penzoil and Paul Morabito and they were trying to cut
16 a deal where they would give us a market and we would give up
17 Austin, Texas and Colorado Springs, Q Lube in Colorado
18 Springs. So they gave us Reno, and they awarded us market
19 rights to the Coachella Valley in the desert, Palm Springs
20 area.

21 Q Now you became a salaried employee with that
22 venture?

23 A No. I became a-- At some point I was on salary,
24 then at some point I became a shareholder and then an officer.

1 Q So you started out a salaried employee and
2 eventually became an owner?
3 A Right.
4 Q And there was a company called PAMCO, a company
5 owned by Paul Morabito?
6 A Correct.
7 Q It changed its name to Consolidated Nevada Corp.?
8 A Correct.
9 Q And that entity acquired Berry-Hinckley?
10 A Correct.
11 Q In 2005?
12 A Correct.
13 Q And you had some ownership with Consolidated Nevada
14 Corp.?
15 A Correct.
16 Q As did Salvatore or Sam Morabito?
17 A Correct.
18 Q If I use Sam, are we understanding each other we are
19 referring to the gentleman here?
20 A Yes.
21 Q Okay. Sam Morabito is Paul's brother?
22 A Yes.
23 Q Just to avoid confusion, Salvatore Morabito, that is
24 Paul's father, correct?

1 A Yes.

2 Q Now you would describe your business at least since
3 you moved to Reno with those as an investor, correct?

4 A I was an owner.

5 Q And Paul and Sam are investors and owners as well?

6 A Which business?

7 Q With various businesses that you have had in common
8 with them?

9 A Okay. Well, you want to be specific, because we
10 were talking about Jiffy Lubes, Q Lubes and Berry-Hinckley.
11 There is more than one business.

12 Q There has not been any business that you have had
13 co-ownership with Paul Morabito where you weren't both
14 officers and owners, correct?

15 MR. GILMORE: Objection. Foundation.

16 THE WITNESS: Best to give me a document.

17 THE COURT: Overruled.

18 THE WITNESS: I am trying to help you, because it is
19 obvious that you don't know all the history of everything, and
20 I am trying to be helpful to you. So it is easier if you give
21 me documents then, because I don't want to get caught saying
22 something that is wrong and I stated it.

23 MS. TURNER:

24 Q So to your best recollection, has there ever been a

1 situation where Paul Morabito was just an employee and you
2 were an owner of that company?

3 A An employee and he was an owner?

4 Q No. You were an owner. Where you were an owner and
5 he was just an employee?

6 A I have had companies where he was an employee, so
7 that is one point. That he wasn't an owner, yes, there was.

8 Q So you have been Paul Morabito's superior in the
9 past where he reported to you as an owner and officer, and he
10 was something less than that?

11 A Yes.

12 Q And you have had the reverse where you have reported
13 to Paul Morabito as an employee and he was an owner?

14 A Well, most of the time in partnerships you all work
15 together, so.

16 Q Paul Morabito was your partner?

17 A Business partner in a number of businesses, yes.

18 Q He was your business partner as well as your
19 domestic partner?

20 A Not domestic partner. He was a boyfriend. We were
21 boyfriends. We were not domestic partners in California or in
22 Nevada. Gays didn't have rights until I think June 2015 or
23 '16, the Supreme Court decision, so we were not domestic
24 partners. We were boyfriends.

1 Q Are you married to anyone currently?

2 A I have never been married.

3 Q Are you a registered domestic partner with anyone

4 currently?

5 A No, I am not.

6 Q Have you ever been?

7 A No, I have not.

8 Q Now Berry-Hinckley was in the gas business, correct?

9 A Yes.

10 Q And you held the title of Executive Vice-President;

11 is that right?

12 A If the document says that, yes.

13 Q And you are paid a lot of money?

14 A Yes.

15 Q Now you didn't -- You held the title of

16 Vice-President and you did receive compensation. You didn't

17 have direct responsibility of the day-to-day operations,

18 correct? You weren't a manager in the stores?

19 A No, but I could do anything I wanted.

20 Q Now when Berry-Hinckley was sold to the Herbsts in

21 2007, PAMCO and Consolidated Nevada Corp., they had no further

22 business, correct?

23 A When CNC got sold?

24 Q To the Herbsts?

1 A Yes. What was the question? I'm sorry.

2 Q There was no further business beyond the ownership
3 with Berry-Hinckley?

4 A Correct.

5 Q Now since the sale of Berry-Hinckley in 2007, you
6 have collected a salary. I shouldn't say "since." Following
7 the sale of Berry-Hinckley in 2007, you started collecting a
8 salary from Superpumper or its related company?

9 A Yes.

10 Q Did you receive the salary from Consolidated Western
11 Corporation or Superpumper?

12 A Probably my W-2 would show you that or actually
13 cooperate documents would show you that.

14 Q And so we are on the same page, Superpumper is an
15 operating company that had eleven gas stations and C-stores in
16 Scottsdale, Arizona?

17 A Yes.

18 Q We saw on the news somebody bought a Mega Millions
19 ticket. It was within the last week anyway?

20 MR. GILMORE: At Superpumper?

21 THE WITNESS: No, I didn't hear that. Good.

22 MS. TURNER:

23 Q Now you collected a salary from Superpumper or CWC.
24 CWC or Consolidated Western Corporation was the holding

1 company where the ownership or the equity was held by the
2 owners of Superpumper, correct?

3 A Yes.

4 Q And up until September 2010 you were a ten percent
5 owner in CWC?

6 A Whatever the documents show.

7 Q Is that consistent with your recollection?

8 A Yes. And refer to documents.

9 Q Do you recall Paul Morabito owned an 80 percent
10 interest in CWC until September 2010?

11 A Whatever the documents show.

12 Q You don't have an independent recollection?

13 A Of the years, no. I just know I own 10 percent.

14 Q And Sam Morabito owned another ten percent?

15 A Yes.

16 Q And then up through September 2010, you -- Paul
17 Morabito was the CEO of Superpumper, correct?

18 A If he gave himself that title, that is probably
19 correct.

20 Q And you were an officer and director as well as
21 Paul?

22 A If he gave me a title, that's probably correct. I
23 mean there is an analogy. I have got to tell you a side story.
24 You know, I worked at two big corporations. One of the things

1 Jack Olsta was really frustrated with, one year he gave all
2 the sales people who had sales people the title
3 Vice-President, and all those people worked for GE Capital
4 were able to get in all the Fortune 500 companies. Just
5 because of the title of Vice-President doesn't necessarily
6 mean you are Vice-President in a corporate document that is
7 filed with the state. So I just want to clarify that with
8 you. A lot of people don't understand that, but that's why I
9 refer to corporate documents that are filed or signed.

10 Q So without a document in front of you, you can't
11 testify whether you were an officer or director of CWC up to
12 September 2010?

13 A I collected a salary from Superpumper. I own ten
14 percent. And I don't know if I had a business card that said
15 Vice-President. I don't think I did.

16 Q And do you understand what a director is and what
17 they do for a corporation?

18 A Yeah.

19 Q Generally?

20 A I have been on four boards, Board of Directors, so
21 yes.

22 Q You, Paul and Sam were on the Board of Directors for
23 Superpumper up through September 2010, correct?

24 A Yes, if the documents say that.

1 Q Well, you know that to be the case, right?

2 A Right. But you have documents, too, that show if I
3 was an officer and director.

4 Q So I am asking you --

5 A Yeah.

6 Q -- for truthful testimony. Do you recall that you
7 were on the Board of Directors for Superpumper with Paul and
8 Sam up through September 2010?

9 A My understanding I was an owner, 10 percent owner in
10 Superpumper. So being a director or Vice-President, it would
11 be helpful if you would just show me.

12 Q If we can go to Exhibit 83.

13 A Leave this one out?

14 Q Sure. I am sure we'll be going back to it. Okay
15 Exhibit 83. If you could take a look, we have a consensus of
16 the Board of Directors and shareholders of Superpumper. Do
17 you see that?

18 A Yes.

19 Q This is really to refresh your recollection. You
20 see the listed names of the Board of Directors for Superpumper
21 as of the 28th day of September 2010? It is on the second
22 page of Exhibit 83.

23 A Yes.

24 Q Do you see Edward Bayuk, Board of Directors. There

1 is a signature there?

2 A Yes.

3 Q And does that refresh your recollection that you
4 were on the Board of Directors with Paul and Sam as of the
5 28th day of September 2010?

6 A Yes.

7 Q And this particular document --

8 MS. TURNER: Which I believe is in evidence, Your
9 Honor?

10 THE COURT: Yes, it is.

11 MS. TURNER:

12 Q -- relates to the merger of the CWC or Consolidated
13 Western Corporation with Superpumper, correct?

14 A Yes.

15 Q You consented to that merger on September 28, 2010,
16 correct?

17 A Yes.

18 Q Now if you could go to the next exhibit which is
19 Exhibit 84. If you could go to that second page. You see your
20 signature?

21 A Yes.

22 Q As a shareholder and director. And then if you go
23 to the first page, it will tell you this is the unanimous
24 written consent of directors and shareholders of Consolidated

1 Western Corporation. Do you see that?

2 A Yes.

3 Q So does this refresh your recollection as of
4 September 28, 2010, you were on a Board of Directors with Paul
5 Morabito and Sam Morabito with respect to CWC?

6 A Yes.

7 Q And you were also an owner as you previously
8 testified?

9 A Yes.

10 Q Now you testified you were a 10 percent owner. You
11 recall that. Does this refresh your recollection that Paul
12 Morabito held an 80 percent interest in Superpumper, pardon
13 me, in CWC, the 100 percent owner of Superpumper?

14 A Yes.

15 Q In addition to being the Director of Superpumper you
16 were also the President?

17 A Of Superpumper?

18 Q Of Superpumper, correct?

19 A When Sam and I organized Snowshoe Petroleum, I was
20 President of Superpumper.

21 Q Then you were Vice-President and Secretary of
22 Snowshoe Petroleum, Inc., correct?

23 A Yes.

24 Q And then Sam was the reverse, is that your

1 recollection?

2 A Correct. It is helpful with documents, but I am
3 sure there is corporate documents.

4 Q If we go to Exhibit 101, do you remember signing
5 Interrogatories during the case where the Defendants had to
6 require answers to Interrogatories?

7 A Yeah. I know I have gotten a lot of Interrogatories
8 for lots of stuff.

9 Q So let's see if this refreshes your recollection.
10 Let's see which one. Interrogatory number two: Identify all
11 current officers of Superpumper.

12 MR. GILMORE: Excuse me, Your Honor. Is this being
13 used to refresh his recollection or is this being offered? If
14 it is being used to refresh, he can read it and testify. It
15 shouldn't be offered or read onto the record.

16 THE COURT: She was using it, as far as my notes, to
17 refresh recollection.

18 MS. TURNER: That's right.

19 MR. GILMORE: She started to read the Interrogatory
20 on the record. That is the only reason I stood up.

21 MS. TURNER: That is probably fair.

22 MS. TURNER:

23 Q If you could go to Interrogatory 2 and read it to
24 yourself and look at the answer.

1 A Read number 2?

2 Q Number 2.

3 A Identify all current officers of Superpumper, Inc.,
4 including titles held by each officer. Edward Bayuk, Salvatore
5 Morabito as Vice-President and Secretary.

6 Q Does that refresh your recollection?

7 A Yes.

8 MR. GILMORE: Objection withdrawn.

9 MS. TURNER:

10 Q Do people ever tell you you have a voice like Alec
11 Baldwin?

12 A No, but I have been told other different people. I
13 try to remember the guy they were telling me, but similar to
14 Alec Baldwin.

15 Q Now, you were in court on September 13, 2010 in
16 Department 6 which is Judge Brent Adams' department. You were
17 there when he made his oral ruling, correct?

18 A I believe so. I missed most of the trial. I only
19 spent probably, I am not sure how long the trial was, but
20 probably a week's worth of days, so I was probably there that
21 day.

22 Q So do you recall when Judge Adams made the oral
23 ruling that you and Sam would be dismissed from the underlying
24 case against the Herbsts?

1 A I was there. I do remember that.

2 Q And Paul Morabito would be liable to the Herbsts for
3 at least \$80,000,000?

4 A Correct.

5 Q And if you were there, Paul Morabito was there?

6 A Yes.

7 Q And Sam Morabito was there?

8 A Yes.

9 Q Now much of my questions will be related to the time
10 period subsequent to that oral ruling just to make sure we are
11 not ambiguous. If I am asking about something else, I will
12 make sure I let you know. Now it was September 13, 2010 that
13 started the conversation with Paul Morabito and Sam Morabito
14 to transfer assets to you and to Sam, correct?

15 A Well, you know, let me, because I am listening to
16 your knowledge of history and years and decades, I probably
17 should make things clear with you. Whatever Paul's stuff is,
18 it is Paul's stuff. Whatever my stuff is, it is my stuff.
19 That includes money. That includes properties. That includes
20 clothing. So, you know, the answer to your question is that
21 if at some point in time I spoke to Paul and then we got
22 layers involved, that I wanted to separate things because I
23 realized things were going to become incredibly complicated
24 for Paul, and I wanted not to be involved with it all.

1 Q When you say things were about to become incredibly
2 complicated with Paul, you mean he was going to be responsible
3 to the Herbsts for tens of millions of dollars?

4 A Yes.

5 Q And it was as a result of you sitting in court and
6 listening to that oral ruling that you hired counsel for the
7 purpose of effectuating a transfer from or transfers from Paul
8 Morabito to you, Sam or to affiliated entities?

9 A No. We hired multiple certified MAI appraisers for
10 the house, and we hired other appraisers, so that my
11 ownership, i.e. the houses that were owned tenants in common,
12 that I could have hundred percent owner of what I wanted, and
13 he could have what he wanted. And I also realized at that
14 point in time Mr. Morabito, Paul Morabito, would owe the
15 Herbsts a lot of money, and it was not my responsibility to
16 pay the Herbst family and it was his responsibility. And I
17 could give you my opinion what the Herbsts should have done,
18 but I was doing what I wanted to do. I wanted to go back to
19 California. I was very disappointed. I am respectful to the
20 Judge, but I was very disappointed to what happened to Paul.
21 I was upset by it. But at the same time, I wanted to go live
22 my life, go back to California. I was very upset selling my
23 portion of the house in Reno, because I spent a lot of time
24 and effort building the house. And you will hear about the

1 house later, I'm sure. But my intentions were to separate
2 things so Paul Morabito could pay the Herbst family what he
3 may owe them.

4 Q Let me back up and make sure we unpack that?

5 A Oh, yeah.

6 Q There is not one piece of paper or e-mail that
7 reflects your intention to or stated intention to separate out
8 the property from Paul Morabito prior to the oral ruling. That
9 oral ruling was the impetus for your actions, correct?

10 A Well, the oral ruling was devastating to Paul
11 Morabito, and I was released from the case, and I wanted to
12 potentially go live my life without being bothered by the
13 Herbsts family. And I can tell you some side stories the Judge
14 would be horrified over, but I won't. Just, I just wanted to
15 go live my life and do business and develop business ventures
16 and all. So I mean --

17 MR. GILMORE: Your Honor, we stipulate that the
18 impetus of the transfers was the oral Judgment. We stipulate
19 to that.

20 THE COURT: Okay. Your attorney just stipulated to
21 that.

22 THE WITNESS: Okay. I am just trying to explain why
23 I did it.

24 MR. GILMORE: We haven't stipulated to that, but I

1 stipulated it was the oral Judgment that started the process.

2 MS. TURNER:

3 Q Now prior to that point in time, that oral ruling on
4 September 13, 2010, we already talked about your joint
5 ownership or common ownership with Superpumper and CWC,
6 correct?

7 A Correct.

8 Q And then you had, you referenced the residence?

9 A Correct.

10 Q Through an entity called Baruk?

11 A Baruk like the gold mine, Baruk Properties, LLC.

12 Q That is spelled B-A-R-R-I-C-K. That is not the
13 spelling here.

14 A No. It is B-A-R-U-K. The property company you are
15 speaking of is Baruk Properties, B-A-R-U-K. The reason I make
16 that comment, people don't pronounce it right. That is why I
17 said that story.

18 Q Baruk Properties is something that you held
19 ownership in that entity fifty/fifty with?

20 A Paul Morabito.

21 Q And then there was Superpumper Properties, LLC that
22 you had common ownership with Sam and Paul Morabito, correct?

23 A Yes.

24 Q And Big Wheel Lodging, Big Wheel Gaming, Big Wheel

1 Hospitality, a casino and truck stop in Fernley where you had
2 ownership, correct?

3 A I believe so, yes.

4 Q Then Watch My Block?

5 A Yes.

6 Q Then we talked about the Reno house. That was on
7 Panorama, correct?

8 A Correct.

9 Q And that is out by Huffaker Lane?

10 A Yup. I was over there the other day taking pictures
11 of the 36 Maple trees I planted.

12 THE COURT: They were pretty weren't they?

13 THE WITNESS: Beautiful. I took like ten pictures.
14 I planted 36 Maple trees down the driveway. When you drive
15 down this long driveway, it is just covered. This is like the
16 perfect time of year. I love this time of year. So it was
17 amazing.

18 MS. TURNER:

19 Q Now your attorney here today is Frank Gilmore,
20 correct?

21 A Yes.

22 Q And he represented your interests, Sam Morabito's
23 interest and Paul Morabito's interest in the underlying case
24 against the Herbsts, correct?

1 A No.

2 Q His firm did?

3 A No.

4 THE COURT: He can answer the question without
5 shaking your head, Mr. Gilmore. That may have been
6 involuntary. You were shaking your head.

7 MR. GILMORE: If she is suggesting that was the
8 case, I was shocked to hear it that's why.

9 THE COURT: Just try not to.

10 MR. GILMORE: I didn't mean to do it intentionally.

11 MS. TURNER:

12 Q It may have been subsequent to the Judgment being
13 entered that Frank Gilmore was retained. He represents you,
14 Sam and Paul, correct?

15 A Frank today represents myself and Sam, and he
16 separately represents Paul Morabito.

17 Q When Paul Morabito was a party to this case, he
18 represented Paul Morabito in conjunction with you and Sam?

19 MR. GILMORE: Objection to the relevance of this
20 line of questioning.

21 THE COURT: What is the relevance?

22 MS. TURNER: Well, there is a common interest
23 amongst Paul Morabito and the two Defendants here. When we
24 are trying to meet our burden on the fraudulent transfer, we

1 have to show that Paul Morabito had an intent.

2 THE COURT: Because there is an issue with regard to
3 the representation, if they did not have a common interest,
4 they may have had a conflict, therefore, I am going to
5 overrule the objection and the testimony is admissible and
6 will be admitted.

7 MR. GILMORE: There has been no foundation this
8 witness knows what Paul's representation was prior to
9 Mr. Bayuk's involvement.

10 THE COURT: That may be. The witness can testify to
11 that if he doesn't.

12 MS. TURNER:

13 Q Specific to this particular case, when Paul Morabito
14 was a party, Frank Gilmore's firm represented you, Sam
15 Morabito and Paul Morabito in joint representation, correct?

16 A Because I am not a lawyer and a layman in that
17 regard, I will agree with you just because I just thought I am
18 here today to defend my credibility. That is why I am here
19 today and set the record straight. But I am here today
20 because Sam and I are being sued. It is a fraudulent transfer
21 case. I know Frank has been representing Paul for a number of
22 different lawsuits and different things. So if you tell me
23 Paul is listed in this lawsuit being sued, the three of us, I
24 will say yes to that.

1 Q You at no point had special counsel that just
2 represented your interests separate from Paul's when Paul was
3 a party to this case?

4 A I have had separate counsel for other lawsuits from
5 the Herbsts against me.

6 Q I am talking about this case when Paul Morabito was
7 a co-defendant?

8 A No, I don't think so.

9 Q Have you ever--

10 A I have to think for a second, because I have had so
11 many lawsuits served on me from the Herbsts, you have got to
12 just give me a second. Yeah, I think that's correct.

13 Q Have you at any point executed a conflict of
14 interest waiver with Frank Gilmore?

15 MR. GILMORE: What is the relevance of this, Your
16 Honor?

17 THE COURT: Overruled.

18 MR. GILMORE: Your Honor, my office took
19 representation of Mr. Bayuk only after these claims were filed
20 and not before. The common interest privilege to the extent
21 has anything to do with the transfers, my firm had no
22 representation of Mr. Bayuk or Sam Morabito or anybody at the
23 time the transfers occurred. I am only trial counsel for this
24 case for Mr. Bayuk.

1 THE WITNESS: That's right.

2 MR. GILMORE: What she's invading or attempting to
3 discuss are things regarding my representation in this case.
4 I didn't represent Mr. Bayuk before this case. I want to make
5 that very, very clear.

6 THE COURT: I don't understand. She asked a
7 question if he had exercised a conflict statement with you.
8 The answer is yes or no. Everything you just said has no
9 relevance to his answer yes or no. Now if we are going to get
10 into specific substantive information, that may go to your
11 objection. But your objection is not timely. It is overruled.
12 You can answer the question about the conflict.

13 THE WITNESS: I am sure I did. I'm guessing.

14 MS. TURNER:

15 Q You're sure you did or do you have a recollection of
16 acknowledging a conflict of interest?

17 A I just assumed I did. I have signed a lot of
18 documents and that's --

19 Q You don't have any independent recollection here?

20 A No. It was hard even doing the Interrogatories
21 because I am running other businesses.

22 Q When Paul Morabito was a co-defendant with you and
23 Sam Morabito, you didn't have any issue with Frank Gilmore
24 representing all three of you because you had a common

1 interest against the Herbsts is how I am understanding your
2 testimony?

3 A My --

4 MR. GILMORE: Objection on relevance. Objection on
5 asked and the questions may invade the attorney-client
6 privilege.

7 THE COURT: Overruled.

8 THE WITNESS: My anger is not to the Herbsts. So I
9 have no axe to grind with the Herbst family. You know, I
10 thought I was going to be able to go back to California and
11 live my life. So if you are asking me the question -- I have
12 spent millions and millions of dollars on litigation fees and
13 a major disruption of my personal, family and business life.
14 So if you are asking me the question I allowed Frank Gilmore
15 to represent me in this case, Frank was not involved when I
16 bought the portion of El Camino Del Mar and Los Olivos. He's
17 not involved in that. That was two other attorneys. So if
18 you are asking me about specific documents that I signed, I
19 would only be guessing unless I can see them, because I have
20 signed hundreds and hundreds of documents. And I have pretty
21 good history, knowledge of years. But months go, weeks run
22 into months. We are in 2018. I was standing in the hallway a
23 few minutes ago and I asked Frank what year was it. 2018. I
24 was trying to remember something that happened in 2016. I am

1 a busy guy and I am trying to be hugely helpful as much as I
2 can. I apologize if I make a mistake.

3 MS. TURNER: I don't know if we got an answer to the
4 question, Your Honor.

5 THE WITNESS: I don't know. I believe so, but I
6 don't know.

7 MS. TURNER:

8 Q Okay. Now Frank Gilmore is not the only attorney you
9 have had in common with Paul Morabito. You referenced two
10 others prior to the transfers. Dennis Vacco represented your
11 interests, correct?

12 A Dennis Vacco was an attorney for me as well.

13 Q He was an attorney for your interests as well as
14 Paul Morabito's at the time of the transfers in September
15 2010?

16 A Well, transfers is plural. I had an attorney who
17 was involved with the houses, and I think he was also involved
18 with the commercial properties. Dennis' office was involved
19 with the business and Dennis might have been copied or a
20 little bit involved with the houses just so he knew what was
21 going on.

22 Q Dennis Vacco was your counsel in September of 2010?

23 A If you have a document that I signed something with
24 him, I am sure I was paying him. I am sure I was paying him,

1 yeah, so.

2 Q Dennis Vacco also represented Paul Morabito in that
3 same time period?

4 A He had been representing Paul Morabito for a long
5 time, way before that.

6 Q So the answer is yes?

7 A Yes. Sorry.

8 Q As well as Sam Morabito?

9 A Yes.

10 Q And you have also shared CPAs with Paul Morabito?

11 A Yes.

12 Q And Stan Bernstein represented your interests as
13 well as Paul Morabito?

14 A Yes.

15 Q And Sam Morabito?

16 A Yes.

17 Q And Gurseay Schneider, do you recognize that name?

18 A Yes.

19 Q They were your accountants?

20 A Yes.

21 Q As well as Paul Morabito's?

22 A They were auditors for Snowshoe Petroleum and
23 Superpumper, Inc.

24 Q So your affiliated entities, they were auditors?

1 A Right.

2 Q They were the auditors when Paul had an ownership
3 interest and was on the Board of Directors with those
4 entities, correct, of Superpumper?

5 A There was another accountant, Dave Darata. So after
6 Stan, there was Dave Darata and Gursej Schneider.

7 Q Gursej Schneider was the auditor for Superpumper
8 while Paul was still involved?

9 A Paul was just probably -- To help you a little bit,
10 Paul is a kind of odd type person. He's a visionary and he's
11 not an operator. So that is why he works all the time. He
12 works nonstop. And so he was involved with, as we divvied up
13 things fairly, he was involved.

14 Q When you say he?

15 A Paul Morabito.

16 Q My question was whether or not Gursej Schneider was
17 the auditor while Paul was on the Board of Directors with you
18 at Superpumper?

19 A Gursej Schneider audited the company a couple of
20 years, so I'm trying to remember what year Paul, you know,
21 when Paul was out of the picture. So Paul's not the-- Once
22 Snowshoe Petroleum owns Superpumper Inc., the auditors, Gursej
23 Schneider is doing the audit, so Paul is not, he's not paying
24 Gursej Schneider, I am. So the company is --

1 Q My question was whether or not Gurseey Schneider was
2 in place at the time that Paul was at Superpumper?

3 A They were auditors for a couple of years. So
4 probably there is a document somewhere that says it. I am
5 trying to remember, you know, the timing and stuff.

6 Q So I am trying to you let you finish your answers,
7 but we are going to be here a long time. If you could answer
8 my question and then your counsel can follow up.

9 Let's move on but we'll come back to Superpumper.
10 But talking about the parties to this case, Edward William
11 Bayuk Living Trust, that is your Trust, correct?

12 A Yes.

13 Q And that is a Trust you set up. You are the Trustee
14 and the beneficiary of the Trust?

15 A Yes. Yes

16 Q It was an estate planning tool to avoid probate on
17 assets in the Trust's name, correct?

18 A Yes.

19 Q And Paul had a living Trust in place as well where
20 you are named as a beneficiary, correct?

21 MR. GILMORE: Objection. Foundation.

22 THE WITNESS: I am not privy to all his documents.

23 THE COURT: I will overrule the objection.

24 THE WITNESS: I am not privy, but I know he thought

1 highly of me, so I would not be surprised if I was in his Will
2 or Trust.

3 BY MS. TURNER:

4 Q You have been advised that in September 2010, you're
5 restated as the primary named beneficiary of Paul's Trust,
6 correct?

7 MR. GILMORE: Objection. Foundation.

8 THE WITNESS: If you show me his Trust.

9 THE COURT: The objection is overruled. He can
10 either answer he is or not.

11 THE WITNESS: I am sure you have a document. I am
12 sure I am.

13 BY MR. TURNER:

14 Q Before we get to the document, let me just ask, I am
15 asking you to testify truthfully?

16 A Right.

17 Q You know you are the primary beneficiary of his
18 Trust, correct?

19 A No one knows who is the beneficiary of my Trust, but
20 I believe I am. And I think I have seen documents with my name
21 in it that I am the beneficiary. But he used to change his
22 Trusts all the time. When I met him, he had a Trust. Two or
23 three years later he had Trust. His lawyers would update it.
24 So he would add things to it. When he's adding things to it,

1 he could change it. So I don't want to -- am probably in some
2 the of Trust documents, more than one version.

3 Q Let's go to Exhibit 39. It is in evidence, Your
4 Honor. If you could go to the page, the bottom right-hand
5 corner 1875. 1875.

6 A Got it.

7 Q Okay. It is really hard to read on this E.L.M.O.
8 but do you see where it says Family Information Section 1.1?

9 MR. GILMORE: Objection foundation. It has not been
10 established this witness knows anything about this document
11 just because it is in evidence?

12 THE COURT: If the document is admitted into
13 evidence, the witness can testify that he knows nothing about
14 it or he has no knowledge. Your continual objections giving
15 him cues is not appropriate. I am overruling your objection.
16 We need to get through the testimony. Either answer the
17 question or not. If you have never seen the document, tell us
18 that and move on.

19 THE WITNESS: No, I have not seen this document.

20 BY MS. TURNER:

21 Q Have you seen earlier versions of the Trust
22 document?

23 A Well, this says Fifth, so at some point I probably
24 did see one one day that had my name in it.

1 Q So the date of this Fifth Amendment that is in
2 evidence is dated September 30, 2010. If you look at the top
3 of this particular page that I directed your attention to
4 September 30, 2010, does that refresh your recollection that
5 there was a restatement of Mr. Morabito, Paul Morabito's Trust
6 Agreement for the Arcadia Trust?

7 MR. GILMORE: I am sorry, I don't mean to keep
8 objecting. I am definitely not trying to influence testimony,
9 but this witness has not been asked first all if he knows this
10 document when he did testify he doesn't know it. The
11 questions related to this document are my client's knowledge
12 of this document keep coming. I don't want to keep objecting,
13 but the issue is--

14 THE COURT: Doesn't it sound a little like she
15 didn't believe him, and this is a witness that she's taking
16 him on, but she's cross examining him because he's a witness
17 that has an adverse position to hers? The question sounded
18 sounded like she did not believe his answer so she was giving
19 him an opportunity to refresh his recollection. I don't know
20 if that is what is happening. I am going to do at least one
21 question. Overruled.

22 MR. GILMORE: All right.

23 THE WITNESS: So now I will follow some of this now.
24 But to answer to your questions, I have not seen this

1 document. And your earlier question was I have probably seen
2 one at some point in time but not this one. I have never seen
3 this.

4 BY MS. TURNER:

5 Q In the document that is in evidence or I would have
6 never done this, it says: I live part time with my boyfriend
7 and long-time companion Edward William Bayuk dated September
8 30, 2010?

9 A Note the part time.

10 Q That was an accurate statement then on that date?

11 A He was dating people that time period, and I was a
12 boyfriend. I am not going to get into what people do in their
13 personal life here, but, you know, if you want me to I will.

14 Q My question is: Is that a truthful statement of
15 September 30, 2010 when Paul Morabito writes: I live part
16 time with my boyfriend and long-time companion Edward William
17 Bayuk? Was that a truthful statement?

18 A We were living in Reno.

19 Q September 30, 2010?

20 A By then I moved back to California.

21 THE COURT: Sir, that is not the question. The
22 question is is that truthful or not.

23 THE WITNESS: Yeah, that's true.

24 ///

1 BY MS. TURNER:

2 Q In fact, you had executed the amendment to the lease
3 to make sure that you had access to the apartment in West
4 Hollywood, correct?

5 A I did that because for medical reasons.

6 Q Now Snowshoe Petroleum Inc., a Nevada company, a New
7 York company, did not exist before September 2010, correct?

8 A Yes.

9 Q It was only after the oral ruling from Judge Adams
10 that Dennis Vacco created Snowshoe Petroleum a New York
11 corporation at your and Sam Morabito's direction?

12 A Dennis Vacco was the attorney.

13 Q Yes.

14 A For Snowshoe Petroleum Inc.

15 Q Somebody had to direct Dennis Vacco to create the
16 entity?

17 A Yeah. He did all the corporate documents.

18 Q And it was after Judge Adams' oral ruling that that
19 direction was made to Dennis Vacco to set it up?

20 A Yes, that was probably that time period.

21 Q And Snowshoe Petroleum was formed for the purpose of
22 acquiring Paul's interest in CWC, Consolidated Western
23 Corporation, correct?

24 A Yes.

1 Q And Consolidated Western Corporation was a Nevada
2 company?

3 A Yes.

4 Q And now that 80 percent interest in CWC that was
5 owned by Paul Morabito would be owned by Snowshoe Petroleum, a
6 New York company?

7 A Yes.

8 Q Now prior to Snowshoe Petroleum's ownership of the
9 Superpumper equity or shares, CWC, a Nevada corporation, owned
10 100 percent of Superpumper, correct?

11 A Yes.

12 Q Now, in September 2010, Paul didn't just hand you
13 his shares in CWC. You had Paul transferring his interest
14 from CWC to Snowshoe Petroleum, correct?

15 A We purchased his shares, then we formed Snowshoe
16 Petroleum.

17 Q To hold the interest?

18 A Correct.

19 Q Now if Paul just wanted to sell his shares to you,
20 you could have co-owned Superpumper in CWC. You were already
21 an owner, a ten percent owner of CWC, correct?

22 A Right.

23 Q But there was a decision made to create a new
24 company out of New York to hold that interest instead of CWC?

1 A Yes.

2 Q And that was your decision?

3 A I think what it was, the Snowshoe Petroleum was a
4 holding company. It was going to own Superpumper Inc. And
5 Snowshoe Petroleum was in search of other opportunities in New
6 York, Chicago, Florida, and we chose New York because Dennis
7 Vacco was the attorney.

8 Q CWC was the 100 percent holding company of
9 Superpumper?

10 A Right.

11 Q It had no other purpose other than that business?

12 A Right.

13 Q And in September of 2010, Snowshoe Petroleum, a New
14 York company, was formed?

15 A Right.

16 Q To hold the interest in Superpumper?

17 A Correct.

18 Q And that decision to change the holding company from
19 CWC a Nevada corporation to Snowshoe Petroleum, a New York
20 corporation, that was your decision?

21 A Well, the decision was made between Sam and I, and
22 we didn't have any other Nevada attorneys anymore, so Dennis
23 was hired to do the corporate paperwork from New York. That
24 is why it became a New York LLC.

1 Q I want to make sure that by the response to the
2 question that it is clear on the record. You and Sam made the
3 decision to create Snowshoe Petroleum, a New York company, to
4 be the holding company of the Superpumper equity?

5 A Right.

6 Q Now there was a shareholder interest purchase
7 agreement, correct?

8 A Yes.

9 Q Now if you could go to Exhibit 103. Exhibit 103.

10 A Okay. Got it.

11 THE COURT: Exhibit 103 has been admitted.

12 MS. TURNER: Thank you.

13 BY MS. TURNER:

14 Q I wanted to clarify this. I think that was one of
15 the later ones. That wasn't on my list. Exhibit 103, if you
16 look on the second page, that has your signature, correct?

17 A Yes.

18 Q And it is a Promissory Note dated November 1, 2010,
19 correct?

20 A Yes.

21 Q And this Promissory Note provides a promise from
22 Snowshoe Petroleum Inc., to pay Paul Morabito \$1,462,013.00
23 correct?

24 A Yes.

1 Q That was to be paid over time?

2 A Yes.

3 Q And this Promissory Note was to represent value

4 conferred to Paul in exchange for his 80 percent interest in

5 CWC, correct?

6 A Was there anymore notes with that? Oh, yes. Yes.

7 Q Was there any other purpose for this note set forth

8 in Exhibit 103?

9 A Yes.

10 Q There was another purpose?

11 A No. No. The answer to your question is yes.

12 Q Now, subsequent to the execution of this Promissory

13 Note for \$1,462,013.00 there were Successor Notes, correct?

14 A I believe so, yes.

15 Q If you go to Exhibits 104 and 105 both. Those are

16 in. These are Successor Notes?

17 A Yes.

18 Q And you executed the Successor Notes?

19 A Yes.

20 Q Exhibits 104 and 105?

21 A Yes. Yes.

22 Q Now at deposition you were asked were any of those

23 notes paid by Snowshoe Petroleum to Paul Morabito, and you

24 said you would defer to Gursey Schneider. Do you recall that?

1 A No, to be honest.

2 Q Well, have you, since the deposition, gone back to
3 see if Snowshoe Petroleum paid Paul Morabito pursuant to any
4 of the notes I just showed you, Exhibits 103, 104 and 105?

5 A I believe so.

6 Q And how much was paid from Snowshoe Petroleum to
7 Paul Morabito pursuant to these notes?

8 A So I would defer these questions to Sam, but I
9 believe everything was paid to Paul Morabito.

10 Q All amounts set forth in all three notes?

11 A I think Sam would be able to clarify that, because I
12 don't know if there was -- Gurseay Schneider made some slight
13 change in the audit, but I don't remember what it was.

14 Q Let me make sure we are clear for the record,
15 because there is a nuance here. If you look at Exhibit 104,
16 Snowshoe Petroleum agreed to pay Paul Morabito \$492,000,
17 right?

18 A Yes.

19 Q If you go to Exhibit 105, that was Snowshoe
20 promising to pay Superpumper \$939,000. Do you see that?

21 A Yes.

22 Q Do you know why the Successor Promissory Notes dated
23 February 1, 2011 were executed?

24 A I defer the question to Sam. Some of the notes were

1 for equity to show -- because we had a -- we had to keep
2 certain balances for the bank as well as the landlord.

3 Q Do you recall there was a loan from Compass to
4 Superpumper?

5 A Yes.

6 Q For about three million dollars?

7 A Yes.

8 Q And you, Sam and Paul each took \$939,000 out of the
9 Superpumper as distribution, correct?

10 A Yes.

11 Q You and Sam put certain amounts back in?

12 A Yes, a lot back in.

13 Q Subsequent to the transfer of Paul Morabito's
14 interest, you and Sam put a good deal of that back into the
15 company, correct?

16 A Yes.

17 Q Paul Morabito's \$939,000 that was taken consistent
18 with yours and Sam's distribution, that was receipted as a
19 loan at some point in time, correct?

20 A I'm not sure.

21 Q Do you recall that Snowshoe agreed to assume Paul's
22 obligation to repay the \$939,000 to Superpumper that was
23 distributed at the same time you and Sam got your
24 distributions?

1 A Given to Paul. We assumed the debt, yes.

2 Q Now if we go to Exhibit 244. It is in evidence.

3 THE COURT: Volume VII.

4 BY MS. TURNER:

5 Q Sorry about that.

6 A That's all right. I was looking at the wrong book.

7 Thank you.

8 A 247.

9 Q 244, pardon me. This is an Assignment Agreement?

10 A Yes.

11 Q Executed the same day as the Successor Notes,

12 correct?

13 A Yes.

14 Q And it references Assignor is a holder under a

15 certain Promissory Note dated November 1, 2010 in the

16 principal amount \$1,462,013.00. Do you see that?

17 A Wait a minute. You're on 244?

18 Q 244 the second paragraph of the recitals?

19 A Oh, yes.

20 Q Then it says: The assignor wishes to assign and

21 assignee desires to assume payments in the principal amount of

22 \$939,000 do you see that?

23 A Yes.

24 Q Then you have reference to the Successors Notes in

1 Section 4?

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q If you look above it, Section 3, it say there:

6 There shall be discharge and forgiveness of obligation under
7 the initial note, they call it the PAM note here, but it is
8 the \$1,462,000 note?

9 A Yes.

10 Q I am going through this to refresh your
11 recollection. Remember I asked you if there had been payments
12 from Snowshoe. There were no payments from Snowshoe on the
13 first note for \$1,462,013.00. That was discharged and
14 forgiven in exchange for these Successor Notes, correct?

15 A Yes.

16 Q And with respect to whether or not there was any
17 payment on the Successor Notes, to understand your testimony,
18 I would be better off talking with Sam Morabito on that point?

19 A Yes.

20 Q Okay.

21 A I didn't handle the finances for the company. I was
22 involved with human resource issues and TI stuff.

23 Q Now the decision to create Snowshoe Petroleum, the
24 New York corporation, that was a quick decision between

1 September 13th and October 1st of 2010, correct?

2 A Well, as I said earlier in testimony, I was moving
3 back to California, and so we had no more Nevada counsel, so
4 Dennis was involved, and he was a New York lawyer doing the
5 documents, that is why it became a New York LLC.

6 Q If we were -- Well, it wasn't a New York LLC. It
7 was a New York corporation, right?

8 A Correct. Sorry.

9 Q If we fast forward to 2012, you realized there was a
10 problem in that an S corporation can't own another S
11 corporation, correct? Do you recall learning there was a
12 problem with Snowshoe?

13 A I'm not an accountant so I don't recall a problem.

14 Q If we go to Exhibit 88.

15 A I have it.

16 Q Great. If you could take a look at the e-mail chain
17 that is set forth in Exhibit 88, and confirm for me that we
18 have your e-mail address as a recipient of these e-mails?

19 A Yes.

20 Q Okay. The date of the e-mail chain is April 26,
21 2012. If you could just take a note or a moment and see if
22 this refreshes your recollection?

23 A Let me just read it.

24 Q Absolutely.

1 A I read the first e-mail.

2 Q Okay.

3 A I forgot about this.

4 Q Now do you recall?

5 A Yes.

6 Q Okay.

7 MS. TURNER: Your Honor, I will move to admit

8 Exhibit 88 before I ask for questions on it.

9 THE COURT: Okay.

10 MR. GILMORE: My objection is that it is hearsay:

11 THE COURT: I haven't read the whole exhibit. This

12 is an e-mail chain this witness was participating in?

13 MS. TURNER: Yes. The e-mail that the witness

14 focused on was the first one to Mr. Gilmore's objection from

15 Dennis Vacco to Ed Bayuk. And Mr. Vacco is the agent of the

16 witness and as he earlier testified to was his counsel. That

17 would be a statement of a party opponent's agent.

18 MR. GILMORE: Only if there is evidence he's adopted

19 that statement. There is no evidence Mr. Bayuk delivered any

20 of the commentary. Just because somebody is copied doesn't

21 mean they have adopted the statement necessarily.

22 THE COURT: Is there anything in the document that

23 says he did not adopt? Does he disagree with the comment? I

24 am not reading the whole thing.

1 MR. GILMORE: I am trying to give the Court a
2 characterization. The e-mail from Mr. Vacco to Bayuk, they
3 are accountant/auditor and one of Vacco's partners where he
4 makes various statements that don't address Edward Bayuk, no
5 response like I agree or yes, you're right. Mr. Vacco has
6 never testified to this document even though he was deposed
7 and could have been. In addition to it being a hearsay
8 statement, there is really no foundation to really understand
9 exactly what Mr. Vacco is talking about. So I would contend it
10 is not an admission of a party opponent through an adopted
11 statement because there is no suggestion Mr. Bayuk had
12 anything to do with the statement or adopted it. Just because
13 he is cc'd doesn't mean he adopted it. That would be my
14 objection.

15 MS. TURNER: Your Honor, I was going to ask the
16 follow up questions, but the witness did say the statement
17 with respect to whether it was created as an S corporation
18 that did refresh his recollection. He did understand the
19 subject matter as result of reading it and having his memory
20 refreshed. I was going to ask him further about the statement
21 to the document from his counsel, and he can either disagree
22 or not as a result of that examination.

23 THE COURT: I am going to overrule the objection. I
24 will admit Exhibit 88. You may inquire.

1 (Exhibit 88 admitted in evidence.)

2 BY MS. TURNER:

3 Q Mr. --

4 A I always thought it was a corporation, and I kind of
5 did from school know that an S corporation can't own an S
6 corporation.

7 Q Now if you could go to the third line of the
8 document and I'll have you follow along Mr. Bayuk. It says:
9 Last year Darata was an accountant for Superpumper, correct?

10 A For Snowshoe Petroleum and Superpumper Inc.

11 Q Thank you. Last year Darata, at the direction of Ed
12 and Sam, converted Snowshoe to an S corporation. Since an S
13 corporation can't own another S corporation, we worked with
14 Darata to convert Ed's and Sam's interest in SPI. That is
15 Snowshoe Petroleum?

16 A Correct.

17 Q SPI, you understand that is Snowshoe Petroleum Inc.?

18 A Yes.

19 Q So that Snowshoe owned retroactively day one 100
20 percent of SPI. This is where I am confused. We just need
21 clarification for the record. Is SPI Snowshoe Petroleum,
22 Inc., or Superpumper Inc. Because there is reference to
23 Snowshoe and SPI?

24 A Sadly, I don't read all my e-mails when they are

1 sent to me. Sometimes I never read all my e-mails, so I
2 always thought Snowshoe Petroleum Inc., was a corporation,
3 never an LLC. So I didn't think it was set as a LLC. I know
4 Superpumper Inc., is a-- so.

5 Q Let me ask a different question. Subsequent to
6 Snowshoe Petroleum acquiring Paul Morabito's interest in CWC,
7 was Snowshoe Petroleum eradicated so you and Sam became direct
8 owners of Superumper, Inc.?

9 A Ask that question one more time.

10 Q Well, at any point in time, did you and Sam become
11 direct owners of Superpumper Inc., as opposed to having your
12 equity held in Snowshoe Petroleum?

13 A No. The equity was held in Snowshoe Petroleum Inc.

14 Q At all times?

15 A Yes.

16 Q It was transferred to Mr. Friederich, Jan
17 Friederich?

18 A Well, yes, but it was sold to an LLC. I'm not sure
19 who all the owners are.

20 Q You and Sam held your equity in Snowshoe Petroleum
21 even after it was discovered that an S corporation could not
22 own an S corporation?

23 A I wasn't really too involved with S Corp., Inc. I
24 always thought that Snowshoe Petroleum, when we set it up,

1 owned Superpumper, Inc., until you brought this to my
2 attention today. It refreshes some of my memory. I don't
3 remember how it got solved, and I didn't even know there was a
4 problem.

5 Q Sitting here today, your testimony is you don't
6 know?

7 A I never thought there was a problem with anything.
8 I thought everything was fine.

9 Q All right, now CWC's ownership of Superpumper in
10 June, May, June 2010, did you have an understanding that had a
11 fair market value of thirty million dollars?

12 A That number probably came from Paul Morabito, and,
13 you know, he puts numbers on things that don't make sense
14 sometimes.

15 Q Did you see the e-mail where Paul Morabito
16 represented that the value of Superpumper was or CWC's
17 ownership in Superpumper was worth thirty million dollars?

18 A I can say this: That Paul makes statements on
19 values of things that made no sense to any type of business.

20 Q Did you follow up on any communication from Paul
21 where he said the value was thirty million dollars to correct
22 it and say that you disagreed and you thought the value was
23 something different?

24 A The only thing was I encouraged Paul to work as hard

1 as he could to pay his debts back. I encouraged. I am not
2 the type of person that abandons someone. So did I correct
3 Paul all the time? No. I just let him do his thing. And
4 there is testimony in deposition that show that Paul would
5 make statements and numbers that made no sense. And he's a
6 visionary. You have to understand the personality. It is kind
7 of like people thought Thomas Edison and Ben Franklin was
8 crazy. They were visionaries. They created things. You may not
9 know this, Paul Morabito started the first Aids pharmacy in
10 San Francisco when there was no pharmacies which lead to
11 specialty pharmacies for Aids patients that led to specialty
12 pharmacies for cancer patients. And so that company made like
13 forty-seven million dollars. He's a visionary. He creates
14 businesses and does things. I will probably tell you 100
15 times in my testimony today that he would make statements with
16 numbers that made no sense. That is why you have got
17 accountants and you have employees that do the work that is
18 supposed to be properly done and accurate. I was never in the
19 accounting department or the finance department that dealt
20 with finances and stuff. So I will say yes to you, probably,
21 but will clarify that he made numbers, made statements and
22 numbers on things that made no sense.

23 Q If you could go to Exhibit 77. Exhibit 77 is an
24 e-mail dated May 20, 2010 from Paul Morabito to Dennis Vacco

1 and it indicates you are a cc. Is that the e-mail that you --
2 Do you recall receiving this e-mail, I should say?

3 A I don't recall this. And I don't know this document.
4 But I will read it if you'd like me to.

5 Q If you could. I am interested in point number
6 three?

7 A Just point three?

8 Q You are free to read the whole thing but point three
9 is going to be the focus.

10 A So the e-mail has to do with acquiring stores in
11 Chicago. They were being financed by probably Silvercrest
12 which is the largest hedge fund in the world. It looks like
13 Paul's putting dollar values on things again.

14 Q And you are a recipient of his representation as
15 Chairman of Consolidated Western Corporation and other
16 entities as of May 20, 2010: The following process needs to
17 happen ASAP. Arrange paperwork for me to transfer into CWC
18 100 percent of the shares of Consolidated Western Corporation
19 which owns 100 percent of Superpumper Inc., at a fair market
20 value of thirty million dollars.

21 My question to you is: Did you respond when Paul
22 made statements such as this to say that is inaccurate or you
23 believed it was inaccurate?

24 A No, I never respond. You will find no e-mails where

1 I make commentary.

2 Q And Paul Morabito was in fact the Chairman of the
3 Board of Directors of Consolidated Western Corporation on May
4 20, 2010, correct?

5 A That's probably correct.

6 Q Now Exhibit 90, if you could fast forward in the
7 same book?

8 A Yes, 90.

9 Q This is your signature on page 2 on behalf of
10 Superpumper as the President?

11 A Yes.

12 Q And you hired Matrix to do a business valuation and
13 that was entered September 30, 2010, correct?

14 A Yes.

15 Q When you hired Matrix to do a business valuation for
16 Superpumper, you understood that in order for an expert to do
17 their job correctly, they have to have all the information
18 that is relevant to their assignment, otherwise you risk
19 garbage in, garbage out, correct?

20 A Yes.

21 Q So it was important to you to make sure that Matrix
22 had all information that was relevant to their assignment so
23 they could discern what was important, what wasn't and come to
24 a true value of Superpumper, correct?

1 A Yes.

2 Q Did you provide Matrix a copy of the e-mail from the
3 Chairman of CWC saying in May of 2010 he believed the company
4 was worth thirty million dollars?

5 A I don't think I --I think he got the information
6 from the accountants and all, but nothing came from me.

7 Q Okay. Did you do any process to review what had been
8 provided Matrix to ensure that everything was full, complete
9 and accurate so that they could do their job?

10 A I think the only thing I did was sign their check
11 to be paid.

12 Q Okay. Did you take any steps to advise Matrix
13 regarding the Raffles self-insurance plan that was owned by
14 CWC?

15 A To take that -- That was a-- I think that was put in
16 CWC then into Snowshoe Petroleum as a QSub. It was a
17 placement to hold it, because Raffles needed a like kind
18 company to park those shares.

19 Q Describe for the Court what the Raffles self-
20 insurance plan was?

21 A So Raffles is a self-insured insurance program, and
22 it is -- you own shares in it with about 300 other companies.
23 And it is for businesses, in our case it was gas stations,
24 retail, high risk business where you would have accidents, if

1 there was an accident claim, the claim would be paid by the
2 fund. So Berry-Hinckley was self-insured for obvious reasons
3 because of the Petroleum business, wholesale business,
4 distribution, tanker trucks and all that. Not only were they
5 self-insured but reinsured. So they had multiple levels of
6 insurance, dealt with insurances for all the companies. So I
7 know all this. Anyway when we sold Berry-Hinckley retail
8 operations to the Herbsts, the Raffles program wasn't part of
9 the sale. So that had to be parked somewhere. So I worked
10 with Kensington to park the ownership somewhere. It couldn't
11 be in an insurance company. It couldn't be in a property
12 company. You know, most people think just transfer it to a
13 property company. You can't. It had to be a like-type
14 business. So we parked it over in the petroleum business of
15 Snowshoe Petroleum and Superpumper, Inc.

16 Q It was, Raffles self-insurance plan was to be -- was
17 an asset of the company. It was on the books of CWC prior to
18 it being merged into Superpumper, correct? You indicate
19 parked?

20 A Yeah.

21 Q It was on the books. It had to be. That is your
22 position?

23 A The scary part is, I think, and, again, I am going
24 from my memory, you know, you're dating, it is 2018, but the

1 scary part is I think it was parked in limbo for a while. So
2 I don't, I think it was parked for a while. So that is why,
3 when I called the company Kensington, it had to be parked
4 somewhere and we parked it in Snowshoe Petroleum. And I
5 vaguely remember I did the paperwork for them and all. And I
6 think on the tax return it is a separate line item.

7 Q Did you advise Matrix that Raffles' self-insurance
8 program was an asset of Superpumper?

9 A The only thing I did for Matrix was sign the
10 agreement and pay them. They interacted with the finance
11 people to figure out values.

12 Q If you could go to Exhibit 128.

13 THE COURT: Is that a good place to take our
14 afternoon recess?

15 MS. TURNER: That's fine.

16 THE COURT: Court's in recess.

17 (Short recess taken.)

18 THE COURT: Counsel, you may proceed.

19 MS. TURNER: Thank you, Your Honor.

20 Before we left, I was remiss in not offering Exhibit
21 77 as an exhibit, so I now offer that as an exhibit.

22 MR. GILMORE: I would object on the basis of hearsay
23 and foundation.

24 THE COURT: My notes show the witness said he did

1 not recall getting this document. Was there more after that?

2 MS. PILATOWICZ: Yes, Your Honor. He also
3 acknowledged Paul Morabito was sending the e-mail as the
4 Chairman of Consolidated Western Corporation and other
5 entities. Consolidated Western Corporation was merged to
6 Superpumper. This would be the statement of a party opponent,
7 as with respect to the foundation, and that he was an
8 indicated recipient. Although he doesn't recall it, he didn't
9 dispute receiving it.

10 THE COURT: Okay. Then I will overrule the
11 objection and admit Exhibit 77.

12 (Exhibit 77 admitted in evidence.)

13 THE COURT: You may proceed.

14 MS. PILATOWICZ:

15 Q Mr. Bayuk, in June of 2010 Superpumper actually
16 contemplated taking on debt of three million dollars in order
17 to increase its book value, correct?

18 A I don't know that.

19 Q If you could go to Exhibit 79. It is an e-mail dated
20 June 28, 2010 from Paul Morabito. It says: Paul Morabito as
21 Chairman of Superpumper, Inc., and Consolidated Western
22 Corporation. Do you see that?

23 A I don't know this document.

24 Q If you could go to the one, two, three, fourth

1 paragraph, where it talks about Superpumper and read that to
2 yourself.

3 A Yes.

4 Q The statements made in that paragraph by Paul
5 Morabito as Chairman, you agree those were true as of June 28,
6 2010?

7 A I will reiterate what I stated before. I don't
8 agree and I said to you Paul would put numbers on things that
9 made no sense.

10 Q The numbers, the numbers you reviewed in Exhibit 79,
11 would you say those are numbers that don't make sense to you?

12 A I'm not familiar with the document. I am not copied
13 on it at all. So as I said to you two minutes ago, he would
14 put numbers on things that don't make sense. I don't know
15 what more you want me to say. I don't agree with the number.
16 Is that what you are saying?

17 Q That was my question to you.

18 A Sorry.

19 Q Did, at any point in time in the Summer of 2010 time
20 period, did Paul Morabito tell you that he believed he was the
21 one hundred percent owner of Superpumper?

22 A No.

23 Q Did he tell you he believed the fair market value
24 exceeded twenty-five million?

1 A No.

2 Q And did you have a different understanding of annual
3 cash flow of five million dollars? Did you have a different
4 understanding?

5 A No.

6 MR. GILMORE: I am sorry. That was a compound
7 answer. Which question was answered there?

8 BY MS. TURNER:

9 Q Did Paul Morabito advise you that he believed annual
10 cash flow from Superpumper was five million dollars?

11 A No.

12 Q In June of 2010 there was no term debt?

13 A I don't know.

14 MS. TURNER: Your Honor, I move for the admission of
15 Exhibit 79 as certainly a statement of an adverse party
16 opponent, Paul Morabito as the chairman of Superpumper and
17 Consolidated Western Corporation.

18 MR. GILMORE: Same objection, hearsay and foundation.
19 Paul Morabito was not examined about what he was talking about
20 here, any of the contents, where these statements came from.
21 This witness testified to his knowledge of it, so my objection
22 is hearsay and foundation.

23 THE COURT: Overruled as to hearsay. When was this
24 disclosed?

1 MS. TURNER: Subsequent to all the depositions.
2 Mr. Leonard can testify that they were disclosed subsequent to
3 the depositions and that he owns the files, this particular
4 document LMWF Supp. I represent to you, I think counsel will
5 confirm, those bate numbers came from Dennis Vacco's law firm
6 in response to a Motion to Compel, Order to Compel and
7 supplemental production. And so LMWF is Dennis Vacco's law
8 firm for the production. I am proffering that because -- I
9 believe we can wait until Mr. Leonard comes in and he can lay
10 the foundation how he obtained these documents and how he owns
11 them and the privileges that may have previously attached
12 thereto. But I think it is productive for this Court to hear
13 about the documents or matters set forth in the documents from
14 people who lived with the companies at that point in time.
15 That is why I bringing it up now. I would like to follow up
16 with questions with this witness regarding the statements. He
17 can deny it as he just did, but I think it is important to
18 know. I think it is relevant for the Court to know that there
19 was Paul Morabito the debtor making certain representations
20 and the witness knew they were false.

21 Later we will have the Matrix, the valuation at
22 issue. The information he received or didn't receive or she,
23 that is all relevant to the veracity of the the information.

24 THE COURT: Okay. But this document came out of the

1 files of Mr. Leonard as he got them from Mr. Morabito?

2 MS. TURNER: No. He received them from Dennis
3 Vacco. LMWF is Dennis Vacco's law firms.

4 THE COURT: Did you have something?

5 MR. GILMORE: Yes. There was a misstatement. At
6 the top right corner of this document is an exhibit stamp
7 indicating this was used in fact in a deposition. So it was
8 used in the deposition of Dennis Vacco, himself, which Dennis
9 Vacco maybe answered questions about it, maybe did not.
10 Mr. Vacco is not a Declarant, so the issue here is they could
11 have deposed Mr. Morabito about it and they didn't, number
12 one.

13 THE COURT: What difference does that make? If you
14 are a party opponent, you make statements, there is no
15 requirement to depose somebody about it.

16 MR. GILMORE: Because Paul Morabito is not a party
17 to this action.

18 THE COURT: It doesn't matter whether he's a named
19 party, if he's in association or connected to a named party
20 and he makes statements in furtherance of his association with
21 a named party. Their argument is he was President of
22 Superpumper at the time he was making these statements and
23 Superpumper is a named party. Then this is a statement
24 against interest by Superpumper. They don't have to depose him

1 about it.

2 Now my concern is when did you get it, how did you
3 know for your foundational questions. It sounds like you all
4 are in agreement you have had it for some time.

5 MS. TURNER: Yes, Your Honor.

6 MR. GILMORE: And I don't think they are going to
7 dispute this was used in a deposition. They did have the
8 opportunity to take discovery on these documents.

9 MS. TURNER: Your Honor, to clarify, that exhibit
10 stamp is for Dennis Vacco who is not somebody who will be here
11 and who can testify about it live, because he's not willing to
12 come. Mr. Morabito, Paul Morabito is not willing to come so,
13 therefore, we have what we have, and that is a statement of
14 Paul Morabito on behalf of Superpumper, a party.

15 THE COURT: Okay. Based upon your representation
16 that Mr. Leonard can authenticate it --

17 MS. TURNER: Yes.

18 THE COURT: -- at some future time, I am going to
19 take that, it still has to be done, but I will allow it to be
20 admitted so you can inquire as to the content of this
21 document.

22 (Exhibit 79 admitted in evidence.)

23 MS. TURNER: Thank you, Your Honor.

24 ///

1 BY MS. TURNER:

2 Q I will follow up later. If we go to this paragraph
3 that I have directed your attention to, it says: The Arizona
4 company which I presently own 100 percent of has a fair market
5 value exceeding twenty-five million dollars. You disagree
6 with that statement, correct?

7 A Yes.

8 Q You said Paul Morabito would often just put numbers
9 to paper and there was no truth to them; is that an accurate
10 statement?

11 A Yes.

12 Q Did you advise Matrix Valuation that Paul Morabito
13 had indicated that fair market value exceeded twenty-five
14 million dollars and she or he on behalf of Matrix should
15 follow-up with Paul Morabito?

16 A I signed the contract with them and I didn't
17 interact with them.

18 Q Do you know anybody who interacted with Matrix who
19 was an officer or a Director of Superpumper or Consolidated
20 Western Corporation?

21 A No.

22 Q Now with respect to the valuation by Matrix, you
23 hired Matrix to do that valuation, and you signed the contract
24 after the transfer from Paul Morabito to Snowshoe, correct?

1 A The date of the signing, I think we were trying to
2 get a fair reasonable value of the company so that things
3 would be done correctly. That is why they were hired.

4 Q Now the date of the Valuation Agreement was
5 September 30, 2010?

6 A Okay.

7 Q They didn't just turn around a valuation within a
8 couple of days. It took some time, correct?

9 A Correct.

10 Q And in fact, Exhibit 90 that is already in evidence
11 shows the invoice in October or an invoice in October of 2010.
12 Do you recall that?

13 A No, but I am sure --

14 Q It is Exhibit 90, sir?

15 A Yes.

16 Q Go to the last page? We just went through it. See
17 if that refreshes your recollection?

18 A Yup.

19 Q Now if we go to Exhibit 80 --

20 MR. GILMORE: I am sorry, counsel. Is Exhibit 90
21 only two pages or is it more?

22 THE WITNESS: A couple pages.

23 THE COURT: Looks like it should be four pages.

24 MS. TURNER: Yeah it's four pages.

1 MR. GILMORE: Exhibit 90?

2 MS. TURNER: That's four pages. It has the invoices.

3 THE COURT: The list says it is Matrix Retention

4 Agreement LMWF 00001 through 00004.

5 MR. GILMORE: My fault. My apologies.

6 MS. TURNER: Counsel, it is just invoices.

7 MR. GILMORE: Okay.

8 BY MS. TURNER:

9 Q Are you at Exhibit 80, sir?

10 A Yes, I am.

11 Q Now this is the Shareholder Interest Purchase

12 Agreement that resulted in Paul Morabito selling his interest

13 in Superpumper to Snowshoe Petroleum. Do you see that?

14 A Yes.

15 Q It is dated the very same day that you executed the

16 agreement with Matrix Valuation, correct?

17 A Yes.

18 Q And in this Shareholder Interest Purchase Agreement

19 we have a sale price of one million thirty-five thousand

20 ninety-four, correct?

21 A Yes.

22 Q Then that changed to a higher number subsequent to

23 September 30th, 2010, correct?

24 A Yes.

1 Q I believe that was about a \$400,000 swing, right?

2 A I think so.

3 Q And the purchase price for Paul Morabito's shares

4 did not include consideration of the value of the Raffles

5 asset, correct?

6 A I don't know.

7 Q Who would be the best person to ask that question?

8 A I would guess the accounting people.

9 Q Now when you executed the Shareholder Interest

10 Purchase Agreement, if you go to page 80, we'll see --

11 THE COURT: You mean Exhibit 80?

12 BY MS. TURNER:

13 Q Exhibit 80. Last page. Pardon me.

14 A Got it.

15 Q That is your signature on behalf of Snowshoe, the

16 purchaser, correct?

17 A Yes.

18 Q Nobody else signed this agreement on behalf of

19 Snowshoe?

20 A Yes, that's correct.

21 Q When the purchase price was determined, you don't

22 recall sitting here today whether the Raffles was included in

23 the consideration of that purchase price?

24 A No, I don't recall.

1 Q Do you recall what was considered?

2 A No.

3 Q How was the price reached?

4 A I don't remember to be honest with you.

5 Q There was no offer to Paul Morabito from Snowshoe
6 and then back and forth negotiations, correct?

7 A No.

8 Q If you could go to Exhibit 128. 128. The last page
9 of Exhibit 128 is the first e-mail in an e-mail string. If you
10 could go to that last page at the bottom of the page where it
11 says: Hi, Catherine. Do you see that?

12 A I am on 128.

13 Q Last page of the exhibit?

14 A Got it.

15 Q It is an e-mail sent from you on behalf of Snowshoe
16 Petroleum, correct?

17 A Yes.

18 Q It says: Can you call me sometime next week to
19 discuss changing the form number 5471 to Snowshoe Petroleum
20 Inc.? Consolidated Western Corporation was consolidated into
21 Snowshoe Petroleum Inc., and would like to correct this form
22 for 2011 tax year. Do you see that?

23 A Yes.

24 Q Do you recall sending that e-mail?

1 A Yes.

2 Q Now if we fast forward on the e-mail chain to the
3 first page of Exhibit 128, there is a follow up from you
4 January 6, 2012, and it says: Please have a discussion with
5 Stan and Dave regarding what company name should actually be
6 on these new share certificates, Snowshoe Petroleum or
7 Superpumper, Inc., so we can finalize the tax form for 2011.
8 See that?

9 A Which e-mail?

10 Q Bottom of the page, very first page of 128.

11 A January 6th to Christian and Dennis?

12 Q Yes?

13 A Yes, I see that.

14 Q So the Raffles Insurance share certificates were in
15 the name of Consolidated Western Corporation, the predecessor
16 to Snowshoe Petroleum Inc., the New York corporation, correct?

17 A It looks like that.

18 Q And if you go to the top of the page, there is Stan
19 Bernstein responding. Stan was your accountant, correct?

20 A Yes.

21 Q And it says: Since CWC was merged into Superpumper,
22 I believe that the Raffles asset belonged in this company.

23 A This is the e-mail from Stan Bernstein to Edward
24 Bayuk?

1 Q Yes.

2 A I am out of the office, but Raffles had been
3 previously owned by the holding company in the past. Either
4 CNC or CWC owned the Raffles' interest?

5 Q That's right. The second paragraph: Since CWC was
6 merged into Superpumper, I believe that the Raffles asset
7 belonged in this company. Do you see that?

8 A Yes.

9 Q Then if you go to the last line, it says: But as of
10 the December 31, 2010 audited statement, the asset never
11 appeared in this company. Since the ownership of Superpumper
12 and Snowshoe Petroleum are the same, I believe it would be
13 best if the assets were to end up in Snowshoe Petroleum. Do
14 you see that?

15 A Yes.

16 Q So as a result of this communication string you had
17 CWC with the Raffles asset named as a CWC asset, CWC merged
18 into Superpumper in December of 2010, correct?

19 A Uh-huh.

20 Q Is that a yes?

21 A Yes.

22 Q And then you had Snowshoe Petroleum as the successor
23 to CWC and the assets of CWC were then owned by Snowshoe
24 Petroleum Inc., correct?

1 A Right. But if you start at the beginning of this
2 exhibit where I am talking to the Raffles people and you read
3 the e-mail to her and I am asking her about certificates and
4 we couldn't find certificates, and you will read the two
5 e-mails and you will see I don't have certificates. They
6 can't find the copies, so they send me new certificates. And
7 so you see the e-mail from Stan to me, it says: I am out of
8 the the office. Raffles was previously owned by a holding
9 company in the past. CNC and CWC owned the Raffles' interest.
10 Raffles was originally at Berry-Hinckley because it was
11 self-insured. I think Raffles sat in limbo because you didn't
12 collect money on Raffles until the seven year point. So once
13 it matured, you would start to get a payout. So I think what
14 happened is it sat at Berry-Hinckley from talking to the woman
15 down at Raffles at Kensington, and that when I went to look
16 for the certificates and couldn't find them and couldn't find
17 the BHI certificates, she said Edward, you know what matters,
18 just park it in a Petroleum like operation. And so I filled
19 out the new certificates and we parked them in Snowshoe
20 Petroleum, Inc. And it is on a separate line item. So if they
21 distributed money it would show.

22 Q Mr. Bayuk, if we go to the last page of Exhibit 128?

23 A Yeah. Right.

24 Q Catherine Murphy of Raffles, her response to you

1 was: We will also need share certificates 556 and 556A in the
2 name of Consolidate Western Corporation returned to us?

3 A Right.

4 Q Raffles was in the name of Consolidated Western
5 Corporation?

6 A Okay.

7 Q Right?

8 A I couldn't find the certificates.

9 Q It was communicated to you --

10 A Right.

11 Q -- from their standpoint it was in the name of
12 Consolidated Western Corporation?

13 A Okay.

14 Q And you wanted it to be transferred to Snowshoe or
15 Superpumper because Consolidated Western was no longer in
16 business. It had been merged into Superpumper, right?

17 A Right.

18 MS. TURNER: Move for admission of Exhibit 128.

19 THE COURT: Any objection?

20 MR. GILMORE: No objection.

21 THE COURT: Exhibit 128 is admitted.

22 (Exhibit 128 admitted in evidence.)

23 BY MS. TURNER:

24 Q And the value of the Raffles asset, are you the best

1 person to talk to about that?

2 A Or if you want to talk to Kensington Trust.

3 Q That payout exceeded two million dollars; correct?

4 A Well, because I have to go by memory, but the
5 downturn in the economy in 2007 and '8 caused the value to go
6 down. So you got two statements a year. It was in June and
7 in September. So June 30th -- I am sorry. I take that back.
8 Statements were issued like the end of September, September
9 30th every year and they would tell you June, oh, they're
10 going to be issued the end of September. So the values were
11 erratic. And my prediction was it was probably going to go
12 down even more after 2008, and I was right. It kept going
13 down. So the payout was not two million, it was a lot less. A
14 lot less.

15 Q What is your testimony of the value of Raffles in
16 September of 2010?

17 A Well, we based it on a report. And you have to
18 discount the report because it is not-- because they do all
19 their calculations in June, then they issue the report in
20 September. So you kind of have to take the number and say
21 okay that's close. Then that is kind of what the value is
22 potentially going to be. But that is not necessarily what you
23 are going to get paid, because it changes. It changes monthly,
24 but they report annually.

1 Q So the question was the value in September of 2010?

2 A Right. There is a document, there are documents that
3 show something, but it is not exactly that. It is less. If
4 you see the next report is even less.

5 THE COURT: Do you not have a value? The question
6 was what did you value it in 2010?

7 THE WITNESS: Probably a million eight or something
8 like that, approximately.

9 BY MS. TURNER:

10 Q Now you testified earlier that Snowshoe Petroleum
11 was intended to look for other opportunities in addition to
12 Superpumper. Do you recall something to that effect?

13 A Yes.

14 Q Snowshoe Petroleum never did conduct any other
15 business other than being the holding company for Superpumper,
16 correct?

17 A No. We did look at other opportunities in our
18 markets, Florida, Chicago, New Mex-- southern -- north of
19 Texas, New Mexico we looked at. We made offers. They weren't
20 accepted.

21 Q Snowshoe Petroleum never had any other business
22 where there were operations?

23 A That's correct.

24 Q Or investments?

1 A No. We tried to.

2 Q Now January 1, 2011 you and Sam transferred your
3 interest in Superpumper to Snowshoe, correct?

4 A Yes. Part of the answer to your last question, I
5 believe some of the deals didn't happen because of the outside
6 litigation from the Herbsts point on didn't help. So you
7 always continually had to explain it to people. So that was a
8 deterrent in conducting business. That is why I said it has
9 affected my personal life, business life and family life.

10 Q At issue in this case are certain fraudulent
11 transfers?

12 A Absolutely. I understand.

13 Q There are other litigation addressing other
14 transfers?

15 A Oh, I understand that. I am involved in some of
16 those as well.

17 Q Versanet?

18 A That's right.

19 Q So we are going to focus on this litigation and
20 these transfers. You understand those are separate cases that
21 have separate transfers at issue?

22 A That's right.

23 Q Okay. Here --

24 A You're correct. Lawsuits I don't agree with you

1 but--

2 Q And you understand the purpose of those lawsuits --
3 How many are pending right now?

4 A I have no idea.

5 MR. GILMORE: Objection, relevance.

6 THE WITNESS: I have no idea. I don't keep track. I
7 focus on business and conduct business.

8 THE COURT: When your attorney objects, it is
9 probably a good idea for you to stop talking because he
10 doesn't want you to answer the question, but you keep
11 answering it.

12 THE WITNESS: I am trying to be helpful.

13 THE COURT: I am not sure he thinks you are. He
14 answered it.

15 MR. GILMORE: Agree.

16 THE WITNESS: It is my personality.

17 BY MS. TURNER:

18 Q You have observed the Herbsts or the Trustee on
19 behalf of the Paul Morabito's estate as a substituted
20 Plaintiff for the Herbsts actively pursue litigation against
21 you to collect against that Judgment entered against Paul
22 Morabito, correct?

23 A Yes.

24 Q And its multiple cases. You can't testify how many?

1 A I can't.

2 THE COURT: Counsel, I have a question. When you
3 said you have spent millions of dollars on defense, are you
4 talking about all the cases as opposed to just this case?

5 THE WITNESS: Well, I have spent millions of dollars
6 on this case. I am thinking four hundred thousand or more on
7 the case that she just mentioned. I have spent roughly three
8 million.

9 THE COURT: When you said millions of dollars, you
10 meant this case only or all of the cases?

11 THE WITNESS: To be honest, I just keep a rough
12 total what I spent on everything except for the original case.

13 THE COURT: Okay. Thank you.

14 THE WITNESS: Sorry.

15 THE COURT: That's okay. I just wanted to clarify.

16 THE WITNESS: Yes. It is big money.

17 THE COURT: You may continue, counsel.

18 BY MS. TURNER:

19 Q Just to follow up on counsel, pardon me, the Court's
20 question: In addition to paying your attorneys representing
21 your interest, you have also paid Paul Morabito's attorney's
22 fees, correct?

23 A Yes. And I have loaned him money, too, as well
24 which I keep a record of. But I also owed him money, too,

1 which I'm sure you are going to get to.

2 Q So far all we have talked about are the notes and
3 the Successor Notes that were executed by you relative to
4 Superpumper, and that was an obligation from Snowshoe
5 Petroleum. Not you personally, you understand that?

6 A Yes.

7 Q You personally have paid Paul Morabito's attorney's
8 fees?

9 A Yes. But I owed him money, too.

10 Q And the Trust, the William Bayuk or Edward William
11 Bayuk Trust has paid Paul Morabito's attorney's fees?

12 A My checking account, yes. Not everything is in the
13 Trust.

14 Q So you have Superpumper, pardon me, Snowshoe
15 Petroleum. You don't know whether they have paid Paul
16 Morabito's attorney's fees?

17 A No, they have not.

18 Q But you and your Trust have paid Paul Morabito's
19 attorney's fees?

20 A Yeah, because I owed him money. I owed him money,
21 probably.

22 Q And that was subsequent to September 2010?

23 A I owed him money, so I just deducted it from the
24 money I owed him.

1 Q Prior to September 2010, you did not owe Paul
2 Morabito any money?

3 A No.

4 Q So when we are talking about you testifying that you
5 owed Paul money, that was subsequent to September 2010?

6 A After, right.

7 Q I keep using the word "subsequent." I will use
8 after?

9 A Just use after. It is a little easier. Sorry.
10 Sorry.

11 Q Now your involvement in the Superpumper business was
12 to monitor the investment, your investment, right?

13 A Correct.

14 Q And you reviewed reports, occasionally visited the
15 stores from time to time to be a secret shopper?

16 A Yes.

17 MR. GILMORE: I am sorry, counsel, is this before or
18 after the transaction?

19 THE COURT: The objection is vagueness?

20 MR. GILMORE: Yeah. I don't want to stop the flow.

21 THE COURT: Would you clarify that, please?

22 BY MS. TURNER:

23 Q Before you acquired Paul Morabito's interest in
24 Superpumper, that was primarily your involvement, correct?

1 A I did it before and after.

2 Q That was my next question?

3 A No. I was very involved with everything, trying to
4 be helpful to people. Basically, you know, human resource
5 issues or information and issues.

6 Q You didn't go to Arizona and oversee operations on a
7 day-to-day basis, overseeing day-to-day operations before or
8 after acquiring Paul Morabito's interest, correct?

9 A I went to Arizona periodically since 2007. '7, '8,
10 '9, '10, '11, '12. So I would go to Arizona and stay there.

11 Q My question is: With respect to the day-to-day
12 operations, you didn't oversee the day-to-day operations?

13 A No, not day-to-day. I interacted with the office
14 staff which are the people that ran the operations, and I
15 would sit in on store meetings.

16 Q And you did that as an owner, officer and director
17 through the time that there was a transfer to Jan Friederich?

18 A Yes.

19 Q And when was that?

20 A I may need some help. It was April, April or May
21 2016 or '17. I am trying to remember. What year is it? '18.
22 So '18, '17. I would say it was '16.

23 Q While this litigation was pending?

24 A Yes. It is hard to keep track, because I am running

1 a communications company at the same time. Sam ran things in
2 Superpumper. He would call me, or the office staff would call
3 me if they needed me. So I spent most of my time in
4 Washington, D.C., or other places in the United States.

5 Q Despite the sale of Paul's interest in Superpumper
6 or its holding company, CWC, in September 2010, he remained
7 involved, correct?

8 A I always sought his advice on things, and he was
9 helpful to me in many things even on my trips to Washington,
10 D.C., and all. So he was involved with things I was involved
11 with, and I would seek his advice, because he's a visionary.
12 He thinks outside the box, and he sees into the future of what
13 possibility there could be. So I did seek his advice. And you
14 will pull documents from these booklets and you will see I am
15 copied on them. Some things I read and lots of them I didn't
16 agree with. Some I did not read because I was very involved
17 with another business. So, sadly, I won't be familiar with
18 some of the e-mails.

19 Q So subsequent to September 2010, Paul remained
20 active with respect to the Superpumper business?

21 A He was helpful if there was a problem and I asked
22 his advice on something.

23 Q And Paul remained a guarantor on the credit line,
24 correct?

1 A Well, I think there is a bunch of documents. We
2 were in forbearance quite a few times, like four times. If
3 there was a law firm involved, Dennis Vacco, Christian
4 Lovelace, a lawyer at his firm was involved in talking to that
5 law firm that represented the bank. When Sam and I bought the
6 company, just to put it in perspective, we bought the company
7 and the company didn't make money in 2010. It didn't make
8 money in 2011. It didn't make money in 2012. It didn't make
9 money in 2013. And I paid myself a salary, but it wasn't--
10 The company didn't start making money until 2014. Actually,
11 everything I bought was negative. Nothing was cash flow
12 positive. It had equity value, but it didn't have cash flow.
13 So the business did not-- It was actually a a bad investment.
14 It was a bad investment since the time, effort, too. But
15 anyway, we got through it and there was a couple years, I
16 think it was 2012 and '13 it was really tough because it was
17 so thin.

18 Q And your income from 2007 forward was from
19 Superpumper's operations. You received a salary?

20 A Yes.

21 Q And that salary was hundreds of thousands of dollars
22 a year?

23 A No. It was-- I think it was -- one year it was one
24 hundred, like one twenty. One year it was one twenty. Another

1 year it was three hundred. Another year it was another number.
2 But it wasn't consistent. So I think you are referring to one
3 or two years or maybe from '13. I'm not sure.

4 Q What do you recall as your salary?

5 A In 2011 I recall -- I mean I would have to go look
6 at my tax returns. I think it was one twenty. The following
7 year I believe it was one twenty. Then it changed, and I
8 don't know. But at the same time I was collecting a salary I
9 was putting money into the company, hundreds and thousands of
10 dollars I was putting into the company. Let's say you get
11 paid one twenty a year and I put two fifty into the company, I
12 would say that is negative. Let's say you put a half a
13 million dollars into the company and put one twenty in income,
14 it's a negative. So I had a negative basis in the company.

15 Q It is your testimony \$300,000 was the highest salary
16 you received from you Superpumper?

17 A Yes. That's correct.

18 Q Now in September of 2010 at the same time that Paul
19 transferred his ownership interest in Superpumper through CWC,
20 he paid you and he paid Sam. Do you recall receiving those
21 payments or receiving that payment for September of 2010?

22 A Paid me what?

23 Q Do you recall receiving over \$400,000 from Paul
24 Morabito?

1 A Yes.

2 Q And --

3 A That was from the Raffles program. I sold my
4 ownership.

5 Q As to the Raffles self-insured plan, that was in the
6 name of CWC?

7 A Right.

8 Q That was merged into Superpumper. You sold your
9 interest to Paul Morabito in September 2010?

10 A Right.

11 Q And in exchange for your 10 percent interest,
12 correct?

13 A Well Raffles was owned, it was owned at
14 Berry-Hinckley at twenty-five percent, twenty percent and
15 whatever, forty-eight percent. That's how it was.

16 Q So you received \$420,000 in September of 2010?

17 A Right.

18 Q And it is your testimony that when Paul wired you
19 that money, \$420,000 in September of 2010 that was for your
20 interest in the Raffles self-insured plan?

21 A Right, because it was at Berry-Hinckley. It matured
22 at Berry-Hinckley. So as I explained earlier, you have to
23 wait 7 years. For 7 years it does nothing. It fluctuates.
24 So -- so --

1 Q Berry-Hinckley was sold to whom?

2 A The Herbsts. The Raffles was not included in the
3 sale to the Herbsts.

4 Q We already established it was in CWC then went to
5 Snowshoe Petroleum?

6 A Correct.

7 Q I want to understand why Paul Morabito sent you
8 \$420,000 in September of 2010 and your testimony is you sold
9 your interest in the Raffles asset to Paul at that time?

10 A Correct.

11 Q And there was a payment of \$355,000 to Sam Morabito
12 at the same time, correct?

13 A Correct.

14 Q That was for Sam Morabito's interest in the Raffles
15 asset?

16 A Correct.

17 Q Okay. So Paul Morabito transferred his interest in
18 CWC but kept the Raffles asset?

19 A The Raffles had to be parked in a petroleum company.
20 So when the dividends were issued, Paul was given the money.
21 He was 1099'd I believe for the money Paul also put up. And
22 the reason for that, originally, when we bought
23 Berry-Hinckley, a Letter of Credit was put up, and the money
24 for the Letter of Credit was Paul's money. So Paul put up his

1 own money for the Letter of Credit that was required when we
2 owned Berry-Hinckley. But the ownership of everything was
3 twenty-five, twenty and forty-eight percent. So Paul received
4 the dividends. I actually believe one of the dividends, I
5 remember some of the numbers, one of them, one dollar figure
6 he received was \$658,000. Another number was, it was \$380,000.
7 They were big numbers. So he did get paid. When you refer to
8 the two million dollar number, it doesn't get close to that
9 number, but because of the value fluctuation of it. So he did
10 receive a good mount of money. I would bet he probably
11 received about a million six.

12 Q So he received a million six of distribution from
13 the Raffles self-insured program?

14 A Right. And he spent it on lawyers.

15 Q That was in the name of CWC and then Snowshoe
16 Petroleum. It was held there for the benefit of Paul
17 Morabito?

18 A No. It was held there because Kensington had to
19 have, it had to be parked in a petroleum business or else you
20 would lose it. It would just get null and void.

21 Q When you were holding the company or holding Raffles
22 in Snowshoe, it was for the benefit of Paul. He was taking the
23 distributions as opposed to Snowshoe; is that accurate?

24 A He was getting the money from Raffles.

1 Q Paul Morabito was not getting the money directly
2 from Raffles?

3 A Oh, yes he did. Yeah, the checks were from Raffles,
4 and I forget what company name they were issued in, how they
5 came in, but they were from Raffles.

6 Q They were from Raffles to Snowshoe?

7 A Right.

8 Q Then Snowshoe distributed the funds to Paul,
9 correct?

10 A You know what --

11 Q Or was it Superpumper?

12 A -- I don't remember.

13 Q But certificates were never transferred to Paul
14 Morabito's name?

15 A They couldn't be. They couldn't be. They had to be
16 in a petroleum company.

17 Q If we go to Exhibit 75.

18 A Got it.

19 Q Okay. Exhibit 75 is an e-mail from Dennis Vacco,
20 your counsel to you with a cc to Paul Morabito. Do you see
21 that?

22 A Yes.

23 Q Mr. Vacco says: Edward, please review the attached
24 letter. We need this letter to B of A so it can initiate a

1 request to Royal requesting a diminution of the security
2 collateral Letter of Credit. Do you see that?

3 A Yes.

4 Q Now what Mr. Vacco is referring to there was a
5 Letter of Credit from the Royal Bank of Canada correct?

6 A I think so, yes. Yes. Yes.

7 Q It says: Please put this letter on CWC letterhead.
8 Snowshoe will do, but CWC is better. Do you see that?

9 A Yes.

10 Q Now CWC was no longer in existence in March 30,
11 2012, correct?

12 A Yes.

13 Q It says: Mail directly with enclosure to the address
14 indicated.

15 Now if we go to the second page of Exhibit 75 we
16 have the letter that you were to sign, correct?

17 A Second page?

18 Q Yes, second page of Exhibit 75?

19 A There is no second page.

20 Q There is no letter dated March 30, 2012?

21 THE COURT: Is it marked 76 maybe?

22 MR. GILMORE: No. It is just one page.

23 MS. TURNER: Do you have it? Is there a copy -- the
24 attached letter is not in yours?

1 MR. GILMORE: It is not.

2 THE CLERK: When I marked the exhibit, the

3 description only has one bate stamp on it.

4 MS. TURNER: We'll come back to that tomorrow.

5 THE WITNESS: That's okay.

6 BY MS. TURNER:

7 Q Let me ask you questions without the benefit of the

8 attached letter. I apologize. I will try to put that

9 together tomorrow.

10 Do you recall that in or about March of 2012 that

11 the Raffles asset was presented to the Royal Bank of Canada to

12 reduce the collateral requirement for the company, for

13 Superpumper?

14 MR. GILMORE: Objection. Vague.

15 THE WITNESS: It was Paul's letter.

16 THE COURT: Did you remember what I said? If he

17 objects you don't answer.

18 THE WITNESS: I am sorry. Okay.

19 THE COURT: But he answered.

20 MR. GILMORE: I don't think he substantively

21 answered it.

22 THE COURT: He said it was Paul's letter is what he

23 said.

24 ///

1 BY MS. TURNER:

2 Q So why was the Raffles asset still -- strike that.
3 Paul Morabito had a Letter of Credit that was still being used
4 by Superpumper in March of 2012?

5 MR. GILMORE: Objection. Misstates the testimony.

6 THE WITNESS: No.

7 BY MS. TURNER:

8 Q Then why was Dennis Vacco asking you in March 2012
9 to send a letter to Paul's banker with respect to CWC?

10 A Probably helpful to see the letter. I guess
11 possibly the Letter of Credit was in that company name.

12 Q Was in the CWC name?

13 A I'm guessing. It would be helpful to see the letter.

14 Q Fair enough. I can make a note to get to that
15 tomorrow. Now we have Exhibit 112 I believe is in. Hopefully
16 we have the whole thing here.

17 A Okay.

18 Q Got it?

19 A Got it.

20 Q Thank you. Sorry, you have to go back and forth
21 between books. Exhibit 112 is a Consent Agreement dated
22 December 28, 2010, correct?

23 A 112?

24 Q Yes?

1 A Yes.

2 Q Paul Morabito provided a guarantee of the original
3 lease for Superpumper with Spirit, is that correct?

4 A Yes.

5 Q In December 28, 2010 he restated his guarantee. He
6 reaffirmed it for the benefit of Superpumper, correct?

7 A Yeah. I am not sure why they wanted that.

8 Q But he did do it?

9 A Yes. Probably they wanted it because of experience,
10 business experience, possibly.

11 Q If you go to the second from the last page of
12 Exhibit 112 we have you signing on behalf of Superpumper and
13 Paul Morabito, correct?

14 A Correct.

15 Q And even though Paul Morabito sold his interest, he
16 restated and reaffirmed his guarantee of the lease for the
17 benefit of Superpumper in December?

18 A Which didn't really mean much because of Paul's
19 Judgment and they knew about it. I think they asked for it
20 just because of business experience.

21 Q Go to Exhibit 136.

22 A Got it.

23 Q Do you recall in August of 2011 Superpumper hiring
24 Grubb and Ellis to provide consulting?

1 A I know Tim, yes.

2 Q Tim Haves?

3 A Haves.

4 Q On behalf of Grubb and Ellis?

5 A Yeah, possibly. I vaguely remember.

6 Q And if you go to Exhibit 137, there is an e-mail

7 from Dennis Vacco to Paul Morabito August 24, 2011, subject

8 Tim Haves. This is a document produced by Dennis Vacco's

9 office. I will make that representation. If you could review

10 that.

11 A Yeah. I don't know about this.

12 Q Do you recall your counsel, Dennis Vacco or Paul

13 Morabito, going to you with a recommendation that Tim Haves be

14 hired by Superpumper in or about August of 2011?

15 A I don't know about this e-mail. I am not copied on

16 it.

17 Q My question to you is: Independent of this e-mail,

18 did Dennis Vacco, your counsel, or Paul Morabito go to you

19 with a recommendation that the agreement with Tim Haves be

20 with Superpumper, Inc.?

21 A Well, the e-mail says that, but I don't know.

22 Q You don't recall that?

23 A I recall working with Tim and him finding some gas

24 stations for me to possibly purchase. But I don't recall, I

1 don't think he was ever paid to be honest with you. I think
2 there was an agreement signed by Sam Morabito or someone. I
3 don't think Tim ever made a nickel off anything if I recall
4 correctly.

5 Q Let me unpack that a bit. Exhibit 136 you do recall
6 Sam Morabito on behalf of Superpumper executed some kind of an
7 agreement, consulting agreement retention with Tim Haves at
8 Grubb and Ellis?

9 A Yes, because I --

10 Q Go ahead?

11 A Nothing. Go ahead.

12 Q And the reason that Tim Haves was hired on behalf of
13 Superpumper, Inc., was to protect Tim Haves from being reached
14 in an enforcement action by the Herbsts, correct?

15 A I honestly don't know a thing about this. I do know
16 I met with Tim on a number of occasions, looked at gas
17 stations to purchase. And I am almost 99.99 percent sure he
18 was never paid, because we didn't close on anything. But I did
19 interact with Tim in Arizona.

20 MS. TURNER: Your Honor, I would move to admit
21 Exhibits 136 and 137?

22 THE COURT: 137 is already admitted. Any objection
23 as to 136?

24 MR. GILMORE: Excuse me, Your Honor. Yes. Objection

1 to 136 on the basis of hearsay and foundation.

2 THE COURT: Counsel.

3 MS. TURNER: Well, Your Honor, it is an -- It was
4 produced by Vacco's firm. It was a proposed agreement with
5 Superpumper, Inc. The witness testified he met with Tim Haves
6 and Grubb and Ellis, so it is a statement of a party opponent
7 to have this proposed agreement with Grubb and Ellis in August
8 of 2011. It correlates with the e-mail at Exhibit 137. Albeit
9 it is not an exhibit to the e-mail, it certainly relates, so
10 there is an indicia of reliability as well from whom it was
11 produced through Vacco's law firm, and the substance itself.

12 THE COURT: Okay. Did you have something else?

13 MR. GILMORE: Only this is clearly a draft. There
14 has been no testimony this did anything except in Dennis
15 Vacco's file. So the suggestion which counsel made in her
16 response this was actually prepared and sent and signed, there
17 has been no representation of that, no testimony as to that.
18 That is why I objected as to foundation.

19 THE COURT: There has been testimony that Paul
20 entered into these discussions on behalf of Superpumper. This
21 will be admitted not for the truth of the matter asserted, but
22 to show the state of mind and of Superpumper a party at the
23 time, August 2011.

24 (Exhibits 136 admitted in evidence.)

1 MS. TURNER: Thank you, Your Honor.

2 BY MS. TURNER:

3 Q Now subsequent to Paul Morabito selling his interest
4 to you and Sam and really Snowshoe Petroleum, he had input on
5 Snowshoe's financials for the time period subsequent to the
6 sale, correct?

7 A You are referring to Paul?

8 Q Paul?

9 A Input on what?

10 Q On the Snowshoe financials?

11 A I said earlier Sam was in Arizona running the
12 business, and we had accounting people there doing the
13 accounting stuff. Paul was looking for opportunities for
14 himself, and if he thought a big opportunity was coming along
15 he would say, hey, would you be interested in participating?
16 But Sam was very focused on running the business in Arizona,
17 Superpumper, and so Paul would give his opinions and his
18 advice. Like I said earlier, the e-mail on 137 between Dennis
19 and Paul I know nothing about it. I don't even know -- It
20 makes no sense, the e-mail. So Paul, you know, he did things.
21 He wrote things. And sometimes it made no sense, but did
22 he -- did he say he was the owner of Snowshoe Petroleum or the
23 owner of Superpumper? No. Did he get money out of Snowshoe
24 Petroleum or Superpumper? No. So did he look for all kinds of

1 opportunities? Yes.

2 Q He was privy to communications with the accountant
3 for Snowshoe subsequent to --

4 A After the sale because --

5 Q Yes?

6 A Because there was a lot of complications with making
7 sure everything was done correctly and all.

8 Q And not just with respect to 2010, but he was
9 providing input in 2012. He was communicating with
10 accountants regarding the financials for Snowshoe, correct?

11 A If you have e-mails with him and the accountant and
12 the lawyers, you probably can answer that question.

13 Q Let me clarify.

14 A I am not copied on all these e-mails.

15 Q Let me clarify one thing: Paul Morabito never owned
16 an interest in Snowshoe Petroleum?

17 A Correct.

18 Q If we go to Exhibit 144, do you see in the middle of
19 the page there is an e-mail from Gary Krausz CPA. He's with
20 Gurse, right?

21 A Yup.

22 Q He was the accountant for Superpumper and Snowshoe,
23 right?

24 A Yes.

1 Q And do you see the e-mail sent to Paul
2 Morabito@gmail.com as well as to you and Sam Morabito? Do you
3 see that?

4 A Yes.

5 Q Okay. This was April 2012, correct?

6 A Yes.

7 Q And in response to Gary Krausz' e-mail, we'll go
8 through it. Paul Morabito responded and you were sent a copy
9 of his response where he directs you, Sam Bernstein and Dennis
10 Vacco to please address each of these issues. He has "each
11 these issues" capitalized. Do you see that?

12 A We are on the bottom of the page?

13 Q No. First page of Exhibit 144?

14 A Right.

15 Q There is a capitalization?

16 A Right.

17 Q Do you see that?

18 A Correct.

19 Q And if you go back down and you see there was a
20 written response to Gary Krausz' e-mail with capitalization
21 afterward. Do you see each one of the points?

22 A Yeah, I see.

23 Q Okay. Then go to the next page. I want to make sure
24 we are on the same page. When there is capitalization after

1 the different points, it is a different type face, that was
2 Paul Morabito's response to Gary Krausz' e-mail and you were
3 directed to address each of these issues on the 12:30 call
4 right?

5 MR. GILMORE: Objection. Compound.

6 THE WITNESS: Um, the e-mail is from Gary to Paul.

7 MR. GILMORE: Wait.

8 THE WITNESS: Sorry.

9 MR. GILMORE: Go ahead, answer the question.

10 THE ITNESS: I just said the e-mail is from Gary to
11 Paul, and I don't know, I don't remember a call with Gary. I
12 knew there was a note problem. And you had to keep a ratio
13 because of the landlord and the banks, but I think there was
14 forbearance going on, too, with the banks.

15 BY MS. TURNER:

16 Q You don't recall the phone call referenced here
17 where it says: Address each of these issues in
18 capitalization? You understood that to mean when there is
19 capitalization below that was Paul Morabito's additions or
20 comments to Gary Krausz' initial e-mail, correct?

21 A I'm not sure.

22 Q Okay.

23 A I am just --

24 Q You don't know if that is okay or if that is the

1 case?

2 A Well, I am not sure. I see the first e-mail, then
3 the second and then Gary sending it to Paul. Where is the
4 e-mail from Paul to Gary? I mean I am a little confused on
5 the e-mail thing.

6 Q Paul responded to Gary with capitalized comments,
7 correct?

8 A Yeah. Yes. The e-mail from Gary to Paul.

9 Q Well --

10 A I am a little confused.

11 Q Well maybe you can review with me and that will
12 provide color. You don't dispute that Gary Krausz was the CPA
13 for Superpumper and Snowshoe in April of 2012, right?

14 A Yes.

15 Q And you were a recipient along with Paul and Sam of
16 Gary Krausz' e-mail on April 24, 2012. No dispute there,
17 right?

18 A Yeah, looks like that.

19 Q Then Paul Morabito responded. Do you see that? And
20 you are a recipient of that response as well as Stan Bernstein
21 and Dennis Vacco. Do you see that?

22 A Yeah. This is weird. So the first e-mail is Paul
23 and the e-mail is from Paul to Paul Mitchell and Dennis, and
24 then the second e-mail is from Paul to me and Stan and Dennis.

1 And then you are talking -- Gary is talking to Paul with the
2 capitals and all, correct?

3 Q Yes?

4 A So they are having a conversation about this.

5 Q And --

6 A I was probably on one of the calls.

7 Q And you were on these e-mails, but 41 at the top
8 where Paul sends a follow-up to Dennis Vacco and Paul Mitchell
9 saying: My position is below. Please make it happen. You
10 were on the e-mail from Paul below where it says please
11 address each of these issues?

12 A I think he was trying to put his two cents in,
13 because they were trying to explain the notes for the landlord
14 and the banks.

15 Q Now if we go to the first point in Gary Krausz'
16 e-mail, ownership levels issue to address. Do you see that?

17 A Yes.

18 Q Stan informed us, Stan is --

19 MR. GILMORE: I'm sorry I am going to object on the
20 basis she's reading what is essentially hearsay onto the
21 record without offering it.

22 MS. TURNER: Move to admit Exhibit 144.

23 MR. GILMORE: And I will object on the basis of
24 hearsay and foundation for all the reasons I have previously

1 stated, particularly that Gary Krausz, the author, and Paul
2 Morabito, apparently the author, we don't know that. Neither
3 one of which are here to testify.

4 THE COURT: Counsel.

5 MS. TURNER: Gary Krausz is the CPA for a party and
6 he's communicating with two other parties to this action
7 related to Superpumper and Snowshoe parties. This document
8 was produced by Dennis Vacco. You can see the print in the
9 upper left hand corner, Dennis Vacco. You can see the date
10 number down below that. This was produced in discovery. This
11 is a statement of a party opponent as a result of the CPA for
12 the company making the statement. Mr. Bayuk certainly answered
13 he received the e-mail. He knows the contents. I want to
14 talk more about the contents.

15 THE COURT: When you said it was between two parties
16 to the suit, you kind of pointed towards Sam and Mr. Bayuk.
17 Did you mean that or were you trying to say something
18 different?

19 MS. TURNER: No. I meant that the e-mail from Gary
20 Krausz was to Ed Bayuk and Sam Morabito, parties, and then the
21 follow up from Paul Morabito was to Ed Bayuk, a party as well
22 as Dennis Vacco, counsel for the parties.

23 THE COURT: Okay.

24 MR. GILMORE: Sorry. I have two issues, one being

1 copied on an e-mail, there is no authority for the idea being
2 copied on an e-mail otherwise turns a hearsay document into a
3 non-hearsay one. Two, Gary Krausz is not -- this is not an
4 adoptive statement. An adoptive statement has to be made to a
5 third party in which a party acknowledged or affirmed that it
6 is true. So there are no third parties here.

7 THE COURT: I am sorry. Who are you talking about?

8 MR. GILMORE: I am talking --

9 THE COURT: Your client can make a statement to
10 anybody.

11 MR. GILMORE: Correct.

12 THE COURT: To another party.

13 MR. GILMORE: I totally agree, correct. None of
14 these statements are my clients' statement. This is Gary
15 Krausz' statement which she's suggesting my clients affirmed
16 or adopted.

17 THE COURT: She's suggesting your client,
18 Superpumper, and Gary Krausz was working for Superpumper.

19 MR. GILMORE: Gary Krausz is an auditor. He's not an
20 employee, not a manager, doesn't work for Superpumper. The
21 fact Gary Krausz is making a statement to his client does not
22 make it an adoptive statement by my client. It is still
23 hearsay.

24 THE COURT: Counsel.

1 MS. TURNER: I am following up on the testimony of
2 the witness where he said they were the accountant, they are
3 doing auditing services for Superpumper, but they are the
4 accountant, therefore an agent of the company.

5 THE COURT: Do you have any evidence they were the
6 accountant, not just an outside auditor?

7 MS. TURNER: His testimony. And I believe it is in
8 his deposition.

9 MR. GILMORE: Mr. Krauze was deposed, and they
10 didn't take the opportunity to examine him as to his
11 statement. That is another reason for the foundation
12 objection.

13 MS. TURNER: If we go to Exhibit 14, sorry, the
14 deposition of Edward Bayuk page 14. I don't believe these are
15 in the books so we'll need to publish.

16 MR. GILMORE: Well is the point --

17 THE COURT: I'm sorry. Just a minute. Are you
18 talking about Gary Krausz' deposition?

19 MS. TURNER: No, Mr. Bayuk's deposition.

20 THE COURT: Okay.

21 MS. TURNER: Where he testified that Gurse
22 Schneider, they are the auditors for Superpumper, Snowshoe
23 Petroleum, and his testimony just now they are an agent. He
24 doesn't say they are independent. He says they are the

1 auditors.

2 THE COURT: You better find it. Auditor to me
3 implies a third party, an independent. Usually an auditor is
4 someone who is independent of the accounting world. So just
5 the use of that word does not tell me he's not independent,
6 Mr. Krausz.

7 MS. TURNER: I understand, Your Honor. And I think
8 that the witness testified earlier that they were the
9 accountant, can I lay some further foundation?

10 THE COURT: Certainly.

11 BY MS. TURNER:

12 Q You testified earlier that Gursesey was the accountant
13 for Superpumper and Snowshoe?

14 A The account was Dave Darata, and the auditors were
15 Gursesey Schneider. Sorry if I misspoke. So they worked
16 together, Dave Darata and Gursesey Schneider. So they helped
17 each other. But they were the auditors. Gursesey Schneider was
18 required, because the banks wanted things audited as well as
19 the landlord.

20 Q Did Gursesey Schneider provide accounting services
21 beyond auditing services to Superpumper or Snowshoe?

22 A I probably can't answer that. Probably their bills
23 would reflect what their services were.

24 Q Who is Stan Bernstein?

1 A He's an accountant.

2 Q Stan Bernstein provided you advice, accounting
3 services on behalf of Snowshoe Petroleum and Superpumper?

4 A No. Dave Darata was the accountant.

5 Q What was the service provided by Stan Bernstein?

6 A He did my personal tax return. And he was -- yeah.
7 And he was the accountant. Well, he did my personal tax
8 return and other -- he did accounting services for other
9 businesses of people. Previous to what you are looking at,
10 the answer is previous to 2010 he was the accountant for
11 Superpumper, Inc. I think that is the answer you want.

12 MS. TURNER: Your Honor, with that clarification,
13 then I think counsel has a valid point that it would not be a
14 hearsay exception as a statement of a party opponent, and I
15 apologize for the confusion, but with the witness' testimony
16 it wasn't clear to me. We still have the document set forth
17 at Exhibit 144 as a business record of Dennis Vacco, so I
18 would proffer that. I will be offering it with the Trustee
19 who owns the files from Dennis Vacco, and that he not only
20 owns the files, but he's waived any privilege with respect to
21 those files as a business file that is kept in the ordinary
22 course and produced in the ordinary course pursuant to
23 subpoenas in this action and others. And, frankly, I don't
24 recall whether this was in one of the others or it was in the

1 bankruptcy, but the date number indicates it was produced in
2 the ordinary course of some proceeding. I can lay the
3 foundation with Mr. Leonard. If we can make it conditional so
4 I can ask follow up questions, I would proffer that to you.

5 THE COURT: So the business record exception would
6 be admissible if you have Mr. Leonard testify.

7 MS. TURNER: That's right.

8 THE COURT: Because this is a bench trial, I think
9 we can do that with the Court's caveat if you do not establish
10 that through Mr. Leonard, the testimony would be stricken and
11 will not be admitting.

12 MS. TURNER: I understand that.

13 THE COURT: Yes?

14 MR. GILMORE:. Now there has been a new basis upon
15 which it is proffered. May I address that?

16 THE COURT: Certainly.

17 MR. GILMORE: Technically speaking, there is no
18 business record exception in the State of Nevada. But the
19 record section I am sure she's referring to is the record of
20 regularly conducted activities which requires that it be a
21 memorandum written by somebody in knowledge, with knowledge
22 all in the course of a regularly conducted activity. If
23 e-mails between auditors and their client maintained in a
24 lawyer's file meet the business records exception, then every

1 e-mail practically ever sent between any business person would
2 qualify as a business record.

3 THE COURT: It does unless you have a privilege and
4 the person who owns it is willing to testify he's waived the
5 privilege. So, yes, you should know that your e-mails in your
6 files that are part of your regularly conducted activities as
7 a lawyer are subject to that exception. There is case law on
8 it in the State of Nevada and federally. If there is a
9 privilege, though, you're safe.

10 MR. GILMORE: My question is whose regularly
11 conducted activities is this? This is not Mr. Vacco's
12 regularly conducted activity. This is Mr. Krausz. Mr. Krausz
13 is giving advise to his client who happens to have a lawyer be
14 copied. This is not Mr. Vacco's regularly conducted activity.
15 He was the custodian. Mr. Leonard is now custodian, sure,
16 because of the function of bankruptcy law. Mr. Leonard was
17 never the original business custodian and neither was
18 Mr. Vacco. The only business custodian of this statement
19 would have been Mr. Krausz.

20 THE COURT: Why do you say that? Why not the person
21 he sent it to?

22 MR. GILMORE: That is not the person who is being
23 proffered.

24 THE COURT: Whose business record would it be if

1 you're being audited?

2 MR. GILMORE: This would be Superpumper or Gary
3 Krausz.

4 THE COURT: Is Superpumper a party here?

5 MR. GILMORE: The rule requires it be shown by
6 testimony or Affidavit of the custodian or other qualified
7 person and Mr. Leonard perhaps owns Mr. Vacco's file. He
8 doesn't own Superpumper's file.

9 THE COURT: I know, but in litigation with
10 Superpumper being a party, you have to provide it. If
11 Mr. Vacco hadn't provided it, Superpumper can't just say wait
12 a minute, Mr. Vacco isn't the custodian, therefore, we are and
13 we are not going to give it to you, therefore it can't be in.
14 You can't argue that. If you were the custodian of
15 Superpumper and you are party to this litigation you have an
16 obligation to produce it.

17 MR. GILMORE: I will accept the Court's ruling.

18 THE COURT: But I don't have any of that right now.
19 It would only be contingent upon Mr. Leonard testifying.

20 MS. TURNER: Your Honor, I understand my obligation
21 to do that. Just for the record, to address counsel's
22 comments, there are a legend of cases where the bankruptcy
23 Trustee authenticates documents of the debtor because they
24 were produced in the ordinary course of the debtor's business

1 and it is up to him to establish that, how it was produced,
2 that it wasn't just picking up a piece of paper off the floor.
3 We understand our obligation there. He's the qualified person
4 that we are proffering to provide that testimony in regularly
5 conducted activity. And we appreciate being able to
6 conditionally have these admitted so we don't have to have
7 prolonged proceedings where we then have Mr. Leonard take the
8 stand and then have to have this witness come back. Thank
9 you.

10 THE COURT: Okay. She might have been looking at
11 the bailiffs. We have a trading of bailiffs. She's looking
12 at you like what have I done.

13 MS. TURNER: Exactly.

14 THE COURT: Just so you know, when we go past 5:00
15 o'clock, they have a rule they can't be here by themselves.
16 That is why we have two bailiffs here.

17 MS. TURNER: Thank you. With that I renew my request.

18 THE COURT: Conditionally it is admitted.

19 (Exhibit 144 admitted in evidence.)

20 MS. TURNER: Understood.

21 BY MS. TURNER:

22 Q Mr. Bayuk?

23 A Yes.

24 Q On the first page of Exhibit 144, it says: Ownership

1 level issues to address.

2 You are an owner of Superpumper and indirectly
3 through your ownership in Snowshoe in April 2012, correct?

4 A Yes.

5 Q It says: Stan informed us that the notes receivable
6 from Paul to SPI were written off, forgiven. Do you see that?

7 A Yes.

8 Q That was the notes receivable where Paul owed --
9 strike that -- where Superpumper owed Paul. That was written
10 off.

11 MR. GILMORE: Objection. Misstates the testimony.

12 THE COURT: I don't understand your question.
13 Sustain the objection.

14 MS. TURNER: I understand.

15 BY MS. TURNER:

16 Q There came a point in time when the obligation due
17 to Paul Morabito was written off by Superpumper, correct?

18 A Probably.

19 Q And do you recall, and actually to be more specific,
20 the obligation from Snowshoe to Paul was written off. Do you
21 recall that?

22 A No, I don't. I mean this conversation probably
23 should be happening with Mr. Krausz not me.

24 Q We would be better off --

1 A Talking to Gary.

2 Q -- addressing this with the accountant?

3 A Yeah. Gary or one of the accountants. You are
4 asking someone who would be saying yes and not even knowing
5 what I am saying. I don't want to misdirect you or misinform
6 you. There were notes and notes were being issued and put on
7 the books just so, we have to show certain covenants for the
8 bank and for the landlord.

9 Q The bank and the landlord required there be less
10 debt than what was being reflected on the books of Snowshoe,
11 correct?

12 A Again, you should be talking to Gary or one of the
13 accountants, but that is actually the landlord and the banks
14 required there be certain dollars on the books to show equity,
15 and so notes were put in place to show equity. It was
16 basically, I don't know, I'm not sure of the term, so I think
17 that is what conversation is going on. They are trying to
18 figure out to make the banks happy and the landlord happy,
19 because the bank is in a couple different forbearances, number
20 one, number two, number three, a bunch of forbearances and the
21 landlord is not happy. Obviously, the accountants are all
22 talking here, because they are trying to make everyone happy.
23 But I am not the person you probably should be asking these
24 questions. I'm just trying to be helpful.

1 Q Do you see in the bold that statement, first section
2 where it says: They were written off as part of my sale of my
3 interest. But their question is when. I told them March
4 2011. Do you see that?

5 A Oh, yes, I see that. On December -- Wait a minute.
6 Where are you?

7 Q That first section of Gary Krausz' e-mail where it
8 says: They were written off as part of the sale of my
9 interest. The question is when. I told them March 2011?

10 A Yes, I see that.

11 Q Why was Paul communicating regarding Snowshoe's or
12 Superpumper's notes to the auditor?

13 A Okay just -- And I guess you are not happy with my
14 answer. The reason why Paul was trying to help is that the
15 banks were mad and the landlord was mad, so everyone was mad,
16 and they were trying to make sure everything is correct. So
17 you're having the conversation with the wrong person. I am
18 just --

19 Q How did Sam know that there was an issue with the
20 bank or the lease such that he became involved in March of
21 2012 if he had already sold his interest and as you said moved
22 on?

23 MR. GILMORE: Calls for speculation.

24 THE COURT: I am not sure. Did you mean Sam or

1 Paul? I am having trouble following what your question is.

2 BY MS. TURNER:

3 Q I am sorry. Paul was communicating with the auditors
4 of Snowshoe in April 2012?

5 A Correct.

6 Q Did you authorize Paul to communicate with the
7 auditors or accountants of the company?

8 A Yes.

9 Q Was that a one-time permission or was Paul permitted
10 to communicate with the auditors and accountants?

11 A He was trying to help me, because they had -- there
12 were these letters from the banks. There was notices from the
13 landlords. So everything was trying to be straightened out so
14 the banks would be happy and the landlord. And we didn't want
15 to default on the bank. We were in forbearances. It is in
16 your documents somewhere here, a bunch of different
17 forbearances from the law firm and probably some notes in here
18 from the landlord as well. The landlord required certain
19 equity on the books and so did the bank. And I think this is
20 what this is all about.

21 Q My question is different?

22 A I said yes. You asked if Paul was involved with
23 trying to straighten out things for the bank and the landlord.

24 Q Did Paul have general permission to communicate with

1 the accountants and auditors of Superpumper and Snowshoe in
2 2012?

3 A Yes. I probably told him, you know, this is, you
4 know, I need help because the banks aren't happy and the
5 landlord is not happy.

6 Q And you said that you relied on Paul Morabito, his
7 advice subsequent to him selling. Did you believe that his
8 continued involvement benefitted the company?

9 A Well his background. He worked for one the largest
10 banks in Canada. He was noted as a whiz kid. He was in
11 newspapers in Canada. He's a genius when it comes to
12 understanding financing. His only downfall was when he was
13 hospitalized, incapacitated for four or five months, he lost
14 his edge then. My background is not finance. My background
15 is engineering. And, you know, I understand some things in
16 finance but this was a very complex matter, and it needed
17 attention immediately. So that is why Paul was involved.

18 Q Given that Paul had a propensity for putting false
19 information down, false numbers into e-mails and things, we
20 already went through these e-mails.

21 A Oh, yeah, there will be more.

22 Q Did you --

23 A You will start laughing, and the other lawsuits, you
24 will start laughing, too. My God.

1 Q Did you put a qualifier on his communication with
2 the auditors and accountants of Snowshoe or Superpumper saying
3 you can't believe what this guy is saying?

4 A Well, I think the landlord asked them to sign that
5 document you showed me earlier, and I was the owner of
6 Superpumper. The reason they wanted him to sign it is because
7 he had the relationship with the landlord which was a public,
8 New York public stock exchange RET. I did not have that
9 relationship. They knew me, but also Paul's background is
10 banking and he understands financing, and I don't. And I was
11 in a really bad situation there. And they were trying to
12 straighten everything out to make the banks happy, the bank
13 happy and the landlord.

14 Q Did you at any point go to the auditors of
15 Superpumper or the accountants of Superpumper or Snowshoe as
16 the holding company and say he's not authorized to act on
17 behalf of these companies?

18 A No. Paul was trying to help.

19 Q Okay. Thank you?

20 A To explain things.

21 Q Now back to the value of Superpumper. Do you recall
22 putting value on Superpumper in late 2010, early 2011?

23 A Probably.

24 Q Do you recall when the Successor Notes were executed

1 related to the purchase of Paul Morabito's interest in
2 Superpumper or CWC at the same time that you executed the
3 Successor Notes that you attributed value to Superpumper?

4 A Probably.

5 Q If you go to Exhibit 126.

6 MS. TURNER: Your Honor, this is the only copy we
7 have. I had to start buying readers. And this is one of
8 those you may have a hard time reading. I apologize. It is
9 not my typeface.

10 BY MS. TURNER:

11 Q So do you recognize Exhibit 126?

12 A Looks like Salvatore Morabito's financial net worth.

13 Q If you go to page 2?

14 A Two?

15 Q Yes?

16 A Edward.

17 Q Edward W. Bayuk?

18 A That's right.

19 Q That is your statement of assets and liabilities as
20 of February 1, 2011?

21 A That's right.

22 Q You have seen this before?

23 A Oh, yeah. Yeah.

24 Q And it says Gurseey in the bottom right hand. Do you

1 see that? You provided this statement to Gursey?

2 A Yeah.

3 Q Correct?

4 A Yes. Yes.

5 Q And you provided this statement to Gursey so they

6 would rely on it, right?

7 A Yes.

8 Q All right. So as of February 1, 2011 you list your

9 ownership in the El Camino Del Mar and Los Olivos homes,

10 correct?

11 A Yes.

12 Q The Mary Fleming house, that is the Palm Springs

13 house. These three homes you owned as tenants in common?

14 A No, not then. I owned them 100 percent.

15 Q They were held in your Trust by this point in time,

16 February of 2011?

17 A Well, they were in my Trust and tenants in common.

18 I was able to refinance the mortgage in June of 2011.

19 Q As of February 2011?

20 A But I paid the mortgages.

21 Q As of February 2011 you were or your Trust --

22 A Right.

23 Q We'll get to that -- owned those three residences

24 set forth in the personal items, correct?

1 A Yes.

2 Q Those were formally owned in connection with Paul
3 Morabito. We'll talk about that more?

4 A Yes.

5 Q Those are those properties, right?

6 A Yes.

7 Q And you have your personal effects, and then if you
8 skip down, do you see where it says fifty percent Snowshoe
9 Petroleum, Inc., a New York corporation?

10 A Yes.

11 Q You valued your fifty percent interest in Snowshoe
12 was \$4,514,869 February 1, 2011, correct?

13 A Right.

14 Q The same day those Successor Notes were executed,
15 right?

16 A Right.

17 Q And you have no debt as of February 1, 2011 save and
18 except the mortgages listed and B of A, correct? It looks
19 like and American Express card?

20 A Probably. You know, this is, I think it is pretty
21 accurate.

22 Q You owed nothing as a debt or an offset to Snowshoe
23 or Superpumper in February of 2011?

24 A No. I probably did. You know-- Good question.

1 Q Well when you provided this information to Gurseley --

2 A Right.

3 Q -- and you finalized this statement of assets and
4 liabilities, you believed it to be true?

5 A I believe so, yeah.

6 Q If you had had a note payable to Superpumper or to
7 Snowshoe --

8 A That's not reflected on this.

9 Q It should have been. It was not?

10 A Right. Hindsight.

11 Q That would tell you as of February 1, 2011 you did
12 not have a note payable as of that time?

13 A Well, this is my document produced by me. And I
14 mean net worth statement should probably be done by your
15 accountant, so I probably didn't put Superpumper debts there
16 and all.

17 Q I am not understanding. If you, when you produced
18 this, you spent time providing information, is it your
19 testimony that --

20 A They wanted to know what I owned. That is why they
21 asked for it.

22 Q Yes. And there was no offset with respect to
23 Superpumper reflected in this statement of assets and
24 liabilities?

1 A Correct.

2 Q Okay. Bank of America and American Express, these
3 were individual obligations that you had?

4 A My individual obligation.

5 Q That were due to Bank of America and American
6 Express, not to anybody else?

7 A Correct.

8 Q Okay.

9 A Just so you know, in February 2011 I had not
10 finished redoing the mortgages. So I didn't redo the
11 mortgages until June of 2011.

12 Q Those were home mortgages?

13 A Correct. No, no. So just to make it clear, I was
14 paying the mortgages, and so the properties, I forget what
15 time period, I am just trying to remember the mortgages, but I
16 redid the mortgages in June of 2011. So those B of A mortgages
17 still had Paul's name on them, but I was paying them.

18 Q We'll get --

19 A No.

20 Q Those mortgages, you paid them for the benefit of
21 Paul?

22 A No. I paid for the benefit of me because I owned
23 the properties.

24 Q The proceeds of the loans went to Paul?

1 A Correct.

2 Q You paid the mortgages with the proceeds going to
3 Paul?

4 A Correct.

5 Q I understand that. That was later after February
6 2011, right?

7 A No. I was paying the mortgages in 2010 too, so.

8 Q Now I am trying to understand why you're bringing
9 this up?

10 A Because you were asking me about the debts and all.
11 I agree with you, I didn't put debts down for the other stuff
12 for Superpumper.

13 Q By this point in time, February 1, 2011, there was
14 no Snowshoe or Superpumper debt that you owed them that had
15 not been incorporated into the asset valuation, so there was
16 no separate offset. If there was any debt owed, you
17 incorporated it into the asset valuation.

18 MR. GILMORE: Objection. Vague and compound.
19 I am not following.

20 THE COURT: It is compound. It was vague.

21 BY MS. TURNER:

22 Q There was no debt or loan due from you to Snowshoe
23 or to Superpumper as of February 1, 2011. There was nothing?

24 A There were debts. I just told you I didn't put on

1 the other side, the debts for Superpumper. I am sure there
2 were.

3 Q To the extent there were any debts that were due
4 from you, that is loans?

5 A Right.

6 Q Debts that were due from you to Superpumper or to
7 Snowshoe Petroleum, the fact they are not listed here under
8 debts, you took those into consideration when valuing the
9 asset, correct?

10 A No.

11 Q You included the deductions when coming up
12 with \$4,513,000 as the value of fifty percent of your interest.
13 You took that into consideration there were debts?

14 A No. That number is what someone will pay you for a
15 business, one number, and what market value is is another
16 number. So when you go to sell a business, maybe the business
17 is worth, you hope you can get four and a half million. Maybe
18 someone will only offer two and a half million. So at the
19 time, both Sam and I thought the business, that is the numbers
20 we chose.

21 Q Those are the numbers you chose. They were good
22 faith values?

23 A Yes.

24 Q Of your interest?

1 A Right.

2 Q Because if it wasn't, then you would be making a
3 material misrepresentation to an auditor?

4 A Correct.

5 Q You weren't making a material misrepresentation to
6 the auditor, right?

7 A No. The auditor wanted to know what I owned.

8 Q And that was your good faith statement of what the
9 value of your fifty percent interest was as of February 1,
10 2011?

11 A Right.

12 Q With no offset indicated?

13 A By accident, yeah, I did not put those there.

14 Q So now here today you're saying that this was a
15 false statement of your assets and liabilities and you had
16 debt that you did not disclose?

17 A By accident. It looks like I missed the debt.

18 THE COURT: That's a good place to stop. We are
19 going to stop the testimony now. It is 5:30. Anyway, we have
20 some business to talk about. We are going to stop with your
21 testimony now. Go ahead and retake the seat so I can visit
22 with the lawyers. You can leave that there. We'll take care
23 of it. Go ahead and step down.

24 You all were going to tell me which Findings of Fact

1 that you had proposed to me you had resolved through the
2 stipulation and which ones you had left. Did you get a chance
3 to do that or do you need to do it tomorrow?

4 MR. GILMORE: We both talked about it. We both made
5 an attempt at it. We both kind of failed, because we weren't
6 exactly sure in what way it was going to be useful to the
7 Court to help us be most effective with it. The reason is the
8 Court probably isn't -- Ms. Pilatowicz and I are all in
9 agreement on this, but the stipulated facts are very, what is
10 the word, black and white in the sense it is like, you know,
11 on such and such a date a Deed was recorded on such and such a
12 date. A certain value was arrived at. We were very careful
13 to make sure there were no characterizations of any facts in
14 here. And so the problem was when you take the Findings of
15 Fact, Conclusions of Law, for both of us to try to unpack the
16 black and white facts from the way in which they are
17 characterized is really, really going to be impossible.

18 I am willing to take a crack at it tonight, but I
19 think it would help if we understood more clearly how the
20 Court would use that so that we can figure out the most
21 effective way to do it. My suggestion was we could identify
22 the paragraphs in our respective FFCLs that deal with these
23 particular facts and just simply say, you know, in my FCCLs we
24 don't deny for example on October 12th the State court entered

1 its finding. Then we don't deny, neither of the parties deny
2 that, you know, they both owned a fifty percent interest in
3 Baruk properties. The houses were valued at X and Y. There
4 is nothing really beyond those black and white facts we really
5 stipulated to here. We really want to do what we can to help,
6 but finding an effective way to do it might be the challenge,
7 so I am all ears.

8 THE COURT: So what would be helpful to me is if you
9 perhaps just underline, a color would work, highlight in color
10 those portions of of the Findings of Fact that you are
11 stipulating to.

12 MR. GILMORE: We can do that. That is easy.

13 THE COURT: I can read it, okay, the first three
14 sentences of that Finding you're free to make a decision on.

15 MR. GILMORE: Yeah, we can definitely do that.

16 THE COURT: You can provide it to me electronically.

17 MR. GILMORE: E-mail it to the clerk with the
18 highlighted sections of the stipulated parts.

19 THE COURT: Right. That would be very helpful for
20 me. I don't have to go back and forth between your
21 stipulation, and I have already got two Findings of Fact I am
22 dealing with.

23 MR. GILMORE: Of course. Then the suggestion would
24 be anything not highlighted is something we are potentially --

1 THE COURT: Right.

2 MR. GILMORE: -- agreed 100 percent.

3 THE COURT: That is the way I would take it.

4 MR. GILMORE: Absolutely can do.

5 THE COURT: That is great. I appreciate you doing

6 that. Tomorrow we have a 9:00 calendar. From 9:00 to 9:30 I

7 am going to hear some criminal matters that we couldn't move

8 off calendar. So then we'll take a short recess and start

9 with the trial at 9:45. So it will be Mr. Bayuk still on the

10 stand. And so then Mr. Bayuk will continue with his direct,

11 then we'll get into the cross and redirect, however you want

12 to call that. Tomorrow, after we get this criminal hearing

13 done, the the rest of the day is up to you. I do take breaks

14 every two hours, so we will probably, if we actually start at

15 9:45, we'll probably break a little early for lunch being a

16 quarter to 12:00 then come back right at 1:00, something like

17 that. I am trying to give you about an hour and fifteen

18 minutes, not a full hour and a half because I am concerned.

19 We are in our first day and it is slow moving. So we will

20 see. I want to make sure you get plenty of time to get all of

21 this to me whatever you all want to. So that will be our

22 schedule for tomorrow. Wednesday we are able to start as

23 early as 8:00 a.m. Wednesday morning. We talked about that.

24 But we are not going to be able to go late Wednesday night. I

1 would like to recess no later than 5:00 o'clock, maybe a few
2 minutes before 5:00. So we'll just see how tomorrow goes then
3 talk about Wednesday. But just so you are thinking about
4 witnesses, we can start as early as 8:00 a.m. on Wednesday.

5 MS. TURNER: Your Honor, just for a point of
6 clarification, I understand you have a hearing at 9:00
7 tomorrow. Do we go from 8:00 to 9:00 or come at 9:45?

8 THE COURT: I decided it would probably be best to
9 come at 9:45, because I didn't think we would really get very
10 far by the time everyone gets here and you start talking, then
11 we have only got about 40 minutes.

12 MS. TURNER: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. GILMORE: This might not be a question for you
15 so much as the clerk. What of this can we leave in the
16 courtroom? What do we have to take if everything?

17 THE CLERK: Unfortunately, everything on the tables
18 have to be moved out. Any of the other days it can be left.
19 You can line them up against the wall. You guys can use the
20 jury box.

21 THE COURT: We aren't going to be using the jury box
22 at all during the criminal calendar, and you don't have to
23 move anything here. We won't be using the E.L.M.O or the
24 documents on that. We won't be moving anything off the book

1 shelf. So it is just your tables tomorrow, really. And I
2 don't think, can they leave them on this side?

3 The deputy will kind of show you the way the
4 criminal calendar runs, but this is the only day. We have
5 gotten rid of all the other stuff.

6 Thank you. Court's in recess.

7 (Whereupon the Court adjourned until Tuesday,
8 October, 30, 2018 at 9:45 a.m.)

9 (Whereupon, the proceedings were concluded.)

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

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on Monday, October 29, 2018
9 at the hour of 9:00 a.m. of said day and that I then and there
10 took verbatim stenotype notes of the proceedings had in the
11 matter of WILLIAM A. LEONARD, JR., TRUSTEE vs. SUPERPUMPER
12 INC. ET AL, Case Number CV13-02663.

13 That the foregoing transcript, consisting of pages
14 numbered 1-240 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 6th day of November, 2018.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24