

**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.

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**PETITIONERS' APPENDIX,**  
**VOLUME 37**  
**(Nos. 6287–6552)**

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Recommendation for Order RE: <i>Defendants’ Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP</i> , filed on July 18, 2017 (filed 08/17/2017)		Vol. 11, 1743–1753
Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1754–1796
Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825
<b>Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment	Vol. 12, 1826–1829
2	Findings of Fact, Conclusions of Law, and Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
4	Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber	Vol. 12, 1850–1852
5	September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts	Vol. 12, 1853–1854
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
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
<b>Exhibit to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's counsel's Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736

<u><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></u>
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
<b>Exhibit to Opposition to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)</b>		
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
<b>Exhibits to Defendants' Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Opposition to Defendants' Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit to Defendants' Reply in Support of Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Clerk’s Trial Exhibit List</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
76	March 10, 2010 email chain between P. Morabito and <a href="mailto:jon@aim13.com">jon@aim13.com</a> 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><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></u>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Plaintiff’s Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Plaintiff's Motion to Reopen Evidence (cont.)</b>		
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
<b>Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
[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
<b>Exhibit to Memorandum of Costs and Disbursements</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Application for Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Plaintiff's Opposition to Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68</b>		

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit</b>	<b>Document Description</b>	
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
	<b>Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60</b>	
<b>Exhibit</b>	<b>Document Description</b>	
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 <a href="mailto:eturner@Gtg.legal">eturner@Gtg.legal</a> 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
	<b>Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68</b>	
<b>Exhibit</b>	<b>Document Description</b>	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>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)</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Plaintiff's Objection (cont.)</b>		
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Notice of Submission of Disputed Order (cont.)</b>		
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
<b>Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></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
<b>Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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 NRCP 68 (filed 07/10/2019)	Vol. 53, 9346–9349

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Motion to Make Amended (cont.)</b>		
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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Motion to Make Amended (cont.)</b>		
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
<b>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</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Errata (cont.)</b>		
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
<b>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</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Bayuk's Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030
<b>Exhibits to Bayuk's Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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.**

**PAGE ONE**

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT**

**APPEARANCES-HEARING**

**CONT'D TO**

10/31/18

**NON-JURY TRIAL – DAY THREE**

HONORABLE

Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, present with counsel, Teresa Pilatowicz, Esq., and Erika Turner, Esq.

CONNIE

Defendant Edward Bayuk present, individually and as representative for

STEINHEIMER

Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe

DEPT. NO.4

Petroleum, Inc., and Defendant Salvatore Morabito present, individually and as

M. Stone

representative for Superpumper, Inc., and Snowshoe Petroleum, Inc., with

(Clerk)

counsel, Frank Gilmore, Esq.

J. Schonlau

Chris Kemper, Esq., counsel for the Herbst Family present in the gallery.

(Reporter)

7:59 a.m. Court convened.

Witness Bayuk, heretofore sworn, resumed stand and further examined by counsel Gilmore.

**EXHIBIT 270** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore.

Portion of **EXHIBIT 272** offered by counsel Gilmore; limited objection by counsel Turner; objection sustained and entire exhibit ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore; re-examined by counsel Turner.

**EXHIBIT 271** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further re-examined by counsel Turner.

**EXHIBIT 256** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further re-examined by counsel Turner.

**EXHIBIT 257** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further re-examined by counsel Turner; excused subject to recall.

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT****PAGE TWO****APPEARANCES-HEARING****CONT'D TO**

10/31/18

**NON-JURY TRIAL – DAY THREE**J. Schonlau  
(Reporter)

9:58 a.m. Court recessed.

10:21 a.m. Court reconvened with respective counsel and parties present.

Salvatore "Sam" Morabito called by counsel Turner, sworn and testified.

**EXHIBIT 107** offered by counsel Turner; objection by counsel Gilmore;  
objection overruled and ordered admitted into evidence.

Witness Morabito further examined by counsel Turner.

**EXHIBIT 140** offered by counsel Turner; no objection by counsel Gilmore;  
ordered admitted into evidence.

Witness Morabito further examined by counsel Turner.

**EXHIBIT 33** offered by counsel Turner; no objection by counsel Gilmore;  
ordered admitted into evidence.

Witness Morabito further examined by counsel Turner; examined by counsel  
Gilmore.

12:00 p.m. Court recessed for lunch until 1:15 p.m.

1:20 p.m. Court reconvened with respective counsel and parties present.

Witness Salvatore Morabito, heretofore sworn, resumed stand and was further  
examined by counsel Gilmore.

**EXHIBIT 226** offered by counsel Gilmore; no objection by counsel Turner;  
ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

**EXHIBIT 227** offered by counsel Gilmore; no objection by counsel Turner;  
ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT**

**PAGE THREE**

**APPEARANCES-HEARING**

**CONT'D TO**

10/31/18

**NON-JURY TRIAL – DAY THREE**

J. Schonlau  
(Reporter)

**EXHIBIT 228** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

**EXHIBIT 231** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

**EXHIBIT 232** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

3:17 p.m. Court recessed.

3:40 p.m. Court reconvened with respective counsel, including Gabrielle Hamm, Esq., for the Plaintiff, and parties present.

Witness Salvatore Morabito, heretofore sworn, resumed stand and was further examined by counsel Gilmore.

**EXHIBIT 248** offered by counsel Gilmore; objection by counsel Turner; objection sustained.

Witness Morabito further examined by counsel Gilmore.

**EXHIBIT 248** re-offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

**EXHIBIT 132** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore.

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 FOUR**

**APPEARANCES-HEARING**

**CONT'D TO**

10/31/18

**NON-JURY TRIAL – DAY THREE**

J. Schonlau  
(Reporter)

**EXHIBIT 254** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Morabito further examined by counsel Gilmore; re-examined by counsel Turner.

\*\*\*Deposition of Salvatore Morabito taken October 21, 2018 opened and published.

Witness Morabito further re-examined by counsel Turner.

Discussion ensued regarding trial schedule.

**COURT** advised counsel that a redacted transcript of any video deposition presented as testimony needs to be marked for the record as the Court Reporter does not report video depositions.

4:58 p.m. Court recessed until 8:00 a.m. on November 1, 2018.

**11/1/18  
8:00 a.m.  
Ongoing  
Non-Jury  
Trial – Day  
Four**



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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,	)	
	)	
Defendant.	)	

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TRANSCRIPT OF PROCEEDINGS

TRIAL

WEDNESDAY, OCTOBER 31, 2018, 8:00 A.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18  
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:            GARMAN TURNER GORDON

                                 BY:   ERIKA PIKE TURNER, ESQ.

                                 TERESA M PILATOWICZ, ESQ.

                                 GABRIELLE A. HAMM, ESQ.

                                 650 WHITE DRIVE, SUITE 100

                                 LAS VEGAS, NEVADA   89119

FOR THE DEFENDANT:           ROBISON SHARP SULLIVAN & BRUST

                                 BY:   FRANK GILMORE, ESQ.

                                 71 WASHINGTON STREET

                                 RENO, NEVADA 89503

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
EDWARD BAYUK		5	25	73
SALVATORE MORABITO	77	128	244	

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EXHIBITS:

Marked for  
Identification

ADMITTED  
into  
Evidence

33	125
107	106
140	112
132	234
226	176
227	178
228	180
231	206
232	209
248	229
254	242
256	39
257	55
270	19
271	36
272	21

1 RENO, NEVADA; WEDNESDAY, OCTOBER 31, 2018; 8:00 A.M.

2 -oOo-

3

4 THE COURT: Good morning everyone. You may continue  
5 your inquiry. Sir, you're still under oath?

6 MR. GILMORE: Thank you.

7

8 CROSS-EXAMINATION CONTINUED

9 BY MR. GILMORE:

10 Q Mr. Bayuk will you please turn to Exhibit 151 in the  
11 books you have in front of you. 151. Let me know when you're  
12 there?

13 A 151.

14 Q Yes. This is a document that has been admitted into  
15 evidence and a document about which you have already been  
16 questioned. Do you remember that?

17 A Yes.

18 Q This has to do with the line of testimony with  
19 respect to Alan Skobin. Do you remember that?

20 A Yes.

21 Q What is your memory who Alan Skobin is?

22 A He's an attorney.

23 Q You testified you were dealing with Alan Skobin in  
24 an effort to obtain a loan?

1           A     Yes.

2           Q     Okay. And you were asked about this particular  
3 section where Paul Morabito chimes in and gives terms or  
4 proposed terms. Paul Morabito gives to Dennis Vacco  
5 \$5,000,000 nominal interest first on 1461 Glenneyre. A second  
6 on 570 Glenneyre with other terms. Do you see that?

7           A     Yes.

8           Q     In October 2012 did you pursue a loan from Mr. And  
9 Mrs. Bachman?

10          A     Yes, I did.

11          Q     What was the purpose of this loan?

12          A     I was going to use it -- just finished -- I had  
13 finished about \$380,000 in renovations at 570 Glenneyre, maybe  
14 even more. Then I also was doing work at the other building,  
15 and so I was spending a lot of money. I also was looking at  
16 different business ventures. So I was looking at more than  
17 one business opportunity. So I had the money, I spent some of  
18 the money, and then had some of the money sitting waiting to  
19 do some business ventures.

20          Q     There was some conversation in the top e-mail which  
21 we won't get into the specific dollars, it discusses in  
22 general terms some of these business ventures you were  
23 considering?

24          A     Yes. It mentioned one, but it doesn't mention the

1 others.

2 Q And at that time, October 2012, did you actually  
3 fund this loan?

4 A I funded it?

5 Q Sorry. Was the loan funded?

6 A It got funded in December 2012.

7 Q And what did you use the money for?

8 A Like I said, I used it for repairs on one building,  
9 and then I paid myself back a major renovation 570 for the  
10 tenant. I got that moved in in March 2012. I also was  
11 spending it when I was looking at different business  
12 opportunities. I had legal business. I had to pay lawyers.  
13 So a couple deals that didn't happen, I still had pay the  
14 lawyers. And then, you know, there was a balance in my  
15 account for a while.

16 Q Was Paul Morabito to be involved at all in any of  
17 these deals?

18 A Well, I have a long-standing relationship with the  
19 Bachman's, and he knows them as well. But the loan I borrowed  
20 was to Snowshoe Properties, LLC., which owned 100 percent and  
21 I received all the money.

22 Q Were any of these business ventures that you were  
23 considering ventures that had been in your -- strike that.  
24 Let me ask it a different way. Of these business ideas you

1       were considering, did any of them predate the Herbst Judgment?

2           A       So --

3           Q       Just a minute. The oral Judgment September 2010  
4       that has been established, did any of these ideas you were  
5       working on predate the oral judgment?

6           A       You know what, yes.

7           Q       How about, did you use any of the Bachman money on  
8       any business ideas that predated the Herbst judgment?

9           A       Well, I got Bachman money in 2012, December 2012, so  
10       none of the money was used prior to 2012.

11          Q       I am not sure you understood my question?

12          A       Sorry.

13          Q       I am trying to differentiate between the timing when  
14       these business ventures came to you, when they had their  
15       genesis.

16          A       I will give a thought process. We were working with  
17       a lot of different law enforcement people in California, in  
18       Nevada as well as Washington D.C. Everyone liked the thought  
19       process, because they had a real problem with the Neighborhood  
20       Watch program. Neighborhood Watch, law enforcement wants  
21       people to report crimes. They want you to report bad things.  
22       They want you to report bad people. And so there are  
23       Neighborhood Watch captains who meet with the neighborhood.  
24       They wanted to facilitate the information quicker so



1 information goes from local law enforcement to the FBI to  
2 other public safety agencies. So that is where we got the  
3 thought process Watch my Block. And so that started in 2007,  
4 the relationship of law enforcement, working with law  
5 enforcement happened which evolved. Follow me here. So we  
6 purchased another company that is mentioned in here that is  
7 not part of this case Versanet HUSCC. I can explain that  
8 company, but I won't. It is not part of this unless the Judge  
9 wants me to. But that led into purchasing that company. That  
10 company deals with public agencies, law enforcement throughout  
11 the United States as well as Washington D.C. so the incubation  
12 of the idea of Watch my Block that is why Watch my Block sat  
13 on the side, because this type of business became more  
14 important. That is where a lot of effort and time was spent  
15 in that particular company.

16 Q Understood. Did you spend-- I appreciate the  
17 explanation. Did you spend any of the Bachman money on Watch  
18 My Block for example?

19 A No.

20 Q But was your testimony that the relationships in  
21 Watch my Block had helped form --

22 A Yeah. I mean we were dealing with all types of law  
23 enforcement agencies and people, so we had this relationship,  
24 and it continued and it continues to this day.

1           Q     Understood. Will you turn to Exhibit 188, please.  
2     This is a document that has been admitted into evidence. Do  
3     you recognize this document?

4           A     Yes. It's the Baruk Properties mortgage from B of A  
5     on 570 Glenneyre.

6           Q     When was this loan originated?

7           A     2004.

8           Q     Who was the borrower?

9           A     Baruk Properties, and the owners were Edward Bayuk  
10    and Paul Morabito.

11          Q     And we established in September or October you  
12    purchased Paul's interest in Baruk, correct?

13          A     Yes.

14          Q     When you purchased Paul's interest in Baruk, was  
15    this Bank of America loan outstanding.

16          A     Yes.

17          Q     In what amount?

18          A     Approximately a million three hundred some thousand.

19          Q     This is a statement dated 10-1-2010, right?

20          A     Right.

21          Q     So the time period in which you purchased Paul's  
22    interest?

23          A     It is a 9365.

24          Q     Please turn to Exhibit 143.

1           A     I am there.

2           Q     This document is in evidence?

3           A     Yes.

4           Q     So in your direct examination, you were questioned  
5 about this e-mail. Do you remember that?

6           A     Yes.

7           Q     This is dated April 2012. So we are again --

8           A     We are on 141?

9           Q     I am on 143?

10          A     143 is dated April 20th you said?

11          Q     April 20, 2012. So we are eighteen months or so  
12 after you purchased Paul's interest in Baruk, true?

13          A     Correct.

14          Q     And you say to Dennis: " Met the B of A appraiser  
15 this morning at 570 Glenneyre," right?

16          A     Yes.

17          Q     What is the affiliation between 570 Glenneyre and  
18 Bank of America?

19          A     The mortgage, first mortgage is with B of A.

20          Q     The loan we just looked at?

21          A     Correct.

22          Q     Which was requested by David Morello of Bank of  
23 America but indirectly by a different Department of B of A?

24          A     Yes.

1           Q     Dave Morello, is this a name we heard in this case  
2 before?

3           A     Quite a few times. He's high up in B of A, the lead  
4 guy who hired outside counsel. This is what I found out that  
5 Paul's being sued for his personal line.

6           Q     Do you remember when we looked another Exhibit 75,  
7 that showed the letter that you sent to Bank of America on the  
8 Raffles issue?

9           A     Right. Yes.

10          Q     Do you remember who was copied on that?

11          A     Dave Morello. So he was -- that was part of -- He  
12 wanted to make sure he was going to get paid. He was the lead  
13 guy suing Paul for B of A. Steve Peek I think was copied on  
14 that letter as well.

15          Q     You came to learn Steve Peek's role was what?

16          A     Was the outside counsel for B of A.

17          Q     And just to help you, this is the letter I am  
18 referring to Dennis Vacco drafted for you to send to Bank of  
19 America, right?

20          A     Yes.

21          Q     That Bank of America needs a letter permitting the  
22 reduction of the line -- Letter of Credit with Royal. Do you  
23 remember that?

24          A     Yes.

1           Q     Here is that name David Morello?

2           A     And Steve Peek.

3           Q     And Steve Peek. So you testified earlier that you  
4     were being examined -- when you were being examined you  
5     testified earlier that you e-mailed Dennis Vacco to seek his  
6     counsel, true?

7           A     Yes.

8           Q     What was the significance in your point of fact that  
9     David Morello was involved in this effort to get an appraisal  
10    of 570?

11          A     His whole focus to collect the money that was owed  
12    to B of A and the lead guy suing Mr. Morabito. I seeked  
13    Dennis' advise, because I was worried. First of all, I didn't  
14    know about the personal line of credit, and then I realized  
15    talking to Dennis, after talking to him it was cross  
16    collateralized. All B of A loans would have been affected by  
17    whatever Paul signed. That put me in a bit of panic. I  
18    realized at this point I could lose the building. This is  
19    when I started seeking outside financing to refinance the  
20    first mortgage.

21          Q     So you say to Dennis: "The appraiser today asked me  
22    for the tenant improvement expense, a copy of the existing  
23    lease and a copy of building drawings. I am very reluctant to  
24    give him all this information at this point in time."

1           Why were you reluctant to give Dave Morello and his  
2       team information about 570?

3           A     I didn't want to lose the building, and I was hoping  
4       that Paul would be able to pay his personal line of credit  
5       somehow.

6           Q     Okay. And we have seen this: "No, no, no, no, no?"

7           A     Right. Paul did not want me to cooperate with Dave  
8       Morello.

9           Q     Do you have any idea as to what the status of the  
10      Bank of America lawsuit was in April, 2012?

11          A     Yes. Steve Peek and Dave Morello was talking to  
12      Dennis Vacco. They came to an agreement, and things simmered  
13      down. It was very heated. So Bank of America gave Paul  
14      Morabito time to arrange to pay his personal line of credit.  
15      Part of that payment came from the locked box at Bank of  
16      America

17          Q     Will you go to Exhibit 145, please?

18          A     145?

19          Q     Yeah?

20          A     Got it.

21          Q     So the previous e-mail we looked at was April 20,  
22      2012. Now we are looking at September 4th, 2012, right?

23          A     Right.

24          Q     You already testified to this e-mail when you were

1 examined on direct that Dennis Vacco asked you to fill out  
2 these documents and send them to him. Do you remember  
3 testifying to that?

4 A Yes.

5 Q Okay. And then it was pointed out to you that there  
6 are a number of Bank of America legal documents attached to  
7 this e-mail, right?

8 A Yes.

9 Q You testified that you didn't recall ever actually  
10 putting a lien on any of the Glenneyre properties as part of  
11 this Bank of America pledge; is that true?

12 A Could you ask that question again?

13 Q When you were asked on your direct examination did  
14 you actually put a lien on the Glenneyre properties for Bank  
15 of America, your testimony was you didn't know, right?

16 A So September 4th, 2012, there was no Second Trust  
17 Deed on Glenneyre.

18 Q You acknowledge that Dennis Vacco had asked you to  
19 sign these documents pledging --

20 A Right. Yes.

21 Q Essentially agreeing to put a lien on Glenneyre?

22 A Yes. Right.

23 Q Your testimony when she asked you was you didn't  
24 know if you had done that or not?

1           A     That's correct. And I believe there was some sort  
2 of agreement with the lawyers and the bank that gave us or  
3 gave Paul more time to make good on his line of, personal line  
4 of credit.

5           Q     When did you make the payment to Bank of America of  
6 the \$732,000?

7           A     In early December. It was in December 2012.

8           Q     So it has been established, you testified it was  
9 December 4th 2012 or so?

10          A     Okay. I know it was early December.

11          Q     Three months after Dennis Vacco asks you to put a  
12 lien on Glenneyre, you just paid the loan off?

13          A     Right, the balance.

14          Q     Sorry. You paid the settlement?

15          A     Settlement, correct.

16          A     Why did you do that?

17          A     I didn't want to lose the building.

18          Q     Any other reasons?

19          A     Also I owed Paul, you know, a million six at the  
20 time, so I gave myself credit.

21          Q     Between April, between the April e-mail we looked  
22 at, okay, and the December payment of Bank of America, what  
23 did you do with respect to the Bank of America loan on  
24 Glenneyre?



1           A     I hotly pursued other banks to take out first  
2 mortgage, and I took it away from Bank of America.

3           Q     You tried to?

4           A     No, I did. I did in I think March 2013. I did it  
5 with another bank. And I also took -- I changed some our  
6 stuff. I closed one of my accounts. They were mean to Paul,  
7 so?

8           THE COURT: Bank of America is mean to everyone.

9           THE WITNESS: I could tell you some good stories.  
10 Forget this story. They love you when you're making money, but  
11 when your hurting, they come after you with tons of guns.

12 BY MR. GILMORE:

13          Q     If you will now turn to Exhibit 73.

14          A     73.

15          Q     We are only going to be here a minute and then we'll  
16 shift to a different binder. Do you have 73 in front of you?

17          A     I have the binder. Got it.

18          Q     Okay. Now you testified previously that Exhibit 73  
19 is a ledger you put together, true?

20          A     Yes.

21          Q     Now have you provided the backup documentation from  
22 where these numbers originated?

23          A     Yes.

24          Q     Let's turn to Exhibit 270. Let me know when you're

1       there.  It will be in Volume VII. 270. Got it?

2           A       Got it.

3           Q       Now this is an exhibit that is comprised of

4       approximately 200 some odd pages, right?

5           A       Right.

6           Q       Where did these documents come from?

7           A       From my bank.

8           Q       Did you compile this list yourself?

9           A       Yeah.  This is the stuff that I had to order three

10       times.

11          Q       What is in here?

12          A       Just cancelled checks.

13          Q       For example, the first page, we are not going to go

14       through these, but the first page is a check to Paul Morbito

15       for \$7,000.  Do you see that?

16          A       Yes.

17          Q       Is that check reflect in your ledger which was

18       Exhibit 73?

19          A       Yes.

20          Q       And are all of the information surrounding the

21       ledger contained in this backup?

22          A       Yes.

23               MR. GILMORE:  Your Honor, I move for admission of

24       Exhibit 270 as a compilation to go along with Exhibit 73.

1 THE COURT: Counsel.

2 MS. TURNER: I don't have any objection.

3 THE COURT: Exhibit 270 is admitted.

4 (Exhibit 270 admitted in evidence.)

5 BY MR. GILMORE:

6 Q Now would you please turn to Exhibit 72?

7 A Yes.

8 Q This is an exhibit I believe that has been admitted.

9 Yes. This is an exhibit that was testified to in the Stan

10 Bernstein deposition which will come up in a couple of days.

11 You know that, right? Don't look at the document. I am still

12 asking the questions?

13 A Okay.

14 Q This is a document Stan Bernstein testified to in

15 his deposition, right?

16 A If you say so, yes. Okay. Yes.

17 Q You might know. If you don't know, you don't know.

18 We'll read about it in a couple of days. I will represent to

19 you that Stan Bernstein testified --

20 MS. TURNER: I am going to object before he even gets

21 it out. This is a representation from counsel.

22 THE WITNESS: This looks --

23 MR. GILMORE: Hold on. Hold on. Don't say

24 anything. I either do it now or call him as rebuttal after

1 Stan.

2 THE COURT: Why don't you two talk to each other.

3 MR. GILMORE: You know what, Your Honor, we'll do it  
4 this way: I am not going to inquire as to this line of  
5 testimony at this time. I am going to reserve my right to  
6 call him as a rebuttal witness in my case-in-chief after Stan  
7 Bernstein testifies. We have the deposition transcript already  
8 present, so it is a shortcut, but I will call him as a  
9 rebuttal witness. Hold that thought.

10 THE COURT: Remember you told me a half hour.

11 MR. GILMORE: I have only got three or four minutes  
12 left, I promise.

13 THE COURT: Okay.

14 BY MR. GILMORE:

15 Q It is going to take more time to get through the  
16 binders than anything else. Please turn to Exhibit 272.

17 A Got it.

18 Q Now 272 is a multi page e-mail with communications  
19 between people other than you; is that true?

20 A Yes.

21 Q So I am offering -- I would like you to look at only  
22 the top two e-mails of this chain. One is an e-mail from you  
23 to Tim at Petroleum Realty. Do you see that?

24 A Yes.

1           Q     The second one is from Tim at Petroleum Realty to  
2     you. Do you see that?

3           A     Yes.

4           Q     Do you recognize the statements that are attributed  
5     to you on the top page of exhibit?

6           A     Yes.

7           Q     Okay?

8           MR. GILMORE: Your Honor, I move for admission of  
9     272 but only with respect to the communication between this  
10    witness and Mr. Haves that he can testify to.

11          THE COURT: Counsel.

12          MS. TURNER: Yeah, so the top e-mails were not a  
13    follow-up to the below e-mail. And if it was the other way  
14    around, I would agree. But I think you have to have the  
15    initial e-mail for completeness. So I would object to that  
16    for lack of completeness. Otherwise, I have no objection to  
17    it coming in. And I think it is probably proper for the whole  
18    thing to come in between Mr. Stan Bernstein and the third  
19    party.

20          THE COURT: You think the whole exhibit can be  
21    admitted?

22          MS. TURNER: Yes.

23          THE COURT: Without bifurcating?

24          MS. TURNER: Right.

1                   THE COURT: 272 is admitted in its entirety.  
2                   (Exhibit 272 admitted in evidence.)  
3       BY MR. GILMORE:  
4           Q     Mr. Bayuk, at the top of page one of 272, Mr. Haves  
5       asks you to give him some information, right?  
6           A     Yes.  
7           Q     Do you know why he's asking you for information?  
8           A     He wanted to know Paul's income, 1099.  
9           Q     From which company?  
10          A     For Snowshoe Petroleum, because that was the Raffles  
11       dividend.  
12          Q     Do you know why? My question is do you know why Tim  
13       Haves is asking you for that Information?  
14          A     I think Mr. Morabito was looking for a loan.  
15          Q     You tell him, this is May of 2012: " Know the  
16       amount," and you give a number?  
17          A     Right.  
18          Q     Where did this number come from?  
19          A     It came from the -- Paul received, started receiving  
20       payments from Raffles. That was one of the first checks. So  
21       I think that --  
22          Q     And how was it paid to Paul?  
23          A     1099.  
24          Q     But which company?

1           A     Snowshoe Petroleum.

2           Q     Superpumper's parent company?

3           A     Right. That is where it was parked.

4           Q     Did CWC ever retain any of the dividends Raffles

5     paid out after the merger?

6           A     No. They all went to Paul.

7           Q     Now will you go to 271, please.

8           A     Got it.

9           Q     I am not there yet. What is 271?

10          A     It is a \$100,000 wire to Superpumper.

11          Q     This is a wire from 2011 June; is that true?

12          A     Correct.

13          Q     What is this document reflecting, the first page

14     anyway?

15          A     The first page, just a \$100,000 wire to Superpumper,

16     Inc.

17          Q     Why were you wiring money to Superpumper?

18          A     The company needed money.

19          Q     Turn the page. What is this page, page 132?

20          A     It is another wire to Superpumper.

21          Q     When did you send it?

22          A     July 31st, 2011.

23          Q     Why are you sending money to Superpumper in 2011?

24          A     Because the company needed money.

1 Q Turn the page. We are now on 1881. What is this?  
2 A It is a wire of \$50,000 to Superpumper, Inc.  
3 Q When?  
4 A September 30, 2011.  
5 Q Why were you sending it?  
6 A The company needed money.  
7 Q Turn the page, 1883. What is this?  
8 A This is a wire for \$659,000.  
9 Q Do you see at the bottom of the page beneficiary?  
10 A Superpumper Inc., Compass bank.  
11 Q What was this for?  
12 A This is -- This is 9-30-2010, putting money into  
13 Superpumper, Inc.  
14 Q And then the last two pages. What is page 1884?  
15 What is that?  
16 A 1884 is another wire December 31, 2010 for \$250,000.  
17 Q Then the last page, what is that?  
18 A It is a check to Superpumper, Inc., for \$250,000  
19 December 15, 2010.  
20 Q Why did you put \$250,000 into Superpumper December  
21 15th of 2010?  
22 A I'm sure the company needed money.  
23 Q You testified earlier that Paul Morabito received a  
24 million thirty-five thousand as the initial downstroke on the



1 purchase of his interest in Superpumper, true?

2 A Yes.

3 Q Did you contribute at all to that downstroke?

4 A Yes.

5 Q How much did you contribute?

6 A Fifty percent.

7 Q Where did the money come from?

8 A From me.

9 Q And last question, when you sold your interest in  
10 Superpumper properties, Card Locks to Paul, did you receive  
11 anything?

12 A Those were -- Card Locks, that is Nevada. I sold my  
13 interest to Paul and I received money for my ownership.

14 Q And how much did you receive from Paul?

15 A I believe \$141,000.

16 MR. GILMORE: No more questions at this time. Pass  
17 the witness with reserving the right to call him as rebuttal.

18 THE COURT: Okay.

19 THE WITNESS: Redirect.

20

21 REDIRECT EXAMINATION

22 BY MS. TURNER:

23 Q Good morning.

24 A Good morning. Happy Halloween.

1           Q     Happy Halloween. All right. I am going to try to  
2     track your counsel's questioning from yesterday, and I just  
3     have some brief follow up so I will try to be brief. So going  
4     back to the oral ruling on September 13, 2010, you said you  
5     witnessed the dismissal of you and Sam Morabito from the case?

6           A     Yes.

7           Q     And instead of being elated you described your  
8     disappointment?

9           A     Yes.

10          Q     And you did not understand how Paul Morabito could  
11     be liable to the Herbsts; is that right?

12          A     Correct.

13          Q     And you thought --

14          A     For the amount.

15          Q     And you thought any liability would be limited to  
16     three to six million?

17          A     Correct.

18          Q     Now he's an adjudicated fraudster. You heard that  
19     from Judge Adams, correct?

20          A     Correct.

21          Q     And you didn't see it. You didn't see that Paul  
22     Morabito had committed fraud against the Herbsts?

23          A     I am a layman, so I am not a lawyer, but I know --

24          Q     And here in this case you are not here to testify

1 about what Paul Morabito's intent is, right?

2 A No.

3 Q You are here to testify about what you did?

4 A Right. Yes, myself, my reputation.

5 Q And Paul Morabito, his intent with respect to the  
6 Herbsts, he has told you this is going to be scorched earth  
7 litigation, correct?

8 A That's your opinion.

9 Q He has told those words or you heard him say those  
10 words, haven't you?

11 A I know there is a huge judgment against Paul, and I  
12 mean with all due respect, no one knows this except law  
13 enforcement, I actually had people break into my backyard in  
14 2011 and law enforcement showed up. The D.A. got involved.  
15 It is very complicated. I hate to say it, it is directed at--  
16 So I realized how hot and heavy this pursuit of Paul is, and  
17 it really spooked me?

18 Q My question is: You know that Paul doesn't want to  
19 pay the Herbsts?

20 A No.

21 MR. GILMORE: Objection. Argumentative.

22 THE WITNESS: No, no, no. I testified --

23 MS. TURNER: We have an objection.

24 MR. GILMORE: It is argumentative.

1           THE COURT: I am going to overrule the question. The  
2 witness isn't being responsive. You respond to the question,  
3 not the answer you want to.

4 BY MS. TURNER:

5           Q     Let me ask the exact same question I asked before to  
6 address counsel's comment. You have witnessed Paul saying  
7 scorched earth?

8           A     Scorched earth. Has he said that to me?

9           Q     Said that in your presence or to you that this is  
10 going to be scorched earth litigation?

11          A     In so many words, probably.

12          Q     He has not said to you I want to make this right  
13 with the Herbsts?

14          A     I believe that he understood facts later, and he was  
15 trying -- he did make payments to the Herbsts.

16          Q     Paul Morabito has never made a voluntary payment to  
17 the Herbsts that hasn't been compelled by the law, has he?

18               MR. GILMORE: Objection. Foundation that this  
19 witness knows anything about the settlement.

20               THE COURT: He can answer that question.

21               THE WITNESS: I'm not sure to be honest with you.  
22 Sorry.

23 BY MS. TURNER:

24          Q     Now you have said in these proceedings that you

1 believe Paul Morabito makes false statements about values. Do  
2 you recall that?

3 A Yes.

4 Q We looked at the e-mail from May of 2010 where there  
5 was a thirty million dollar value attributed to Superpumper  
6 that was made to third parties. Do you recall that?

7 A Yes.

8 Q And you believe that that representation from Paul  
9 Morabito was false?

10 A Yes.

11 Q And yet you did nothing to advise the third party  
12 that you believed it was false?

13 A I can't -- I remember the document. You're right, I  
14 probably was not too involved as much as I should have been.

15 Q And we looked at the April 2011 communication with  
16 your electronic signature to Nella?

17 A I thought that was the document you were talking  
18 about.

19 Q We can refresh your recollection on the May one.  
20 That was for Chicago?

21 A Right.

22 Q But you recall where you attributed ten million  
23 dollars to the value in April of 2011?

24 A Right.

1           Q     And you said you thought that was false?

2           A     Right. Like I just said, probably I wasn't as  
3 involved as I should have been with everything, paying  
4 attention to everything.

5           Q     There is no justification for false information to a  
6 third party?

7           A     I agree.

8           Q     You agree with that?

9           A     Yes.

10          Q     Now, sitting here today and yesterday and the day  
11 before, you have been loyal to Paul Morabito, correct?

12          A     Yes.

13          Q     You continue to call him trustworthy to this Court?

14          A     I explained that he is a visionary and he hotly  
15 pursues all kinds of business deals. Sometimes they make no  
16 sense whatsoever.

17          Q     He's not trustworthy, is he?

18          A     I don't like to criticize people, but so everyone,  
19 you know, he does not state things correctly.

20          Q     And you have witnessed him misrepresenting facts to  
21 third parties. He's also cheated on you, yes?

22          A     I'm not going to get into my personal life.

23          Q     At all aspects of your involvement with Paul  
24 Morabito, he has been false with you, business and personal,

1 correct?

2 A I guess you could say, yes.

3 Q You talked about the motivation for these transfers  
4 in September 2010 with Mr. Gilmore, and you said something to  
5 the effect of you didn't want the Herbsts to get a key to your  
6 house. Do you recall that?

7 A Yes.

8 Q Your intention was to separate your assets from  
9 Paul's so that the Herbsts would not be involved in your life;  
10 is that correct?

11 A Correct.

12 Q How has that worked out for you?

13 A Not good. Very bad. And law enforcement knows as  
14 well what has happened. I have not spoken to this court or  
15 anyone about it. But law enforcement knows.

16 Q You are making an accusation there has been criminal  
17 activity by the Herbsts?

18 A Against me.

19 Q That is a very serious allegation with severe  
20 consequences.

21 A I will retract it.

22 Q This is a sworn statement?

23 A Okay. I will retract it.

24 Q All right. So your choice in September of 2010 you

1       said was to do nothing or to do something which is what you  
2       did. Do you recall that?

3           A       Yes.

4           Q       Now there was a third option, wasn't there? That  
5       you could separate your assets from Paul Morabito to the  
6       benefit of the Herbsts?

7           A       To the benefit of myself.

8           Q       Instead of giving your interest in the Panorama  
9       house, writing a check, stroking a check to Paul Morabito in  
10      September of 2010 or October of 2010, you could have sat down  
11      with the Herbsts and figured out a way to provide the benefit  
12      to them, correct?

13          A       They never called me. No one ever called me.

14          Q       And you never called them?

15          A       That's right.

16          Q       Let's talk about your understanding of the Herbsts'  
17      rights that they could get a key to your house. Did anybody  
18      explain to you that a creditor's interest in Paul's interest  
19      in Baruk Properties would be limited to fifty percent of  
20      distributions?

21          A       I would say the lawyers probably weren't clear with  
22      me on things like that.

23          Q       Didn't they tell you if Baruk Properties doesn't  
24      show a profit with distributions to Paul Morabito, the Herbsts



1 get nothing?

2 A There might have been conversation before or after.  
3 I didn't understand the sum of the, what do you call it,  
4 corporation protection. I am probably an idiot. I admit to  
5 you I am an idiot. I changed it from a Nevada LLC to a  
6 California LLC. So you can call me an idiot.

7 Q And then a Delaware, LLC.?

8 A I did that because of other business opportunities  
9 that I am doing. That is a different reason.

10 Q When you say you are doing different business type  
11 of--

12 A Correct.

13 Q -- things, you are making business decisions  
14 resulting in you transferring interests from Baruk Properties  
15 to a Delaware, LLC.?

16 A Yeah. I am purchasing more properties. So I am  
17 looking at business opportunities.

18 Q When you say you're looking at business  
19 opportunities?

20 A Right.

21 Q Those are new opportunities?

22 A Absolutely, yes.

23 Q In conjunction with Paul Morabito?

24 A No.

1 Q None of them are?

2 A No.

3 Q You talked about Versanet?

4 A We mentioned the name.

5 Q You mentioned the name?

6 A We all agreed we were not going to talk about it,  
7 but go ahead.

8 THE COURT: I am sorry, what name?

9 MS. TURNER: Versanet.

10 BY MS. TURNER:

11 Q When you make an affirmative statement in this Court  
12 you say you are not doing business with Paul Morabito, Paul  
13 Morabito was an owner of Versanet, correct?

14 MR. GILMORE: Objection. That misstates the  
15 testimony. He didn't say he wasn't doing business with Paul.

16 THE COURT: Okay. I think the question was just the  
17 property Snowshoe Properties, a Delaware corporation. And an  
18 interest to Mr. Morabito.

19 MS. TURNER: As a follow up to that, he has raised  
20 the issue of Versanet. I really don't want to have a second  
21 trial, but to say he's not doing business with Paul Morabito,  
22 I want to make sure the record is clear.

23 THE WITNESS: Right.

24 ///

1 BY MS. TURNER:

2 Q Versanet was formed after September 2010?

3 A Yes.

4 Q And you co-owned it with Paul Morabito?

5 A It was formed in 2011.

6 Q And Paul Morabito was an owner?

7 A When I first started it, I was a single owner of it,  
8 then he became an owner in 2012, I think. I'd have to check  
9 all the records. The answer to your question earlier about the  
10 real estate company, I was looking at a sixty-five unit  
11 apartment complex and another smaller apartment complex, so I  
12 am busy with my real estate company, so just to clarify that  
13 is my own thing.

14 Q You have not acquired any additional commercial  
15 property beyond the Glenneyre properties?

16 A That's right.

17 Q Now Superpumper, counsel just went through I believe  
18 Exhibit 270. Sorry, 271. 271. And it was not admitted, was  
19 it? 271 regarding the payment to Superpumper. 271. Your  
20 counsel went through it with you. It was not offered.

21 MS. TURNER: I would offer it to make a complete  
22 record. I am sure it as an inadvertence?

23 MR. GILMORE: It was.

24 THE COURT: 271 is admitted.

1 (Exhibit 271 admitted in evidence.)

2 BY MS. TURNER:

3 Q Exhibit 271, you went through and described the  
4 payments that you have made subsequent to September 2010?

5 A Right.

6 Q To the business, right?

7 A Right.

8 Q What you didn't disclose or discuss was you  
9 receiving \$933,000 from CWC in September 2010?

10 A That's correct.

11 Q In September of 2010 you, Sam Morabito and Paul  
12 Morabito each took or were paid \$939,000 from CWC correct?

13 A Yes.

14 Q And that was the proceeds from the Compass loan that  
15 was obtained with Superpumper, correct?

16 A Yes.

17 Q And then subsequent to receiving that \$939,000, you  
18 recapitalized certain amounts to Superpumper as needed?

19 A Yes.

20 Q And we discussed yesterday that the \$933,000 that  
21 was paid to Paul Morabito, that was treated as a loan due and  
22 payable to Snowshoe Petroleum. Do you recall that?

23 A Yes.

24 Q And Paul Morabito executed a note for repayment of

1       that \$933,000, correct?

2           A       I believe so.

3           MR. GILMORE:   That misstates the testimony. There  
4       was no time Paul Morabito was paid \$939,000 from this  
5       transaction.

6           THE COURT:   The testimony today he said that. He  
7       just now said it. \$933,000 was paid to each.

8           MR. GILMORE:   As part of a term loan.

9           THE COURT:   The question was each were paid. Now  
10      she's questioning Paul's share was a loan. He said yes. Now  
11      she's asking the terms of the loan.

12          MR. GILMORE:   Okay.

13          THE COURT:   Correct? We are all on the same page?

14          MS. TURNER: Yes.

15          MR. GILMORE:   There was more to that question that  
16      is incorrect. It is immaterial. I am about to withdraw the  
17      objection.

18          THE COURT:   There may be more I don't understand.

19          MR. GILMORE:   I think that is the case.

20      BY MS TURNER:

21          Q       My question is this: The \$933,000 went to you and  
22      to Sam. Did you execute a Promissory Note to Snowshoe  
23      Petroleum to repay them then?

24          A       I executed a bunch of Promissory Notes, so if you

1 show it to me. I apologize.

2 Q I will represent to you I haven't seen it. Do you  
3 recall executing a note?

4 A If you say no, I will say no. I am continuing to  
5 agree with you.

6 Q I don't want to get too far into CWC and Raffles  
7 with you because you have told me twice now that Sam Morabito  
8 is the best witness, however, your counsel showed you Exhibit  
9 256. I am going to just pull it up on the screen. We are not  
10 going to spend a whole lot of time on it. Do you remember  
11 seeing this statement?

12 A Yeah.

13 Q You said you received from Raffles?

14 A Every September.

15 MS. TURNER: Again, through inadvertence, this was  
16 not offered for admission. It was discussed with the witness.  
17 I would offer for it to be admitted.

18 MR. GILMORE: This particular exhibit was not  
19 discussed with the witness.

20 THE COURT: Okay. I will check my notes.

21 MR. GILMORE: I asked him to turn to it. I never  
22 asked him any questions regarding its substance.

23 THE WITNESS: I turned to it.

24 MR. GILMORE: If you want to offer it, I have no

1 objection.

2 MS. TURNER: Okay.

3 THE COURT: Did you want to offer it?

4 MS. TURNER: I do.

5 THE COURT: There is no objection. Exhibit 256 is  
6 admitted.

7 (Exhibit 256 admitted in evidence.)

8 BY MS. TURNER:

9 Q And the other day you said you could not recall the  
10 value of the Raffles asset in September of 2010. You obtained  
11 the summary from Raffles as of September 30th. Total equity  
12 as of September 30th, 2010, was \$2,234,175. Do you see that?

13 A Yes.

14 THE COURT: I am sorry, what was that amount again.

15 MS. TURNER: I'm sorry?

16 THE COURT: Two million what?

17 MS. TURNER: 234,175.

18 THE COURT: Thank you.

19 BY MS. TURNER:

20 Q Go to Exhibit 77 which is in evidence or counsel  
21 went over it with you yesterday?

22 A Yes.

23 Q This is that e-mail regarding the thirty million  
24 dollar value. Do you see that?

1           A     I see it.

2           Q     Now your counsel went through and asked you  
3           different questions about the different names of companies  
4           laid out in the e-mail. It says: Paul Morabito, Chairman  
5           Consolidated Canada Corporation, Consolidated Western  
6           Corporation, American Oil Distribution and Signal Specialty  
7           Risk, LLC. Do you see that?

8           A     Yes.

9           Q     May 20, 2010 he was in fact the Chairman of the  
10          Board of Directors for Consolidated Western Corporation, the  
11          one hundred percent owner of Superpumper, correct?

12          A     I believe so.

13          Q     And when you were asked about Hanoosh Holdings?

14          A     Yes.

15          Q     An Ontario company owned by Dr. Anna Kobylecy. I  
16          will say that wrong. Do you know who Dr. Anna Kobylecy is?

17          A     Yes.

18          Q     That is Sam Morabito's significant other?

19          A     Yes.

20          Q     Now, you talked about purchasing Panorama property  
21          here in Reno for roughly two and a half million dollars?

22          A     A little bit over.

23          Q     Spending another three and a half million on capital  
24          improvements?



1           A     It was a lot of money.

2           Q     And you also testified about furnishings?

3           A     Yes.

4           Q     And stroking a check to Paul Morabito for \$29,000,

5 was it for the furnishings also in the Panorama property?

6           A     Without looking, if you say so, I did.

7           Q     Remember we looked at the check yesterday.

8           A     Yeah, all the checks yesterday.

9           Q     So you spent over two and a half million on the

10 house, itself?

11          A     Right.

12          Q     Three and a half million upgrades and only \$29,000

13 in furnishings?

14          A     Right. Correct.

15               MR. GILMORE: I'm sorry, that misstates the

16 testimony. He didn't testify -- He testified --

17               THE COURT: Wait a minute your witness answered the

18 question. He certainly can say no, that's not correct if it

19 isn't correct?

20               MR. GILMORE: Sure.

21               THE COURT: Make sure you answer her question. If

22 it isn't complete, say that. I don't want you, Mr. Gilmore,

23 to opine your objection.

24               MR. GILMORE: Agreed. But if she's asking questions

1       that were not established, she says you testified yesterday.

2               THE COURT:   He can say no, I didn't testify to that.  
3       We don't have a jury.

4               MR. GILMORE:   It is an unfair question.

5               THE COURT:   I am not sure she's making unfair  
6       assumptions, but we'll start over with that.   Now I don't have  
7       any memory.  Something about the value of the furnishings.

8       BY MS. TURNER:

9               Q       Yes.  You valued the furnishings of Panorama yourself  
10       and valued those furnishings, correct?

11              A       I wrote a check for twenty-nine thousand odd dollars  
12       for the furniture.

13              Q       That was not the cost basis for that furniture?

14              A       I don't know what the cost basis was for the  
15       furniture at the time, so my testimony is I wrote a check for  
16       the furniture at the house.

17              Q       Then you took the furniture to California?

18              A       Yes.

19              Q       And there was no cost basis established that --  
20       There is no appraisal for the furniture, so you are telling  
21       the Court you spent six million dollars on this house but the  
22       value of the furniture was \$29,000?

23              A       My testimony was Paul didn't want the furniture,  
24       so --

1           THE COURT: I don't think she's asking who wanted  
2 the furniture. She's asking about the value.

3           THE WITNESS: I didn't put a value on it.

4 BY MS. TURNER:

5           Q     Okay.

6           A     Sorry.

7           Q     The \$29,000 that you paid to Paul for the personal  
8 property contained within Panorama, there was no rhyme or  
9 reason to that number?

10          A     No. Just showed that I paid.

11          Q     Something?

12          A     Correct. Yes.

13          Q     Where did your money come from?

14               MR. GILMORE: Objection. Relevance?

15           THE COURT: I will sustain as to vague. I am not  
16 sure what money from when.

17 BY MS. TURNER:

18          Q     You have testified in this case about the money that  
19 you spent on curtains, the money you spent with upgrades, the  
20 best interior designers in the world and attorney's fees. My  
21 question to you is: What is the source of your funds to be  
22 paying attorney's fees and these upgrades to the Panorama  
23 property? The example you provide of millions of dollars  
24 being expended?

1           MR. GILMORE: Same objection. He testified the  
2 upgrades were in 2006 and beyond. Is this a debtor's exam?

3           THE COURT: I am going to overrule the objection.  
4 You can answer the question.

5           THE WITNESS: Ask the question again, please.

6 BY MS. TURNER:

7           Q     The money that was expended, I will just tie it to  
8 your testimony in this case, for the upgrades of millions of  
9 dollars to the Panorama house you testified to as well as  
10 millions of dollars in attorney's fees, what is the source of  
11 the funds?

12          A     I paid for things out of my checking accounts, and I  
13 was making a living, earning income from the businesses plural  
14 and probably my stock portfolio. So it was an accumulation of  
15 sources.

16          Q     What business --Let's go to this 2006 time period.  
17 The upgrades to the Panorama house were not in 2006. They were  
18 2006 on, correct?

19          A     No. They started in 2005.

20          Q     Were they done by 2006?

21          A     I think they got done right at the end of 2000 --  
22 sometime early 2007 or '6. I'm not sure the exact month. I  
23 would have to look.

24          Q     When Berry-Hinckley sold to the Herbsts in 2007,

1       what did you receive from that?

2           A       I don't recall, but you're welcome to show me.

3           Q       Was it in excess of a million dollars?

4           A       I honestly don't recall what I received, but it was  
5       some monies.

6           Q       Do you recall how much the Herbsts paid for  
7       Berry-Hinckley?

8           A       No. Show me a document and I would probably be able  
9       to remember.

10          Q       You were twenty-five percent owner of  
11       Berry-Hinckley?

12          A       Right.

13          Q       When you transferred Superpumper to Jan Friederich,  
14       when was that?

15          A       We transferred control I believe April 2016, and we  
16       closed in December 2017.

17          Q       What did you receive from that?

18          A       I received two checks, two payments.

19          Q       For how much?

20          A       Oh, God. My memory is getting worse. But the last  
21       payment I want to say was two fifty, and the first payment was  
22       probably sixty eighty or so. If you want to know, I can check  
23       my records for the exact numbers.

24          Q       Since 2010 your business interests were distribution

1 from Snowshoe Petroleum, correct?

2 A Salary.

3 Q Salary and distributions?

4 THE COURT: I am sorry, and distributions?

5 THE WITNESS: Actually, no. So I received a salary,  
6 and I just remember '10, '11, '12. I don't know what years I  
7 received distributions. I just know the company was cash  
8 negative, that is why I paid myself a salary.

9 BY MS. TURNER:

10 Q And then you say it was cash negative 2010, 2011,  
11 2012. It certainly wasn't cash negative before 2010,  
12 September 2010?

13 A I wasn't involved, sadly my testimony is I wasn't  
14 too involved with all the financing, so I'm the wrong person  
15 to ask questions to, because I will be guessing.

16 Q Then you said yesterday that the Glenneyre  
17 properties were cash flow negative?

18 A Yes.

19 Q So from September 2010 to today, other than the  
20 salary from Superpumper through 2016, what has been your  
21 source of income?

22 A Investments. I have a large tenant at 570 Glenneyre,  
23 and I borrowed money, and I sold stocks and bonds. So back  
24 then I did collect dividends and interest on different things.

1           Q     So collecting dividends from your stock portfolio  
2     and then borrowing money?

3           A     Yeah.

4           Q     And receiving rent from 570 Glenneyre?

5           A     Correct.

6           Q     Other than you paying Paul Morabito's bills, what is  
7     Paul Morabito doing to earn income?

8           MR. GILMORE:   Calls for speculation.

9           THE WITNESS:   I don't pay all Paul's bills, just so  
10    you know. He owes a lot of money.

11   BY MS. TURNER:

12          Q     My question is how is he funding his living but for  
13    you providing his house and paying his bills?

14          MR. GILMORE:   Objection.

15          THE WITNESS:   I think you have to start backward  
16    again. He lived in L.A., had two places in L.A., so I didn't  
17    live with him at those places. I went there often. And so he  
18    was receiving money from one of the companies that I owned.  
19    That is USHFCC. He was working there receiving monies from  
20    that. So he was working for the company and had expense  
21    accounts and all. A different company.

22          Q     Now, your counsel walked through it was Exhibit 270  
23    saying this was the backup for your ledger payments to  
24    Paul Morabito?

1           A     Yes.

2           Q     If you could go to that exhibit?

3           A     270?

4           Q     270?

5           A     Got it.

6           Q     Now, your testimony is that the payments that are  
7 reflected in 270 and summarized at 73, I would call that a  
8 summary of voluminous records, that those were to satisfy your  
9 obligation to Paul Morabito under the Baruk Properties note  
10 where you acquired Paul Morabito's fifty percent interest in  
11 Baruk Properties?

12          A     Right. There are credits to me.

13          Q     There is no other note where you owed money to  
14 Paul Morabito, correct, other than that \$1,617,000?

15          A     I believe so, yes.

16          Q     Now there are certain payments to Paul Morabito.  
17 Those are self-explanatory. But these payments to Paul  
18 Morabito, they don't correlate with the payment schedule in  
19 the Promissory Note, correct?

20          A     Correct.

21          Q     Now if we go to, if you could just follow with me,  
22 Superpumper 2156 in the bottom right-hand corner, do you see  
23 those Bate numbers? That is a legal term. It means page  
24 number?



1           A     2156.

2           Q     2156?

3           A     What exhibit number are you on?

4           Q     Exhibit 270 the checks?

5           A     Oh, sorry. I am on 271.

6           Q     All right. Fair enough.

7           A     Got it.

8           Q     All right, so here we have a payment to Granite

9     Mountain Marble for Panorama, 8355 Panorama that is dated it

10    looks like 9-29-10. So you credited your Promissory Note on

11    the Baruk Properties purchase for the payment to the Granite

12    guy or the marble guy for the Reno property?

13          A     Right.

14          Q     And if you thumb through these exhibits or these

15    pages, you are going to see a lot of payments that were made

16    for services and goods?

17          A     Right.

18          Q     Delivered to the Panorama property, correct?

19          A     Yeah. I was still helping, because I was taking

20    care, involved with taking care of the house, because no one

21    was living there. So I was paying the person who looked at the

22    house monthly sometimes.

23          Q     If you go to Superpumper 2159. You have a payment to

24    John Blake?

1           A     Right.

2           Q     That is not Paul Morabito. That is John Blake?

3           A     Right.

4           Q     And you have on the next page a credit card bill

5 from you, correct? That is your credit card statement?

6           A     Yes.

7           Q     Where you went clothes shopping?

8           A     Yes.

9           Q     That was you going clothes shopping?

10          A     No, it was with Paul.

11          Q     You went clothes shopping with Paul?

12          A     I take that back. He had one of my credit cards.

13 Sorry.

14          Q     So Paul used your credit card to go clothes

15 shopping?

16          A     Yeah.

17          Q     Then you received the bill?

18          Q     He has credit cards of mine. Either he ordered it or

19 charged it, but that was for Paul.

20          Q     Next page you have the marble company for the

21 Panorama house, right?

22          A     What page number?

23          Q     Superpumper 2161?

24          A     No.

1           Q     Kim's Marble?

2           A     No.

3           Q     Who were you buying Kim's Marble for?

4           A     So I purchased a house, Los Olivos. I had a water  
5     problem under the house. It was a pretty catastrophe. I had  
6     to move out of the house. I was out of the house for a while  
7     and I had to rip up the floors and take out cabinets. I had  
8     to do a lot of work on the house. There was, I spent a lot,  
9     probably \$300,000 fixing the house, maybe more. And I had  
10    already purchased the house from Paul, so I said I am going to  
11    sue you. This is ridiculous, you know. So I made -- so I  
12    credited myself some of the monies I spent fixing the house.  
13    That is what some of these checks are.

14          Q     So you credited your payment obligation?

15          A     Or else the house I paid a million nine for was  
16    really worth a million five hundred because it was so much,  
17    there was so much work to be done on the house.

18          Q     So you bought the house, the Los Olivos, the fifty  
19    percent, Paul's fifty percent October 1, 2010?

20          A     Correct.

21          Q     By October 13th you were crediting your obligation  
22    to Paul for that acquisition for improvements or work done on  
23    the Los Olivos house?

24          A     Yeah. There was a major -- I had issues with the

1 house. And remember this is-- yes.

2 Q If we go to the next page, Superpumper 2162, you  
3 have Doheny Builder Supplier?

4 A Right.

5 Q That was related to the Los Olivos house?

6 A Yes.

7 Q Next page and Geo Technical?

8 A That is, I hired them because of the water. I had  
9 tons of water under the house.

10 Q Los Olivos?

11 A Big problem. Catastrophe probably is the word.

12 Q You paid American Vector. There is many payments in  
13 this grouping?

14 A Right. They put in a basement in the house I had to  
15 take out.

16 Q They put a basement in your Los Olivos house?

17 A Like a four foot -- They had to redo the foundation  
18 walls in the basement. I had to take out ten dump trucks of  
19 dirt. I had to hire day laborers and all. So I was GC'g the  
20 job.

21 Q Go to the next page, Superpumper 2165. Chase was the  
22 mortgage company that had a Deed of Trust on Mary Fleming?

23 A Right. For paying the mortgage?

24 Q That mortgage existed before you purchased the home?

1           A     Right.

2           Q     In fact, the mortgage went into account on

3     determining the price for your purchase of --

4           A     Correct.

5           Q     -- Paul's fifty percent interest?

6           A     Correct.

7           Q     And then you took a deduction in the value for the

8     amount of the mortgage when you purchased Paul's interest in

9     the property, correct?

10          A     Yeah, the mortgage value.

11          Q     So you took the deduction, and then you also took a

12     credit for paying the mortgage off?

13          A     This may be a page mistake. I don't know if the

14     ledger has it. Hopefully it doesn't.

15          Q     If you can go to Exhibit 73. Exhibit 73. I

16     apologize for making you have all these open.

17          A     No, that's okay.

18          Q     Exhibit 73?

19          A     Yup. I have got it.

20          Q     You see credit there, the \$341,000?

21          A     Yes.

22          Q     So you are saying that was a mistake?

23          A     No. No. I took over the mortgage.

24          Q     You took over the mortgage? You already had taken

1       that credit in determining the purchase price?

2           A     Right.

3           Q     So you took it twice?

4           A     No. I only took it once. I just said to you if  
5       this is in there, this amount, it may be a mistake.

6           Q     It was a mistake to include it in payments to Paul?

7           A     I am just looking real quick if I see the number on  
8       the schedule. Have you seen it?

9           Q     Go ahead and look. October 2010.

10          A     No. But do you see the deduction on the mortgage  
11       payment?

12          Q     Do you see on Exhibit 73, 10-31-2010 Mary Fleming  
13       mortgage balance \$341,000?

14          A     Right.

15          Q     Now if you go to Exhibit 257, we are going to bounce  
16       around?

17          A     2165.

18          Q     257. Exhibit 257 in the other book. 257 is in your  
19       counsel's book?

20          A     Exhibit 257?

21          Q     Exhibit 257.

22          A     Got it.

23          Q     Do you see where the \$1,617,000 purchase price was  
24       calculated?

1           A     Yes.

2           Q     And you have the Mary Fleming Circle, Palm Spring  
3 property.

4           A     Right.

5           Q     Estimated appraised value one million fifty thousand  
6 dollars. Do you see that?

7           A     Yeah.

8           Q     Then it has the mortgage \$344,000, correct?

9           A     Right. That was Paul's mortgage. I took over  
10 paying it.

11          Q     So it was already calculated in the purchase price  
12 of \$1,617,000 that you would take on that mortgage, correct?

13          A     The reason why it is in the book, it is showing what  
14 the mortgage was, the Chase statement and then I got credit.  
15 Oh, you're saying I took credit when I purchased?

16          Q     That's right. You received a credit for the mortgage  
17 when you purchased Paul Morabito's interest in Baruk  
18 Properties?

19          A     It looks like that may be my mistake.

20                THE COURT: Counsel Exhibit 257 is not admitted.

21                MS. TURNER: I will move for its admission.

22                MR. GILMORE: No objection.

23                THE COURT: Exhibit 257 is admitted.

24                (Exhibit 257 admitted in evidence.)

1 BY MS. TURNER:

2 Q Okay. And if we continue on in Exhibit 270. I

3 apologize for the aside. We had to look.

4 A Got it.

5 Q Okay, 270, if you go to Bate Superpumper 2181, that

6 is where we -- I am sorry -- 2180 we'll start there.

7 A Got it.

8 Q One more apology. We left off on 2176 when we talk

9 about American Vector.

10 A Yes.

11 Q Now the next page is 2177. That was to Mark Paul

12 Designs. You testified yesterday that Mark Paul Designs, they

13 are the fancy curtain people?

14 A Yes.

15 Q That was for fancy curtains where?

16 A Los Olivos. Because they were wrecked from the

17 water damage.

18 Q Then the next page buying more clothes?

19 THE COURT: What was the number, I am sorry?

20 MS. TURNER: 2177, Your Honor.

21 BY MS. TURNER:

22 Q 2178 is a shopping trip to Neiman Marcus dated, it

23 seems to indicate 12-13-09?

24 A Yeah. That is not right.



1           Q     It has a closing date on the statement of January 7,  
2     2010?

3           A     Right.

4           Q     That was an error to include that?

5           A     No. I think it is an error in when it showed up. I  
6     that is an error.

7           Q     Do you see where the closing date on the statement  
8     is 1-7-10?

9           A     Right.

10          Q     You didn't have any obligation to Paul Morabito  
11     under a note in January of 2010, right?

12          A     That's correct. Yes.

13          Q     So to give credit of \$2,218.49 for purchases made in  
14     2009 that were billed in January 2010, that would be an error?

15          A     Yes.

16                 MS. TURNER: That was 2170, Your Honor. American  
17     Vector.

18     BY MS. TURNER:

19          Q     Any time we see American Vector it would be the Los  
20     Olivos home?

21          A     Yeah, the catastrophe.

22          Q     On 2180 that is Bead Painting. That was for Los  
23     Olivos?

24          A     Yes.

1 Q Next page, 2181, Atlas Sheet Metal, Los Olivos?

2 A Yes.

3 Q If we go to 2182 do you see it is a 2010 year end  
4 summary of individual spending for Phillip Alexander?

5 A Yes.

6 Q That was Paul's boyfriend?

7 A No. That was a helper for Paul in L.A. So he  
8 worked in L.A. for Paul. This is after the surgery and all.  
9 So he had people there making food for him and stuff.

10 Q Go to the next page 2183. We don't have a document.  
11 We have some kind of a summary. Did you prepare the Excell  
12 spreadsheet or what is this?

13 A I am not really sure what this is. It is not my  
14 writing there. That's not my writing. I'm not sure who  
15 prepared this. It is not me. So I am not sure how it got into  
16 the exhibits.

17 Q \$105,084.09 to Comerica. You don't know what that  
18 would be?

19 A No. But I have a bank account with Comerica.

20 Q You didn't have a loan with Comerica?

21 A No, no. I had a bank account.

22 Q So if there is \$105,084.09 attributed to Comerica,  
23 you don't know what that is? It is an error?

24 A I believe it is an error. It looks like Comerica

1 money out of my account to Paul, but I think -- I don't know  
2 who prepared it, because that's not my writing. But I think  
3 it is just --

4 Q A copying mistake?

5 A Possibly.

6 Q It ended up in the ledger by mistake?

7 A Yeah.

8 Q If we go to Superpumper 2184, is it fair to say any  
9 time we see a credit card statement with your name, that that  
10 was Paul's using your credit card?

11 A He had -- He had two credit cards that was on mine.

12 Q Was one of those an American Express?

13 A Yes. And it got shut off or got put on hold when he  
14 went into bankruptcy. But I still have it.

15 Q Does he still use a credit card of yours?

16 A Yes.

17 Q What credit card company?

18 A It is Chase.

19 Q You have seen the Chase statement here. That is the  
20 same card he had before?

21 A No. That is a Chase mortgage.

22 Q Okay.

23 A Sorry. So Chase card, VISA I think it is.

24 Q I don't want to ask you this. So I am grouping them

1       altogether. All credit card statements that are in here where  
2       there is a purchase, it wasn't a purchase for you, it was  
3       shopping by Paul?

4           A       Yeah.

5           Q       Then you credited your loan obligation for the  
6       purchase of his interest in Baruk Properties, the amount of  
7       that shopping?

8           Q       That's right.

9           Q       He must have some beautiful ties?

10          A       He does.

11          Q       Okay. If we go to Superpumper 2219.

12          A       Yes.

13          Q       You're writing a check to Brian Haley?

14          A       Yes.

15          Q       In Reno. How does that satisfy your obligation to  
16       Paul Morabito?

17          A       Brian was the one that would check on the Panorama  
18       house monthly or every day. He's the son of Sheriff Haley so  
19       he actually did it for years, even when we owned the house, so  
20       he had keys to the house and everything.

21          Q       So you paid a caretaker of the Panorama house?

22          A       Yeah. I was still helping Paul because it was for  
23       sale.

24          Q       All right. If we go to -- Now we are paying the

1       lease for the L.A. property?

2           A       No.

3           Q       If you go to --

4           A       I don't think.

5           Q       -- Exhibit 2222?

6           THE COURT: We're talking about Bate stamp?

7           MS. TURNER: Yes, I am sorry. Bate 2222.

8           THE COURT: I just want to make sure the record is

9       clear.

10          THE WITNESS: 2222.

11       BY MS. TURNER:

12          Q       Yeah. Do you see there is a lease payment

13       referenced. Do you know what that is?

14          A       I am on a platinum circle checking.

15          Q       Yes. Bate number 2222, it references a lease

16       payment?

17          A       I can see it.

18          Q       It is small, what is the lease payment that you

19       paid?

20          A       It is kind of weird, yeah. That was Phillip's car

21       payment. So he's working for Paul and I paid for Phillip's

22       car.

23          Q       Okay. If we go to Superpumper 2229, you paid Moana

24       Nursery?

1           A     Yes.  Yes.  For Panorama.

2           Q     It says September 2010.  You were still an owner

3     September 2010?

4           A     This is 2011.

5           Q     Do you see the memo?

6           A     At the bottom?

7           Q     Yes.

8           A     The stamp cashing the check.

9           Q     No, your memo September 2010?

10          A     Right.

11          Q     In September 2010 you owned the Panorama property,

12     correct?

13          A     I was selling it to Paul, so that was the month I

14     sold it to Paul.  October 1st.  I am sorry.

15          Q     All right, if we could go Superpumper 2247, the Bate

16     number?

17          A     2247?

18          Q     Yes.  I promise we are not going to spend all day

19     going through these.  I am trying to group them together but

20     there are some outliers.  You paid for travel to New York?

21          A     Yes.

22          Q     And this travel was for the benefit of

23     Paul Morabito?

24          A     Yes.

1 Q What was the purpose of going to New York?

2 A I think he had a business meeting.

3 Q Do you recall a business meeting?

4 A No.

5 Q All right. Now if I understand your testimony  
6 earlier, you paid Paul what you believed to be full  
7 satisfaction of that \$1,617,000 note, right?

8 A Right.

9 Q Inclusive in that note you credited \$50,000 which  
10 was splitting the \$100,000 value in the Clayton property,  
11 right?

12 A Yes.

13 Q And you testified that the properties were a burden  
14 financially, that you had carrying costs that were not being  
15 met by revenue. Do you recall that?

16 A Yes.

17 Q Why not pass that burden on to the Herbsts instead  
18 of taking the burden from Paul?

19 A It had to do with, I knew there was an opportunity  
20 at 570 Glenneyre to get a tenant, and that is why. I was  
21 working on trying to get a tenant for that building, and I  
22 landed a tenant in August 2011.

23 Q Is that your only reason?

24 A I mean I was moving back to California and one

1 building is a block from my house. The other building is four  
2 blocks from my house or six blocks.

3 Q You weren't motivated by the finances in the  
4 company. You were motivated by the convenience?

5 A Well, it made sense. I was moving back to Laguna. I  
6 could spend time working on the buildings and repairing the  
7 buildings and look for tenants.

8 Q And your tenants in the Glenneyre property, the  
9 1461, that included your affiliated companies you have?

10 A One suite, yes.

11 Q Which company was that?

12 A Snowshoe Properties. And after 2010 or before?

13 Q After 2010.

14 A So after 2010 I had Snowshoe Properties and in 2012  
15 or '13 I was doing work for USHFCC that is where I was doing  
16 work.

17 Q USHFCC was a new company created after September  
18 2010?

19 A It was created in 2012, I believe.

20 Q And Paul Morabito had involvement?

21 A Yes.

22 Q Now you testified about Watch my Block?

23 A Yes.

24 Q Watch my Block, you bought Paul's ninety percent



1 interest in that property?

2 A Yes.

3 Q And then you changed the entity from a Nevada LLC,  
4 to a New York LLC.?

5 A Right.

6 Q So that we understand this September-October 2012  
7 time period, you were asked to guarantee Paul's settlement  
8 obligation to Bank of America?

9 A Yes. Well, I never did.

10 Q Yesterday you testified that you executed the  
11 documents that had been provided to you?

12 A Yeah. And I forgot I didn't, because they gave a  
13 grace period to Mr. Morabito.

14 Q So it was, instead of putting Bank of America on  
15 title and guaranteeing that, that you went to the Bachmans?

16 A Yes.

17 Q Please tell me Mr. Bachman's first name is Peter so  
18 we can say Peter, you loaned from Peter to pay Paul?

19 A No. It is Bernie.

20 Q All right. Then that was the five million dollar  
21 loan?

22 A Correct.

23 Q That you obtained in December of 2012?

24 A Correct.

1           Q     That resulted in the first Deed of Trust on 1461?

2           A     No. Stop. The first Deed of Trust is held by Bank  
3 of America for \$1,383,000.00

4           Q     I have them swapped.

5           A     So Paul has a line of credit, a personal line of  
6 credit of two million dollars. Bank of America's lawsuit  
7 against Paul is concerning the two million dollar line of  
8 credit, not the \$1,383,000.00 first mortgage on 570. You're  
9 getting confused.

10          Q     Okay. But Mr. Bachman --

11          A     Right.

12          Q     -- secured his loan with a Deed of Trust?

13          A     Correct.

14          Q     And that Deed of Trust, you have one for Mr. Bachman  
15 on 570?

16          A     Right.

17          Q     And one on 1461 at the time?

18          A     Yes.

19          Q     And they were not placed, that five million security  
20 instrument, the Deeds of Trust were not there in September of  
21 2010?

22          A     That's correct.

23          Q     You only added that debt in December of 2012 and  
24 related collateral, right?

1           A     Correct.

2           Q     So now Mr. Bachman, if he is not paid his five  
3 million dollars, can foreclose on 1461?

4           A     Correct.

5           Q     And 570?

6           A     Potentially, yes.

7           Q     Did Mr. Bachman get any additional collateral?

8           A     He had an option for 10 percent in the company we  
9 are not supposed to mention.

10          Q     So an option for ten percent in Versanet, correct?

11          A     Yeah. It was not written correctly, so it was not a  
12 valid option contract. His lawyer wrote the contract.

13          Q     Now that debt, you said you used it to fund some  
14 TIs?

15          A     Correct.

16          Q     Less than \$400,000?

17          Q     Yes, after that time period?

18          Q     That was to 571?

19          A     I paid myself back the \$400,000 I spent on 570.

20          Q     And then you had a significant payment to satisfy  
21 Paul's obligation to Bank of America?

22          A     Yeah. I had to pay the \$735,000 estimated to settle  
23 his lawsuit.

24          Q     So the Bachmans --

1           A     Because the loans were collateralized by Bank of  
2     America. So I didn't know that.

3           Q     You are saying Paul Morabito's two million dollar --

4           A     Personal line of credit, they are cross  
5     collateralization for any B of A loan.

6           Q     Okay. The Bachman loan of five million dollars to  
7     Snowshoe --

8           A     Properties.

9           Q     -- Properties, that was secured by the 571 and 1461  
10    properties, and the ten percent interest in Versanet, when you  
11    received those funds you paid some back to yourself?

12          A     Right.

13          Q     And then you funded over \$700,000 to satisfy Paul's  
14    obligation to Bank of America?

15          A     Or else I would have lost the building.

16          Q     And I am sure your counsel will show the Court those  
17    cross collateralization documents. You have seen them?

18          A     No. My lawyer, Dennis, told me what was going on.

19          Q     You have never seen any document that contained a  
20    cross collateralization?

21          A     Probably in this litigation I have. Prior to that I  
22    was taking direction from attorney, Dennis Vacco. He told me  
23    there was a problem.

24          Q     The proceeds from Mr. Bachman were used to pay the

1       \$700,000 to Bank of America?

2           A       Correct.

3           Q       That is contained in your ledger?

4           A       Correct.

5           Q       The payment you made for the benefit of Paul set  
6       forth in Exhibit 73, right?

7           A       Correct.

8           Q       That was separate and apart from the payment that  
9       you made in September of 2012, the \$350,000?

10          A       Right.

11          Q       That you paid for the benefit of Bank of America  
12       routed through Dennis Vacco's law firm?

13          A       That was legal. A lot of it was legal fees for the  
14       lawsuit, Bank of America lawsuit.

15          Q       Remember we saw the e-mail yesterday where Dennis  
16       Vacco, you were directed to send the payment for Bank of  
17       America through the Dennis Vacco law firm?

18          A       Because he was handling the litigation with Bank of  
19       America.

20          Q       That is your testimony, that it was because he was  
21       handling the litigation? It wasn't for the purpose of hiding  
22       it from the Herbsts?

23          A       No, no. He was the lawyer interacting with Bank of  
24       America, and I was seeking -- He's the one that was telling me

1 of the problem and all after Dave Morello called me and all.  
2 So it all started, you know, he was giving me legal advice how  
3 I should handle it, you know. Because I didn't want to lose  
4 the building to Bank of America.

5 Q That is not what the e-mail said yesterday was it?  
6 A Well it is probably -- I think at the bottom of the  
7 page it lists out all the expenditures, correct?

8 Q When you were talking about the e-mail yesterday--  
9 A What is the exhibit. You can refresh my memory.

10 MS. TURNER: I will. We don't have time to go the  
11 gym but we can get some workout here. It is 147, sir, and  
12 Your Honor.

13 THE WITNESS: 147?  
14 BY MS. TURNER:

15 Q 147, sir.?  
16 A I see it, I see it.

17 Q At the bottom of the page you have the e-mail from  
18 David Morello outlining--

19 A Right.

20 Q -- the sub parts to the total wire for closing of  
21 \$351,626.82. See that?

22 A Yeah.

23 Q The legal fees are those of Bank of America's,  
24 right?

1           A     Yes.

2           Q     And then Dennis Vacco says Edward, then in the  
3           second paragraph that is the September 4th, 2012 e-mail from  
4           Dennis Vacco to you, second paragraph it says: "I recommend  
5           that in order to not make your involvement in this settlement,  
6           that you first send the proceeds to LMWF. We will then  
7           initiate the payment wire from here."

8           A     I wasn't named in the lawsuit, only Paul was, with  
9           Bank of America.

10          Q     I understand that.

11          A     Oh, okay.

12          Q     But you testified that you wired the funds through  
13          the law firm of Dennis Vacco to pay fees a few moments ago  
14          because he was handling it?

15          A     Right. Sorry.

16          Q     But you wired the funds to not make your involvement  
17          in this settlement?

18          A     With Bank of America.

19          Q     With Bank of America?

20          A     Right. I didn't want to be involved. It was Paul's  
21          lawsuit.

22          Q     So you were avoiding disclosure from Bank of America  
23          to the Herbsts?

24          A     No. Bank of America knew I owned fifty percent of

1 the building, but it wasn't my line of credit. It was Paul's  
2 line of credit.

3 Q Sir, I am going to make sure your testimony is clear  
4 here today because I know you get confused?

5 A Yeah.

6 Q I will try to make sure that you understand my  
7 question. But you testified in response to your counsel and  
8 to me, it is your sworn testimony here today you never signed  
9 the documents with Bank of America for the guarantee of Paul  
10 Morabito's settlement and for those Deeds of Trust to be  
11 placed on the Snowshoe Properties, LLC.

12 A I believe -- I don't think I signed those documents.  
13 I believe that Dennis was able to get a grace period from Bank  
14 of America so that payment could be paid to Bank of America.  
15 So I think those documents were drawn up, but they were never  
16 used, because it continued, the First Trust Deed from Bank of  
17 America for the million three eighty-three, the first mortgage  
18 stayed in place so Bank of America would have put a Second,  
19 you're correct. So I think they drew up the documents and  
20 might have sent them to me in an e-mail, but I don't believe I  
21 ever signed them.

22 MS. TURNER: Your Honor, I will pass the witness,  
23 but I will proffer we are going to have rebuttal exhibits that  
24 we will propose and reserve the right to call him back to



1 discuss that.

2 THE COURT: Okay. I am not sure how much more you  
3 have.

4 MR. GILMORE: Less than five minutes.

5 THE COURT: Why don't you go ahead and do it, but we  
6 have to stop. We have just a few minutes before to take a  
7 break.

8 MR. GILMORE: I recognize that, Your Honor. I have  
9 to flip to two exhibits.

10

11 RECROSS-EXAMINATION

12 BY MR. GILMORE:

13 Q First question I have for you, Mr. Bayuk, you said  
14 just a few minutes ago in that questioning you were an idiot  
15 to move Baruk from Nevada to California. What did you mean by  
16 that?

17 A Well, I realized there were certain protections  
18 under Nevada state law that if you are in litigation, you  
19 couldn't take the asset from the individuals. You could get  
20 charging orders against the company.

21 Q How did you learn that?

22 A From one of the lawyers.

23 MR. GILMORE: Did you take Volume VII?

24 MS TURNER: That is very possible. Sorry. Hopefully

1 I didn't write in it.

2 BY MR. GILMORE:

3 Q That is why you say you were an idiot for doing  
4 that?

5 A Yes.

6 Q It is a stipulated fact that the term loan from  
7 Compass Bank to Superpumper in the original amount of three  
8 million dollars was funded on or after the date of the oral  
9 Judgment, okay?

10 A Okay.

11 Q It a stipulated fact we all agreed to. So the  
12 testimony was that you received \$939,000 right?

13 A Yes.

14 Q Sometime after the oral Judgment. That is the  
15 stipulated fact?

16 A Right.

17 Q Okay. Now please turn to Exhibit 271. We just looked  
18 at it, you and I a few minutes ago. Specifically page 1883  
19 about it is the fifth or sixth page of this exhibit. You  
20 already testified on September 20th you sent \$659,000 to  
21 Compass Bank?

22 A Right.

23 Q Where did this \$659,000 come from?

24 A Well, it came from my Bank of America account.

1           Q     Sure. What I mean is the stipulated evidence is that  
2     you received \$939,000 roughly two weeks before this date?

3           A     Right.

4           Q     From Compass Bank?

5           A     Right.

6           Q     And then you sent \$659,000 back to Compass Bank  
7     September 30th?

8           A     Correct.

9           Q     So you didn't keep all of the \$939,000 for yourself,  
10    did you?

11          A     Well, the balance I think was -- Yes, I must have.

12          Q     Last one. 256. I might be under the five minutes,  
13    Your Honor, for the first time ever. Do you recognize this  
14    document, 256?

15          A     Yes.

16          Q     You testified yesterday that you relied on the June  
17    statement to value Raffles, right?

18          A     I looked -- My memory, I looked at the last five  
19    years because the statement would come out in September. They  
20    would be prepared in June and you can call and talk to them.  
21    I looked at the last five years. The values fluctuate from  
22    year to year dramatically.

23          Q     Did you have this statement in your hand when you  
24    called Kensington to discuss the value of Raffles?

1           A     No.

2           Q     Now this number comes in at 2.2 million dollars?

3           A     Right.

4           Q     Your testimony yesterday, you valued it around 1.8.

5     Can you explain that?

6           A     It is just because they didn't know the set value

7     yet because they were still finishing out claims and all.

8           Q     Any other offsets you can testify to today?

9           A     No.

10           MR. GILMORE: All right. Thank you. No further

11     questions.

12           THE COURT: Anything further, counsel?

13           MS. TURNER: No.

14           THE COURT: Okay. Sir, you may step down. You will

15     be subject to being called again.

16           THE WITNESS: Okay.

17           THE COURT: Okay. You can just leave it. We will

18     take a little break.

19                     (Witness excused.)

20           THE COURT: Counsel, we are going to take a recess

21     now. The courtroom I know is really cold, but there is really

22     not anything we can do about that. So if you would like

23     coffee, there is coffee in my office. You can get a cup of

24     coffee during our break.

1 MR. GILMORE: Thank you.

2 MS. TURNER: That would be great.

3 THE COURT: We'll take a short recess. We'll be  
4 back on the record in a little while. Court's in recess.

5 (Short recess taken.)

6 THE COURT: Thank you. Please be seated. Okay.  
7 Call your next witness.

8 MS. TURNER: Sam Morabito.

9

10 SALVATORE MORABITO

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

13

14 DIRECT EXAMINATION

15 BY MS. TURNER:

16 Q Good morning.

17 A I will get some water. It is awfully dry here.

18 THE COURT: Okay. Counsel, you may proceed.

19 BY MS. TURNER:

20 Q Now, Mr. Morabito, you go by Sam, correct?

21 A I do go by Sam, yes.

22 Q But your full name is Salvatore Morabito?

23 A That's correct.

24 Q You are the brother of Paul Morabito?

1           A     That's correct.

2           Q     And you have shared business interests or have had  
3 shared business interests with Paul Morabito over the years?

4           A     Yes.

5           Q     Not Baruk Properties. You had no ownership interest  
6 in Baruk Properties, right?

7           A     That's correct.

8           Q     We can remove that from our examination this  
9 morning. You had no interest in the Laguna homes?

10          A     No.

11          Q     Or the Reno house that has been at issue in this  
12 case?

13          A     No interest in those homes, no.

14          Q     Your testimony is shortening with every question?

15          A     Good.

16          Q     Now since September of 2010, have you had any  
17 business interests where you had co-ownership of a business  
18 with Paul Morabito?

19          A     No.

20          Q     Have you been an employee, officer or director in  
21 any company in conjunction with Paul Morabito since September  
22 2010?

23          A     No.

24          Q     So your business interests with Paul Morabito

1       stopped in September of 2010?

2           A       That's correct.

3           Q       September 30th?

4           A       That's correct.

5           Q       Okay. Now you had an ownership interest in

6       Berry-Hinckley?

7           A       Correct.

8           Q       And when Berry-Hinkley sold to the Herbsts, you

9       received money for that?

10          A       Correct.

11          Q       And what was your percentage ownership in

12       Berry-Hinckley?

13          A       Twenty percent.

14          Q       What was your payday from that purchase?

15          A       Honestly, I can't remember. It wasn't -- You know,

16       it was less than a million dollars, I believe, but I can't say

17       for sure.

18          Q       Now you were named as a counter defendant in the

19       underlying case with the Herbsts. Do you recall that?

20          A       I believe that's true.

21          Q       And you were in the courtroom, Judge Adams'

22       courtroom in Department 6 of this courthouse when he made the

23       oral ruling on September 13, 2010, correct?

24          A       Yes. Yes.

1           Q     And you heard when Judge Adams dismissed you from  
2     the case?

3           A     He used the word exonerated.

4           Q     He exonerated you from any liability in that  
5     underlying case?

6           A     That's right.

7           Q     Now subsequent to that oral ruling, there was a  
8     decision made to acquire Paul Morabito's interest in  
9     Superpumber, correct?

10          A     Correct.

11          Q     That was an indirect interest. Paul Morabito owned  
12     80 percent of Superpumber through the holding company  
13     Consolidated Western Corporation, a Nevada corporation.  
14     Correct?

15          A     That's correct.

16          Q     Consolidated Western Corporation as of September 13,  
17     2010 was the one hundred percent owner in Superpumber?

18          A     That's correct.

19          Q     By September 20, 2010, Consolidated Western  
20     Corporation, a Nevada corporation, had been merged into  
21     Superpumber, Inc., correct?

22          A     Correct.

23          Q     And that -- And then a new entity was formed,  
24     Snowshoe Petroleum, Inc., a New York corporation?



1           A     That's correct.

2           Q     That was all by September 30th?

3           A     Yes.

4           Q     And on September 30th, Snowshoe Petroleum, Inc.,  
5 fifty percent owned by you and fifty percent owned by  
6 Mr. Bayuk?

7           A     That's correct.

8           Q     And Snowshoe Petroleum, Inc., as soon as it was  
9 formed, then acquired Paul Morabito's interest in Consolidated  
10 Western Corporation, correct?

11          A     Yes, that's true, yes. The two companies merged,  
12 CoWes Co., merged. Snowshoe bought that entity.

13          Q     As a result of that series of transactions on  
14 September 30th, instead of Consolidated Western Corporation, a  
15 Nevada corporation having a 100 percent ownership interest in  
16 Superpumber, Inc., you had, with Paul Morabito having 80  
17 Percent ownership, you had Snowshoe Petroleum, Inc., a New  
18 York corporation with you and Ed Bayuk having 100 percent  
19 ownership?

20          A     That's correct.

21          Q     Now if we take the time, sir, from September 13th to  
22 September 30th, that is where we are going to go here --

23          A     Okay.

24          Q     -- during this examination. Now prior to the

1 Consolidated Western Corporation consolidation with  
2 Superpumper, Paul was the 80 percent owner. You had ten  
3 percent?  
4 A That's correct.  
5 Q And Ed Bayuk had the last ten percent?  
6 A Uh-huh.  
7 Q Is that a yes?  
8 A Yes.  
9 Q You are a a Director of Consolidated Western  
10 Corporation?  
11 A No. I was the President. I was strictly a  
12 shareholder.  
13 Q You were a Director of Superpumper, Inc.?  
14 A No, I was not.  
15 Q If we could go to Exhibit 86 in the books. Do you  
16 see the numbers.  
17 A Uh-huh.  
18 THE COURT: So what was the exhibit number you  
19 wanted?  
20 MS. TURNER: Actually he -- Let's go back further so  
21 we understand. If we go to Exhibit 81.  
22 THE COURT: Okay. Okay. Do you have Exhibit 81, sir?  
23 THE WITNESS: Yup.  
24 ///

1 BY Y MS. TURNER:

2 Q Exhibit 81 is a Plan of Merger of Consolidated  
3 Western Corporation within and into Superpumper, Inc. This is  
4 in evidence. You executed this Plan of Merger on behalf of  
5 Consolidated Western Corporation as well as Superpumper. It  
6 says below you are named Vice-President, right?

7 A It does say that, yes.

8 Q So you are an officer of Consolidated Western  
9 Corporation and Superpumper as of September 2010, yes?

10 A No, I don't think I was. I think the other documents  
11 show I was not. I was only a shareholder. I think, if you  
12 look at the corporate tax return, it shows I am not an  
13 officer, or director. When the company was initiated, I don't  
14 remember signing any document becoming an officer or director.  
15 I am not sure what this document is showing, who it was  
16 prepared by. I can almost one hundred percent say I was not  
17 an officer of CoWes Co., or Superpumper. That is my  
18 understanding.

19 Q Exhibit 81, that is your signature on the last page?

20 A Yes, it is.

21 Q And it is your testimony that you executed the Plan  
22 of Merger of Consolidated Western Corporation with and into as  
23 your capacity as a ten percent shareholder?

24 A I guess that would be true. I am signing -- I don't

1 know if I was the Vice-President to be honest. I am signing  
2 the document for the merger. I believe I was a shareholder  
3 only, not an officer or director. That is what I know.

4 Q All right. If you go to page 132, Section 4.01. Do  
5 you see that?

6 A Yes.

7 Q It says: Directors and officers of surviving  
8 corporation. It says persons who are directors and officers  
9 of SPI -- I will represent to you that was defined earlier as  
10 Superpumper, Inc. -- at the effective time, shall, immediately  
11 after the effective time, be the officers and directors of the  
12 surviving corporation?

13 A Yeah. So I definitely became an officer, director  
14 of Superpumper after the merger, definitely. Absolutely. At  
15 the time of signing this document, I was not a director. I  
16 will agree with that. I was never an officer or director of  
17 CoWes Co. I certainly became an officer and director of  
18 Superpumper. Thank you for pointing that out. That looks  
19 like a pretty good explanation to me. So immediately after  
20 the effective time, yes, I became an officer and director.

21 Q If we go to Exhibit 83, we have the unanimous  
22 written consent of the Board of Directors and sole shareholder  
23 of Superpumper, Inc. Do you see that?

24 A Yes.

1           Q     Now these forms that we are looking at, they are  
2 prepared by Dennis Vacco, correct?

3           A     I believe so, yes.

4           Q     They we are prepared by Dennis Vacco at your  
5 direction?

6           A     Yes.

7           Q     Now, this form at Exhibit 83, it is in evidence, is  
8 a consent of the Bord of directors and sole shareholder which  
9 would be Consolidated Western Corporation. If you look at the  
10 signature page, do you see the list of the Board of Directors?

11          A     I see the list. I see it listed as the Board of  
12 Directors, yes.

13          Q     You see where your name is listed with Mr. Bayuk and  
14 Paul Morabito?

15          A     I see my name listed without a signature. I see  
16 Paul's name listed without a signature, and Edward's name with  
17 a signature, so that is what I can tell you.

18          Q     You didn't direct Dennis Vacco to prepare a  
19 different form without your name indicated?

20          A     I don't recall doing that, no.

21          Q     Now you heard Mr. Bayuk testify in this courtroom  
22 that you were a director?

23          A     He's incorrect.

24          Q     And you are saying that Vice-President, when that is

1 indicated next to your name, that you weren't aware you were  
2 an officer of Consolidated Western Corporation or Superpumper?

3 A I don't believe I was an officer or director of CWC  
4 or Superpumper prior to the merger. After the merger, I  
5 definitely became a director and officer of Superpumper, Inc.  
6 As far as CoWes Co., is concerned, I believe I was not an  
7 officer or director. That is my understanding.

8 Q If we go to Exhibit 84 where we have the unanimous  
9 written consent of directors and shareholder of Consolidated  
10 Western Corporation, we again have the signature of Ed Beyuk,  
11 but you listed as a director of Consolidated Western  
12 Corporation. And you are saying Dennis Vacco erred when he  
13 prepared this form listing you as a director of Consolidated  
14 Western Corporation?

15 A I think that is possible, because I was not a  
16 director or officer of CoWes Co. I am not a lawyer. I can't  
17 comment on who made a mistake and who didn't make a mistake.  
18 I can tell you my belief.

19 Q You didn't direct Dennis Vacco to prepare a new form  
20 that did not include your name as a director of Consolidated  
21 Western Corporation?

22 A I don't recall doing that, but there is lots of  
23 documents flying around, but I don't recall doing that,  
24 specifically.

1           Q     And if Mr. Bayuk tell us you were a director of  
2 Consolidated Western Corporation in this courtroom he was --

3           A     Very incorrect.

4           Q     -- incorrect. Okay. The next Exhibit, 85, Articles  
5 Amendments and Merger of Consolidated Western Corporation, a  
6 Nevada corporation into Superpumper, Inc., an Arizona  
7 corporation. You see where it is filed September 29, 2010 in  
8 Arizona? It is the top of the first page of Exhibit 85?

9           A     I see it filed in October, October 12th.

10          Q     Do you see up at the top it says Arizona Corporation  
11 Commission filed September 29, 2010?

12          A     Yes, just above the October 12th date, yes I see  
13 that.

14          Q     If you go to the signature page, we have you once  
15 again acting on behalf of Consolidated Western Corporation as  
16 Vice-President as well as Superpumper, Inc., as  
17 Vice-President, correct?

18          A     I am signing on behalf of Superpumper, Inc., as  
19 Vice-President I believe on the 29th of September. I would  
20 hope I am signing as Vice-President of the Arizona entity  
21 which has been, you know, now merged.

22          Q     Sir?

23          A     Yeah.

24          Q     The Articles Amendments and Merger of Consolidated

1 Western Corporation that was filed with the Arizona  
2 Corporation Commission on September 29, 2010, you signed that  
3 document as Salvatore Morabito, Vice-President of Consolidated  
4 Western Corporation as well as Salvatore Morabito  
5 Vice-President of Superpumper, Inc., correct?

6 A My signature is there. It says that, yeah.

7 Q And no one else signed on behalf of either entity  
8 for these Articles Amendments and Merger?

9 A I don't know that for sure, but it would appear that  
10 way.

11 Q If you go to page 132 Exhibit 85, we have you solely  
12 acting on behalf of Superpumper as Vice-President dated the  
13 29th day of September 2010, correct?

14 A I am signing the document. I am not -- I can't tell  
15 you how I am Vice-President. As of the merger of Superpumper,  
16 yes, I will agree to that, yes. As of the merger, I am  
17 Vice-President of Superpumper, Inc., definitely.

18 Q Sir, September 29, 2010, this Articles Amendments  
19 and Merger was Superpumper's agreement to be merged with its  
20 parent corporation, correct?

21 A I believe so, yeah.

22 Q And you agreed on behalf of Superpumper as  
23 Vice-President to merge with the parent company?

24 A We did merge the company. I am not sure I agreed to



1       it. Yes, definitely.

2           Q       You executed as Vice-President. It says it right  
3 here. You are agreeing?

4           A       Okay.

5           Q       Right?

6           A       That's fine. As long as we make the distinction I  
7 was not an officer or director. Is a Vice-President the same  
8 as an officer or director? I don't know that. I am not smart  
9 enough to make that distinction. I just want to make it clear  
10 to you I am not an officer or director of CoWes Co., or  
11 Superpumper prior to the merger. That is what I wanted to  
12 make absolutely crystal clear. Again, I am not a lawyer.  
13 Maybe we can research it more, but that is my understanding.

14          Q       Did Mr. Vacco advise you who had to approve the  
15 merger of Superpumper with the parent company?

16               MR. GILMORE: I am going to object on the basis of  
17 attorney-client privilege.

18               THE WITNESS: I don't recall.

19               MR. GILMORE: Don't answer the question until you  
20 have a question.

21               THE COURT: Why is it not attorney-client privilege?

22               MS. TURNER: Because there has been a waiver of  
23 privilege held by Paul Morabito. I can lay the foundation.

24               THE COURT: It may be as to Paul. I am not sure it

1 is with regard to Sam.

2 MS. TURNER: That very well may be. I would have to  
3 lay some foundation, I will acknowledge that.

4 THE COURT: At this time, I will sustain the  
5 objection.

6 MR. GILMORE: For the record, so we don't have to  
7 have this conversation again, we acknowledge the waiver has  
8 been, what is the word, there has been a waiver as to Paul's  
9 privilege with the Dennis Vacco law firm as it relates to  
10 Paul, and, we acknowledge Judge Zive apparently also waived it  
11 with respect to any joint privilege. So there could be,  
12 obviously, some questions with respect to joint representation  
13 that won't be waived and I won't object to that. It seems to  
14 me this could have led to a question that was directly related  
15 to Dennis' representation of Sam. I am not going to jump up  
16 and object every time. That is why I give the explanation.

17 THE COURT: All right. Thank you.

18 BY MS. TURNER:

19 Q I think your counsel asked for some foundation. At  
20 the time you directed Dennis Vacco to prepare these documents  
21 that we have been going over this morning, Dennis Vacco  
22 represented you?

23 A Correct.

24 Q He represented your brother, Paul Morabito?

1           A     I believe so.

2           Q     And he represented Ed Bayuk?

3           A     Yes, he did.

4           Q     He represented Snowshoe Petroleum once it was  
5 created?

6           A     Uh-huh. Yes.

7           Q     And he represented Consolidated Western Corporation  
8 and Superpumper before the merger?

9           A     I'm not sure if that's true. I can't say that for  
10 sure.

11          Q     So when he was preparing these documents for merger,  
12 the plan, the articles, who do you believe the client to be?

13          A     In this case it is CoWes Co., Superpumper and  
14 Snowshoe.

15          Q     Consolidated Western Corporation, Snowshoe and  
16 Superpumper, right.

17          A     I believe so. He's acting on everyone. He's acting  
18 on everyone's behalf.

19          Q     With that, when you were having these discussions  
20 with Dennis Vacco about the preparation of this document, were  
21 you advised that an officer or a director had to execute the  
22 documents on behalf of Consolidated Western Corporation and  
23 Superpumper in order to effectuate the merger?

24          A     I don't recall that specific instruction. I left it

1 up to my lawyers to do the right thing and prepare the  
2 document in the correct fashion that I would sign to have the  
3 merger succeed. So I don't remember all the details. I know I  
4 am not a lawyer so you hire a lawyer. I trust he's going to  
5 do the right thing, and you go in his office, you sign the  
6 papers and you get on with your life.

7 Q No one advised you that a 10 percent shareholder  
8 interest was sufficient to bind Superpumper and Consolidated  
9 Western Corporation to merge?

10 A Say that again?

11 Q No one advised you that a mere ten percent  
12 shareholder had the authority to merge Superpumper, Inc., with  
13 Consolidated Western Corporation?

14 A I don't recall anything of that nature, so I can't  
15 answer that question. I don't recall that being an issue.

16 Q So it is your position here today that Ed Bayuk made  
17 misrepresentations to the Court that you were a director or  
18 officer of Consolidate Western Corporation?

19 A He was just incorrect.

20 Q It was a false statement?

21 A He made a mistake. He just -- He was incorrect. He  
22 made a mistake.

23 Q It was a false statement?

24 MR. GILMORE: Objection. Asked and answered.

1 Argumentative now. He answered the question.

2 THE COURT: Overruled. It is cross-examination.

3 THE WITNESS: He made a mistake. Was it  
4 intentional? I mean he made a mistake. He was wrong. I am  
5 just saying he was wrong in what he said.

6 BY MS. TURNER:

7 Q It was a false statement. That means not true.  
8 When Ed Bayuk testified that you were an officer and director  
9 of Consolidated Western Corporation --

10 A I call it a mistake. You can call it whatever it  
11 was. I am just saying he's incorrect.

12 Q Ed Bayuk made a false statement to this Court under  
13 oath you were a director and officer of Superpumper, director  
14 or officer of Superpumper before September 30, 2010?

15 A I prefer to call it an incorrect statement. I am not  
16 a lawyer, again. False statement to me invokes he's making  
17 some kind of, you know, doing it intentionally. He was just  
18 incorrect.

19 Q Let me define it was an incorrect statement. There  
20 were incorrect statements under oath?

21 A He made an incorrect statement under oath.

22 Q Dennis Vacco, who was working at your direction in  
23 September of 2010, made a separate mistake when he included  
24 you as an officer and a director in these papers that provide

1       for the plan and merger, the Articles of Merger of  
2       Superpumper, Inc., with Consolidated Western Corporation; is  
3       that right?

4           A       Again, I am not a lawyer. I don't know who was  
5       wrong, who was right. All I can tell you is I was not a  
6       director, not an officer of CoWes Co., or Superpumper before  
7       the merger. That's all I know. I had Dennis prepare the  
8       document. I trusted him. I signed what I had to sign. The  
9       merger obviously happened. Arizona stamped it and accepted  
10      it. Whatever was done was done. It seems to be done  
11      correctly. I am just telling you I am not an officer, not a  
12      director. That's all I know.

13          Q       And Ed Beyuk and Dennis Vacco were wrong when they  
14      indicated you were?

15          A       Did Dennis Vacco say that I was? I don't know.

16          Q       He put a signature line for you as director of both  
17      Superpumper and Consolidated?

18          A       He put a signature for Vice-President not director.  
19      I asked you before, does Vice-President make you a director?  
20      I don't know.

21                  THE COURT: Well, sir, you were a Vice-President?

22                  THE WITNESS: Of Superpumper. I don't think I was  
23      before the merger.

24                  THE COURT: Then it doesn't really matter if

1 Vice-President means you were an officer or director. The  
2 question was was Vacco wrong when he put your name down there  
3 with that title. If that wasn't your title, then he must have  
4 been wrong.

5 THE WITNESS: As long as, before the merger, if it  
6 relates to before the merger, then he's wrong. If it relates  
7 to after the merger, then he's right. That's my point. I don't  
8 know how to make that distinction.

9 THE COURT: Thank you.

10 BY MS. TURNER:

11 Q Sir, we just looked at the signature line for  
12 Superpumper and Consolidated. You were listed as a member of  
13 the Board of Directors. Do you recall that?

14 A I was listed, yeah. I was listed there, yes I was.

15 MR. GILMORE: I don't want to object. This is all  
16 asked and answered.

17 THE COURT: It is.

18 MR. GILMORE: We covered the ground.

19 THE COURT: If you need to argue, it has been put  
20 in.

21 BY MS. TURNER:

22 Q Now on the heels of the oral ruling on September 13,  
23 2010, in fact the very next day you received \$933,000 from  
24 Consolidated Western Corporation, correct?

1           A     Yes.

2           Q     As did Paul Morabito?

3           A     Yes.

4           Q     And Ed Bayuk?

5           A     Yes.

6           Q     And then September 21st there was a payment to you

7     from Paul Morabito for \$355,000?

8           A     Yes.

9           Q     Correct? That was the same day that Ed Bayuk

10   received the \$420,000?

11          A     Yes.

12          Q     And that was, you and Ed Bayuk had taken a position

13   in this litigation that \$355,000 paid to you, the \$420,000

14   went to Mr. Bayuk, that was in exchange for your interest in

15   the Raffles asset; is that accurate?

16          A     Yes, that's true.

17          Q     Now there is not a piece of paper that has been

18   produced indicating that there was a sale of your interest or

19   Mr. Bayuk's interest to Paul Morabito to that asset, correct?

20          A     I don't think I have seen a piece of paper to that

21   effect.

22          Q     And subsequent to September 21st, 2010, the

23   certificate that associates with the Raffles asset, that was

24   in the name of Consolidated Western Corporation.



1           A     It was held within CoWes Co., yes.

2           Q     And you heard some testimony that the Raffles asset  
3 was originally purchased in the name of Consolidated Nevada  
4 Corporation the holding company for Berry-Hinckley; is that  
5 accurate?

6           A     Yes.

7           Q     Then when Berry-Hinckley was sold to the Herbsts,  
8 the asset was transferred to Consolidated Western Corporation?

9           A     It was held within Consolidated Western, yes,  
10 because as we said before, it has to be, because of the  
11 insurance, it has to be held in a like entity.

12          Q     And Berry-Hinckley sold in 2007, correct?

13          A     Yes.

14          Q     At that point, the asset was re-certificated, that's  
15 quite a word, re-certificated in the name of California  
16 Western Corporation?

17          A     Consolidated.

18          Q     Or Consolidated Western Corporation?

19          A     I believe it was re-certificated in that name, yeah.

20          Q     Because Consolidated Nevada Corporation ceased doing  
21 business?

22          A     Correct.

23          Q     In 2007. And from 2007 until 2016, at least the  
24 Raffles asset remained certificated in the name of

1 Consolidated Western Corporation, correct?

2 A I'm not sure about that. I know, you know, there are  
3 some documents I have seen just recently, actually in your  
4 production, that show it is bouncing around, because  
5 Consolidated doesn't exit in 2010. It needs to find another  
6 home and be placed somewhere. But I know at the end of the  
7 day, it still -- it is what it is. It's an insurance captive  
8 and it is an asset,

9 Q Was it ever re-certificated in the name Snowshoe  
10 Petroleum?

11 A I don't believe it was in Snowshoe's name.

12 Q It remained in the name of Consolidated Western  
13 Corporation even after the merger of September 29, 2010?

14 A I believe that would be true, yeah.

15 Q And from 2007 until at least 2016 when Superpumper  
16 was transferred to Jan Friederich, at least that time period,  
17 Consolidated Western Corporation paid the premiums that were  
18 required to maintain the Raffles asset?

19 A I don't believe that's true. I'm not sure how that  
20 worked. But, no, I think the premiums were paid prior. I  
21 think what happens is, you know, you have captive so much  
22 money paid into it, then there is, it gets drawn on over time.  
23 So, you know, the valuation fluctuates. I'm not sure how the  
24 premiums work on that. Because premium suggests that you're

1 getting insurance benefits from it, and I think it is  
2 something that sort of sticks out there so to speak and goes  
3 up and down with value over time depending on the claims that  
4 are drawn on that.

5 Q Is it your testimony Consolidated Western  
6 Corporation did not have the right to make a claim on the  
7 Raffles self-insurance plan?

8 A I don't know. That is a good question. I don't  
9 know.

10 Q And you don't know whether or not Consolidated  
11 Western Corporation paid annual premiums for the Raffles  
12 asset?

13 A Under what time frame are we talking?

14 Q From 2007 to at least 2010 when you sold your  
15 interest to Paul?

16 A I'm not sure if premiums were required. I mean  
17 there is -- I am not sure how that works. Raffles is a very  
18 complicated thing. Edward explained it better than I did. He  
19 knows insurance better than I do. I don't understand that  
20 asset 100 percent.

21 Q There was no decision to transfer your interest in  
22 the Raffles asset to Paul Morabito prior to September 13,  
23 2010?

24 A I never discussed it, no.

1           Q     Now, as a result of --

2           A     Actually, I should say I don't remember discussing  
3     it. I mean it is something that is an excluded asset of  
4     Berry-Hinckley. I mean it is one of those things I knew was  
5     out there, but I never, you know, considered it to be anything  
6     that was of importance to me.

7           Q     By virtue of the asset?

8           A     Uh-huh.

9           Q     Being transferred from your standpoint to Paul  
10    Morabito and the certifications remaining in the name of  
11    Consolidated Western Corporation, CWC, a Nevada corporation,  
12    the Herbsts had no right to attach or garnish that asset did  
13    they?

14          A     I'm not sure how that works. I don't know.

15          Q     Isn't that precisely why it was set up in that  
16    fashion, that Paul Morabito would receive the benefit of the  
17    asset without the asset being held in his name?

18          A     No. That asset always had to be held -- That asset  
19    cannot be held in a personal name. It has to be held in a  
20    company such as BHI. They don't allow to you keep it in a  
21    personal name. It has to be a company name that has a like  
22    business as the one that preceded it. Berry-Hinckley was a  
23    petroleum company. CoWes Co., was a petroleum company. It  
24    could hold the asset. Snowshoe could actually hold the asset,

1 too, because it is a petroleum company. A person cannot hold  
2 that asset.

3 Q Did you advise the Herbsts that Paul Morabito was  
4 entitled to the value of the Raffles asset after September  
5 21st, 2010?

6 A No.

7 Q Did you tell Paul Morabito to advise the Herbsts  
8 that distributions from the Raffles asset were going to Paul  
9 Morabito as opposed to CWC?

10 A No.

11 Q You did nothing to value the Raffles asset as of  
12 September 21st, 2010?

13 A Well, I relied on Edward's documentation that he  
14 had, because Edward is a very good insurance person. He  
15 actually ran all the insurance in our company, so I relied on  
16 what he had to say.

17 Q If you would go to Exhibit 45. Wrong one. I  
18 apologize. Wrong exhibit. Exhibit 80. Now this Shareholder  
19 and this Purchase Agreement dated September 30, 2010, the next  
20 day after the merger of Consolidated Western with Superpumper,  
21 this was executed on behalf of -- no it wasn't. It was Ed  
22 Bayuk. The value in this agreement was for \$1,035,094. Do  
23 you see that?

24 A That is the initial purchase price. That is the

1 initial actually down payment on the purchase.

2 Q What was your contribution of that purchase price?

3 A Exactly half of that, \$517,000 and whatever dollars.

4 Q Then if you go to Exhibit 103. We have the  
5 Promissory Note where there was a promise to pay Paul another  
6 \$1,462,213 dated November 1, 2010, right?

7 A That's correct.

8 Q That was additional and above and beyond the  
9 million?

10 A That's correct.

11 Q It was roughly two and a half million dollars to  
12 purchase 80 percent of Superpumper; is that right?

13 A That's correct.

14 Q What was your involvement in determining that  
15 purchase price?

16 A Nothing.

17 Q If we go to Exhibits 104 and 105, we had the  
18 Successor Promissory Notes that replaced the 1.4 million  
19 dollar note we just saw in Exhibit 103, correct?

20 A Yes.

21 Q And pursuant to the Successor Promissory Notes,  
22 there was an obligation for Snowshoe Petroleum to pay Paul for  
23 \$492,000 and then for Snowshoe Petroleum to pay Superpumper  
24 \$939,000, right?

1           A     That's correct.

2           Q     The \$939,000, that doesn't correlate directly with  
3     the \$933,000 you each received September 14th. But that was,  
4     that \$939,000 obligation of Snowshoe was actually to take over  
5     Paul's obligation to repay that \$933,000 back to Snowshoe,  
6     correct?

7           A     Right. So the 939 we'll call it 939, Paul took from  
8     the September draw on the term loan he initiated a note to  
9     Superpumper, then Snowshoe assumed that note and Paul kept the  
10    939 as part of the original 1.4 million dollars that was owed  
11    to him. That is what gives the Successor Note. You take the  
12    939 off the 1.4 and you come up with this.

13          Q     And we saw payments from Ed Bayuk back into  
14    Superpumper recapitalizing to a certain degree. And if there  
15    was a payment from Ed, there was an equal payment from you?

16          A     That's right.

17          Q     You did not execute any note in favor of Superpumper  
18    for repayment or in favor of Consolidated Western Corporation  
19    in favor for repayment of that \$933,000, right?

20          A     No, because it is now, it is assumed on the books of  
21    Snowshoe. Snowshoe assumed that debt.

22          Q     You never executed a note like Paul did for that  
23    \$933,000?

24          A     No, because I am not keeping the money.

1           Q     And it is your position Snowshoe Petroleum repaid  
2     Superpumper \$939,000 pursuant to Exhibit 5? 105, pardon me?

3           A     Well, did Snowshoe pay back Superpumper?

4           Q     Yes?

5           A     More than likely. I mean it is all one company  
6     anyway, so I mean, yeah, I would say yes. Yes.

7           Q     If you go to Exhibit 107.

8                   MS. TURNER: Your Honor, I will offer Exhibit 107,  
9     the Declaration to Paul Morabito to which I think the Court  
10    can take judicial notice of the certified copy of the  
11    Declaration filed in the Bankruptcy Court.

12                   THE COURT: Any objection?

13                   MR. GILMORE: It is a hearsay statement. It is an  
14    out of court statement. I assume it is being offered to prove  
15    the truth of the matter, although there hasn't been any  
16    foundation laid for that. So my objection right now is it is  
17    hearsay.

18                   MS. TURNER: There is also the inherent indicia of  
19    reliability, because the the Declaration was filed with the  
20    Bankruptcy Court under the penalty of perjury subject to  
21    bankruptcy penalties. Separate and apart from if it was a  
22    false statement, that would come in under the exception of  
23    hearsay as well.

24                   THE COURT: Has there been inquiry with regard to



1       this Declaration?

2               MS. TURNER: Not yet. We'll see. It is directly  
3 responsive to the last line of questioning.

4               THE COURT: I mean in Bankruptcy Court.

5               MS. TURNER: In Bankruptcy Court?

6               THE COURT: Had there been any further pleadings  
7 filed in relation to this Declaration?

8               MS. TURNER: Yes, Your Honor. It was in support of  
9 Paul Morabito's opposition to the order prohibiting him from  
10 transferring certain assets, and there was a a resolution of  
11 that motion practice with an order from Judge Zive, and I  
12 believe Judge Zive's Stipulation and Order.

13              MR. GILMORE: He denied the motion.

14              MS. PILATOWICZ: There was a subsequent adversary  
15 proceeding.

16              MS. TURNER: According to Mr. Gilmore, it was not in  
17 the bankruptcy proceeding. I am relying on these two.  
18 According to Mr. Gilmore, he prevailed as a result of this  
19 Declaration.

20              THE COURT: Paul did.

21              MS. TURNER: Paul did.

22              THE COURT: It was taken for the truth of the matter  
23 asserted in the litigation and Judge Zive ruled on it based on  
24 its truthfulness?

1 MS. TURNER: Yes.

2 THE COURT: It is a certified copy of the bankruptcy  
3 case?

4 MS. TURNER: Yes.

5 THE COURT: I will admit it as an exception to the  
6 hearsay rule.

7 (Exhibit 107 admitted in evidence.)

8 BY MS. TURNER:

9 Q If you could go to page 3?

10 A Yes.

11 Q Paragraph 10?

12 A Yes.

13 Q Mr. Paul Morabito says: "I sold my interest in a  
14 company, Consolidated Western Corporation, for a cash payment  
15 of approximately \$542,000 and a note of approximately \$933,694  
16 which I had received partial payments on, and the principal  
17 balance has been subsequently cancelled based on the post  
18 closing reevaluation of the significant decrease in fair  
19 market value of the business." Do you see that?

20 A Yes.

21 Q Does that refresh your recollection that Mr. Paul  
22 Morabito's note for \$933,000 was subsequently cancelled?

23 A I don't know what he's talking about here, because  
24 the note was never cancelled. I mean he got paid, you know. We

1        didn't cancel any note. We assumed the note from Superpumper.  
2        But I guess, well, Superpumper would have forgiven his note,  
3        right? He kept the money. Snowshoe assumed the Superpumper  
4        note for 939. That would cancel his note with Superpumper.

5                THE COURT: Sir, you kind of are ruminating in your  
6        own mind. You are doing it out loud. I am having a little  
7        trouble understanding exactly what your testimony is.

8                THE WITNESS: Okay. I will try to be --

9                THE COURT: You can ruminate.

10              THE WITNESS: Yeah. Yeah.

11              THE COURT: -- but I kind of would like to get the  
12        end what you really think.

13              THE WITNESS: Let's start over again. Ask me the  
14        question.

15        BY MS. TURNER:

16              Q        So you disagree with this statement that a note of  
17        approximately \$933,000 was cancelled based on a post closing  
18        reevaluation?

19              A        Yeah, I disagree. I don't know what he's talking  
20        about here.

21              Q        And your testimony is that Snowshoe Petroleum paid  
22        the \$933,000 obligation to Superpumper?

23              A        Yes.

24              Q        And if that occurred, there would be record of

1 payment from Snowshoe Petroleum to Superpumper, correct?

2 A Yes.

3 Q Have you seen any proof of that payment?

4 A I can't recall that payment, but I mean I know the  
5 books, Snowshoe and Superpumper are, you know, they file their  
6 taxes as one entity, so I am sure it has been accounted for  
7 somewhere.

8 Q That would be reflected in the documents you could  
9 bring forward?

10 A Tax records, yeah. Tax returns. Tax returns.

11 Q Have you seen any document indicating there was  
12 value conferred from the parent company back to Superpumper?

13 A I don't recall a particular document, but, again, I  
14 don't recall one.

15 Q So the \$933,000 that was paid, it was from  
16 Consolidated Western Corporation to the three owners, right?

17 A Yes.

18 Q And then it is only by virtue of the merger of  
19 Consolidated Western with Superpumper that there would be an  
20 obligation to Superpumper, right?

21 A Correct.

22 Q Post merger, if there was a distribution from  
23 Superpumper, Inc., to the equity company, to the parent  
24 company Snowshoe Petroleum?

1           A     Yes.

2           Q     Then that would go, it would go from Superpumper to  
3     Snowshoe. Snowshoe has no operations, right?

4           A     No.

5           Q     Snowshoe is just a holding company?

6           A     Correct.

7           Q     So if I understand your testimony, post merger it  
8     really didn't matter if Snowshoe has a papered obligation to  
9     Superpumper because it had no funds other than those generated  
10    from Superpumper; is that accurate?

11          A     The funds from Snowshoe come from Superpumper, yes.

12          Q     Right. Now if you go to Paragraph 12 of Paul  
13     Morabito's Declaration, he says: "My sole remaining assets  
14     consist of the following," and this is July of 2013, "cash of  
15     less than \$10,000. Approximately \$10,000 in two bank accunts.  
16     Ownership of Consolidated Nevada Corporation " --

17               MR. GILMORE: I am going to object on the basis of  
18     relevance. I know this document has been admitted, but what is  
19     the relevance of this particular portion of the Affidavit?

20               THE COURT: Counsel?

21               MS. TURNER: I was going to ask him, it says  
22     ownership of Consolidated Nevada Corporation valued less than  
23     zero dollars. Does he know what that is referring to, because  
24     this is July of 2013.

1 THE COURT: Based on his earlier testimony with  
2 regard to Consolidate Nevada Corporation.

3 MR. GILMORE: I will withdraw the objection. If  
4 that is the basis where we are going, I have no problem.

5 BY MS. TURNER:

6 Q Do you know what Paul Morabito is referring to when  
7 he says he has ownership of Consolidated Nevada Corporation in  
8 July of 2013?

9 A No. I don't know what he was talking about.

10 Q Now one thing that is not listed in this paragraph  
11 12 is the interest in the Raffles asset. Do you agree with  
12 that?

13 A Excuse me. He's talking about Consolidated Nevada  
14 Corporation. I always get these confused. 2013, yeah, he  
15 probably did own CNC, Consolidate Nevada Corporation in 2013.

16 Q So this is very confusing. Mr. Bayuk testified and  
17 you testified Consolidated Nevada Corporation had no further  
18 business after it was sold to -- after Berry-Hinckley was sold  
19 to the Herbsts, correct?

20 A I don't think it did, no.

21 Q Now subsequent to September 2010, did you pay the  
22 bills of Paul Morabito?

23 A No.

24 Q You never paid any --

1           A     No.

2           Q     -- bills at the direction of Paul Morabito?

3           A     No.

4           Q     If you go to Exhibit 138. Let me ask you: In  
5 November of 2011, was Dennis Vacco still your attorney?

6           A     Lippes was. Lippes Mathias was.

7           Q     Dennis Vacco was an attorney with the Lippes firm?

8           A     Yes.

9           Q     In November 2011, do you recall a direction from  
10 your counsel to wire you one million dollars or to wire Lippes  
11 one million dollars?

12          A     I would certainly remember if he was wiring me one  
13 million dollars. That would be a major benefit if Lippes was  
14 going to wire me one million like you just suggested. I  
15 certainly would remember that.

16               THE COURT: She did correct it. You didn't hear the  
17 correction?

18               THE WITNESS: I am sorry. Say it again, please.

19 BY MS. TURNER:

20          Q     Do you recall November 2011 being directed by your  
21 counsel to wire one million dollars to the Lippes law firm?

22          A     No. That never happened.

23               THE COURT: I'm sorry I am going to ask you did you  
24 mean you never wired a million dollars, that didn't happen or

1 the request never happened?

2 THE WITNESS: Both the request never happened and I  
3 never wired a million dollars.

4 THE COURT: Thank you.

5 BY MS. TURNER:

6 Q In November 2011 did you wire \$560,000 to the Lippes  
7 law firm at Paul's direction?

8 A Not at Paul's direction. I wired it to the Lippes  
9 law firm at Dennis' direction.

10 Q If you could go to Exhibit 140, page 132. Do you  
11 see the e-mail from Paul Morabito to Sam Morabito: "Sam,  
12 please wire \$560,000 to Lippes Mathias today?"

13 A Yes.

14 MS. TURNER: Your Honor, I move to admit Exhibit 140.

15 MR. GILMORE: No objection.

16 THE COURT: Exhibit 140 is admitted.

17 (Exhibit 140 admitted in evidence.)

18 BY MS. TURNER:

19 Q And you sent the \$560,000 to the Lippes firm at  
20 Paul's request on November 28, 2011, correct?

21 A I sent it at Dennis' request. I remember Dennis  
22 calling me to say I needed to send \$560,000 to fulfill the  
23 note obligation on behalf of Snowshoe, that Successor Note we  
24 signed in February of 2011 for \$492,000 or something. That



1 was the final payoff of that note including interest and  
2 whatever else fees. So that was what that was all about.

3 Q Sir?

4 A Yes.

5 Q If you go to this Exhibit 140, the same exhibit  
6 where Paul Morabito said: "Sam please wire \$560,000 to Lippes  
7 Mathias today?"

8 A Uh-huh.

9 Q You have a follow up from Dennis Vacco: "Can you  
10 confirm that the wire transfer has been initiated?" And  
11 November 28, 2011, it says: "Yes, I sent it out today,"  
12 correct?

13 A Yes.

14 Q Paul Morabito has no interest in whether Snowshoe  
15 Petroleum gets paid. And you are saying that the \$560,000 was  
16 to satisfy the four hundred some odd thousand dollar note?

17 A Due to Paul, yes.

18 Q That the \$560,000, that that correlated with a note  
19 due from Snowshoe Petroleum to Paul?

20 A Yes.

21 Q The \$560,000 wasn't sent from Snowshoe Petroleum,  
22 was it?

23 A No. It was sent from my personal bank account.

24 Q It wasn't for the specific amount due under the

1 note?

2 A Well, there was back interest due and, you know, I'm  
3 not sure what the exact fees were, but Dennis called me that  
4 morning and said, you know, we have satisfied our obligation  
5 with Compass Bank. And I think that, you know, you're happy  
6 with the way things are going with Compass Bank, we should  
7 probably just pay Paul off at this point. I said okay, that's  
8 fine. I said how much do I owe him? And Dennis gave me the  
9 amount.

10 Q Well Paul e-mailed you the number \$560,000. You saw  
11 that e-mail, correct?

12 A Yes, I see that e-mail.

13 Q And it is your sworn testimony today, if we go to  
14 the Promissory Note and we had the calculation of interest on  
15 the Promissory Note due from Snowshoe Petroleum to Paul  
16 Morabito, that it would indicate \$560,000?

17 A That is what Dennis told me to wire to satisfy that  
18 obligation.

19 Q That is not my question. Did you do a calculation of  
20 what amount was due from Snowshoe Petroleum as of the date of  
21 this wire, November 2011 and then wire that amount from your  
22 bank account?

23 A I didn't do the calculation. Lippes did the  
24 calculation and said that this is what you will pay us and

1 we'll take care of the note interest to Paul, and I forget,  
2 there might have been some other disbursements. I can't say  
3 for sure. But I acted on Dennis' -- Dennis and I had a phone  
4 call that day, a very lengthy phone call. That is what he  
5 advised me to do.

6 Q Now there was no satisfaction of the Promissory Note  
7 that was provided in return to Snowshoe Petroleum?

8 A What do you mean by satisfaction?

9 Q Any piece of paper, note, e-mail, texts, wire?

10 A There was a wire.

11 Q Anything that indicated what the use of the funds  
12 was, and that is to satisfy the Snowshoe Petroleum note?

13 A It shows up on the tax return for Snowshoe.

14 Q Snowshoe Petroleum paid you back for you personal  
15 payment to Dennis Vacco's law firm?

16 A I don't believe it did, no.

17 Q So it is your testimony that you paid the Lippes  
18 firm \$560,000, and that Snowshoe Petroleum then treated that  
19 as satisfaction of its loan obligation?

20 A That's correct.

21 Q Now, you valued your fifty percent interest in  
22 Snowshoe Petroleum at \$4,513,899 on February 1, 2011, correct?

23 A Show me where I did that.

24 Q You don't have any recollection?

1           A     Not off the top of my head.

2           Q     Go to Exhibit 126. Exhibit 126 is already in  
3 evidence. The very first page, do you see Salvadore Morabito's  
4 statement of assets and liabilities as of February 1, 2011?

5           A     Yes.

6           Q     You executed that document attesting or certifying  
7 that it was true to the best of your direct knowledge?

8           A     I did sign that, yes.

9           Q     And if you look, I know it is small, but you have  
10 readers?

11          A     I have two readers.

12          Q     It indicates--

13                THE COURT: Does it help if you wear them both at  
14 the same time?

15                THE WITNESS: I have to get glasses. My eyes are  
16 all red. The reason they are all red and scratchy, it is so  
17 dry around here. I have been scratching my eyes like mad.

18                THE COURT: You have one for distance?

19                THE WITNESS: No, I can see distance. I can't see in  
20 front of me. But I am getting old. I am going to be 28 this  
21 year.

22                THE COURT: Okay. Whatever you say.

23                THE WITNESS: That is not -- That is not a true  
24 statement.

1 THE COURT: I understood that.

2 BY MS. TURNER:

3 Q You see where it indicates fifty percent Snowshoe  
4 Petroleum, Inc., \$4,513,869?

5 A Yes.

6 Q Snowshoe Petroleum, Inc., had no active business in  
7 February of 2011 other than just holding equity in  
8 Superpumper?

9 A That's right.

10 Q And this statement of assets and liabilities was  
11 provided to Gursey Schneider, the auditors, so they could use  
12 the information in the preparation of financials for  
13 Superpumper and Snowshoe?

14 A That's correct.

15 Q And that statement was without offset or reference  
16 to a note payable from you to Superpumper for \$2,563,542?

17 A Yeah. I didn't put that on the liability side, yes.

18 Q If you go to Exhibit 122. We have a term note for  
19 \$2,563,542 as of December 31, 2010 that you owed Superpumper  
20 correct?

21 A That is a term note, yes.

22 Q And you never paid it?

23 A Well, I never received anything for it, either. It  
24 is not -- There was no cash consideration for this note. What

1       this note is is a journal entry created by the accountant to  
2       create equity on the books of Snowshoe/Superpumper to satisfy  
3       our landlord that requires us to carry at least six million  
4       dollars of equity in the company at all times. So there is a  
5       provision in there for it actually to be forgiven in the event  
6       of a sale of Superpumper. But this is what is called a book  
7       entry note. But there is no consideration for this note. I  
8       did not receive 2.5 million dollars in cash for this note.

9           Q       Sir, as of December 31, 2010 you and Ed Bayuk had  
10       both signed the term note set forth in Exhibit 122?

11          A       Yes, we did.

12          Q       And the term note as of December 31, 2010 indicated  
13       your promise to pay \$2,563,542?

14          A       Yeah. That is what a term note is. It is a promise  
15       to pay.

16          Q       Despite that promise to pay, you did not pay  
17       anything towards that loan or that note obligation?

18          A       Well, I paid interest, the interest that was due  
19       yearly. Edward and I both paid.

20          Q       You never paid the \$2,563,542 principal amount?

21          A       Back to Superpumper?

22          Q       Right?

23          A       No, because I never received \$2,563,500 whatever. I  
24       never receive any money for this. This is what is called a

1 book note.

2 Q I know you keep going and saying that. My question  
3 to you --

4 A Okay. I never received -- I never paid it, never  
5 received it.

6 Q And if you go to Exhibit 123, we have a similar note  
7 with respect to Ed Bayuk executed by you and Mr. Bayuk on that  
8 same date, correct?

9 A Yes.

10 Q As far as you know sitting here today, Ed Bayuk  
11 never paid Superpumper \$2,580,500 that is outlined in this  
12 term note dated December 31, 2010?

13 A That is my understanding, yes.

14 Q And it is your position that when Superpumper was  
15 transferred to Jan Friederich --

16 A No, it was never transferred to Jan Friederich.  
17 When the company was sold, we can say that.

18 Q When you sold the company to Jan Friederich, you  
19 transferred everything to him, correct?

20 A No, we never sold the company to Jan Friederich. We  
21 sole the company to Super Mesa. That was a company called  
22 Super Mesa.

23 Q That is affiliated with Jan Friederich?

24 A I am not sure of the ownership, the affiliate.

1           Q     Is it your position, as a result of that sale, that  
2     this note then became cancelled?

3           A     Yes.

4           Q     Without payment?

5           A     Yes.

6           Q     Did you obtain a legal opinion from any attorney  
7     that you could rely on for this position that you have just  
8     expressed, that this was a loan obligation that you did not  
9     have?

10          A     Yes. I actually had an opinion from Lippes, and I  
11     had an opinion from my accountant as well.

12          Q     And your attorney can bring those forward if they  
13     exist?

14          A     Yes.

15          Q     Now Mr. Bayuk testified this morning that he put  
16     \$652,000 towards the Compass loan on September 30, 2010. Do  
17     you recall that?

18          A     It is actually \$659,000.

19          Q     \$659,000. You provided an equal amount?

20          A     That's correct.

21          Q     On that day to pay down the Compass loan?

22          A     That's correct.

23          Q     And you had assurance that the change of control  
24     would not be an issue with Superpumper's landlord and



1 creditor, correct?

2 A Oh God no. No, that's not true at all. They were  
3 very concerned about the change of control. They, you know,  
4 wanted Edward and I to show net worth and all kinds of things.  
5 No, they were not -- Are you talking about Spirit? Which one  
6 are you talking about?

7 Q Well, with respect to Spirit --

8 A Correct.

9 Q -- there was actually a restatement of the lease  
10 with Paul Morabito continuing on as a guarantor?

11 A That's correct.

12 Q And Spirit was reassured that Paul Morabito would  
13 not pull his support and would remain involved at least as a  
14 guarantor for the business.

15 A They would not let him off the hook. They wanted  
16 Edward and I personally to guarantee the lease, but they  
17 weren't going to let Paul off the hook.

18 Q So the lease continued?

19 A No -- Yeah, we continued the lease, yeah.

20 Q If we go to Exhibit 33. We have Compass assuring  
21 that it was therefore its intention to put the loans back in  
22 compliance as September 24, 2010, correct?

23 MR. GILMORE: I am sorry, say that again.

24 THE COURT: Exhibit 33 has not been admitted.

1 BY MS. TURNER:

2 Q Pardon me. Exhibit 33. Let me lay some foundation  
3 before I reference it. Please strike my last question. I  
4 apologize. That was unintentional.

5 MR. GILMORE: I heard you say 133. I was in the  
6 wrong place anyway.

7 BY MS. TURNER:

8 Q Who is Stan Bernstein?

9 A He's Vice-President of Compass Bank. Apparently by  
10 this e-mail I refer to him as a bank manager. He's our bank  
11 manager at Compass Bank.

12 Q As a result of the change of control and other  
13 issues, there was a concern about Compass defaulting  
14 Superpumper, correct?

15 A Yes.

16 Q And in fact, Compass, ultimately the reactions that  
17 we're done and Compass was satisfied. That included the  
18 repayment of the \$659,000 and \$659,000 from you and Ed Bayuk?

19 A Well, eventually Compass was satisfied, but they  
20 weren't satisfied until well into 2011. November of 2011 is  
21 when they were satisfied. As a matter of fact, on the day of  
22 closing, Compass put us into default.

23 Q By virtue of you taking the actions that you did in  
24 September of 2013 or September 30th, the actions you took, it

1       resulted in a default. It triggered a covenant?

2           A     No. The actions of Paul, after Judgment, Paul  
3       notified Compass Bank that he had a ridiculously huge judgment  
4       against him, and they basically -- He put them on notice he  
5       was in default of his covenant from day one. So September  
6       14th, Compass knows Superpumper is in default.

7           Q     Despite Paul Morabito communicating with Compass  
8       that he had a huge Judgment against him and there was going to  
9       be a change of control, right?

10          A     Yes.

11          Q     There were issue with Compass Bank. Those issues  
12       were resolved?

13          A     Over a very long time they were, yes.

14          Q     They were resolved?

15          A     Eventually.

16                THE COURT: I am going to stop you there. You said  
17       Paul told Compass that he had been in default for a very long  
18       time. Do you mean that he had --

19                THE WITNESS: I didn't say for a long time. Right  
20       after.

21                THE COURT: What you said was he told them on the  
22       14th that he was in default. He had been.

23                THE WITNESS: No. He told them on the 14th about  
24       the Judgment, and he wanted the bank to know he's going to be

1 in default of his covenant because of his Judgment.

2 THE COURT: So you are not saying he had ever  
3 previously been in default?

4 THE WITNESS: No, no, no. Oh, no.

5 BY MS. TURNER:

6 Q Do you recall there was a liquidity issue by virtue  
7 of the payments of \$933,000 to you, Ed and Paul on September  
8 14th.

9 A What do you mean by that?

10 Q Do you know what liquidity is?

11 A Yes.

12 Q There was a liquidity issue with Compass when there  
13 was the disbursement of \$939,000 each to you and Ed and Paul  
14 on September 14th. That was why you and Ed put an additional  
15 \$652,000 each against the Compass loan to fix the liquidity  
16 issue, correct?

17 A Well, the original draw of that money was initiated  
18 before the Judgment. We decided to take the draw and money on  
19 September 8th or 9th. It was for a different reason. So after  
20 the Judgment, you know, our world changed dramatically. And  
21 as soon as we realized that the bank is going to start really  
22 scrutinizing Superpumper, and we got notice around the 29th or  
23 30th from Sean that the line of credit is immediately going to  
24 be reduced from three million to 2.5 million, Edward and I

1       probably draw on the line at that point 2.4 million dollars.  
2       Edward and I decided to put back \$659,000 times two,  
3       \$1,318,000 back to the bank to basically shore up the line of  
4       credit. So I forgot the question already. I am sorry.

5               THE COURT: Did you offer it?

6               MS. TURNER: That is what I am going to do right  
7       now. I am going to offer Exhibit 33. I was intending to wait  
8       until Mr. Leonard, but we have a date of September 24, 2010.

9               MR. GILMORE: I am not going to object.

10              MS. TURNER: Okay. There is no objection.

11              THE COURT: Okay. 33 is admitted.

12                       (Exhibit 33 admitted in evidence.)

13       BY MS. TURNER:

14              Q       Now if you go to this Exhibit 33, the e-mail from  
15       Paul Morabito to Sean Hollenbach at September 24, 2010 at  
16       4:30, bottom of the first page, do you see that this is  
17       Exhibit 33?

18              A       Exhibit 33?

19              Q       Uh-huh. It says: "This is to confirm our  
20       conversation wherein I advised you that we are in default of  
21       several of our loan covenants including but not limited to  
22       those on liquidity." Do you see that?

23              A       Yes.

24              Q       So that we -- And there are other reasons,

1 judgments, collateral impairment and lawsuits. Do you see  
2 that?

3 A Yes.

4 Q Now was it a result of this communication from Paul  
5 Morabito do Shawn that was the impetus for your purchase of  
6 Paul's interest in Superpumper?

7 A This particular e-mail you mean?

8 Q Yeah? Or the matters that are communicated in the  
9 e-mail?

10 A I think the matters that surround this whole issue  
11 of Compass basically, you know, from day one Paul being in  
12 default of his covenants with Compass. Compass let us know  
13 right away they are not happy and they acted very quickly.  
14 Like I said, on our closing, they gave us a letter saying they  
15 are going to close or shut the line down from three to 2.5. I  
16 two weeks later got a demand for the three million term note  
17 and demand to pay the line of credit, so, yeah it is a fire  
18 storm going on right now. I am not going to say this  
19 particular e-mail is the start of it all, but certainly there  
20 is, you know, an indication of the problems that are at hand  
21 at this time.

22 Q Paul did not contribute any portion of his \$933,000  
23 received on September 14th to resolve the liquidity, the  
24 concern that he outlines in this e-mail?

1           A     No. He didn't put any money back into Superpumper.  
2     He got the \$933,00 or \$939,000 whatever it was.

3           Q     And certainly we have Paul contacting Compass and  
4     communicating the oral ruling, not a Judgment, oral ruling.  
5     That was an issue that you took, you and Ed took to assign a  
6     risk factor or a discount to the value of Superpumper?

7           A     No. We didn't get involved in the valuation at all.  
8     The risk discount that you refer to was assigned by someone  
9     else.

10          Q     You had nothing to do with that?

11          A     The risk discount?

12          Q     Yup.

13          A     No.

14          Q     And it is your testimony that the pricing that was  
15     set forth in the November 2010 Promissory Note from 1.4  
16     million plus the million in the original is a total of two and  
17     a half million, that you had nothing whatsoever to do with  
18     that value, it was a third party?

19          A     Correct.

20          Q     And you provided no input to that third party so  
21     that they could get to their determination?

22          A     None whatsoever.

23                 MS. PILATOWICZ: Actually, let me, if I could have  
24     the Court's indulgence?

1 THE COURT: Okay.

2 MS. TURNER: I will pass the witness.

3 THE WITNESS: That was quick.

4 THE COURT: Yes.

5

6 CROSS-EXAMINATION

7 BY MR. GILMORE:

8 Q Counsel just showed you a Declaration from Paul  
9 Morabito from the bankruptcy case.

10 MR. GILMORE: What exhibit is that? I am sorry.

11 MS. PILATOWICZ: 107, I believe.

12 MS. TURNER: Yes, that's right?

13 MR. GILMORE: Thanks. Yes. Okay.

14 MR. GILMORE: Which was admitted, right?

15 MS. TURNER: Yes.

16 BY MR. GILMORE:

17 Q Mr. Morabito, sorry, Sam, do you know who the  
18 debtors are in the Chapter 7 that was initiated by the  
19 Herbsts?

20 A No. I mean the debtors in the Chapter 7, I would  
21 imagine Paul, but I'm not a bankruptcy expert.

22 Q Do you know if Consolidated Nevada is a co-debtor?

23 A I have no idea.

24 Q Do you know if Consolidated Nevada was a judgment



1 debtor in Judge Adams' original ruling?

2 A I can't say that for sure.

3 Q We could look at the caption and see that for  
4 ourselves, right?

5 A Yes.

6 Q No need to do that. I am just asking if you know.  
7 The date of the oral ruling?

8 A Yes.

9 Q Do you know the name of the operation or set of  
10 operations that went by the name of Big Wheel?

11 A Yes.

12 Q Do you know what that consisted of?

13 A It is a truck stop in Fernley, Nevada. There is a  
14 couple different Big Wheel entities, so you have to separate  
15 them by what they are. But it is basically a truck stop in  
16 Fernley, Nevada.

17 Q I didn't mean to knock you off stride?

18 A No, no. I have no stride.

19 Q Okay. So there were a number of consolidated  
20 entities of the Big Wheel entity, right?

21 A That's correct.

22 Q Do you know who owned the Big Wheel entity?

23 A Paul for sure. I know I was a 10 percent holder of  
24 the Big Wheel lodging entity. I don't even -- I know Paul was

1 involved. I don't know much about Big Wheel to be honest with  
2 you.

3 Q What happened to Big Wheel after the oral Judgment?  
4 Let's just say Judge Adams' Judgment, do you know?

5 A It went defunct.

6 Q How do you know that?

7 A I just know that from Paul telling me that,  
8 basically.

9 Q Do you know if -- Do you have any personal knowledge  
10 of the Big Wheel entities, how they were funded?

11 A No.

12 Q Do you know anything about -- Do you know if there  
13 was a lawsuit between any entity affiliated with Big Wheel  
14 against Paul Morabito that occurred after the Judge Adams  
15 Judgment?

16 A I'm not aware of that.

17 Q Okay. And we'll talk about this at greater depth  
18 later, but the \$560,000 that you wired to Lippes Mathias in  
19 November 2011, do you remember that line of questioning?

20 A Yes.

21 Q Your testimony was it was intended to satisfy the  
22 note obligation owed to Paul Morabito for the purchase price  
23 of his interest in Superpumper, true?

24 A Yes.

1           Q     You also testified that money came directly from  
2 your own bank account?

3           A     That's correct.

4           Q     Not from a bank account held by Snowshoe or  
5 Superpumper, true?

6           A     That's correct.

7           Q     Do you know how that \$560,000 was treated with  
8 respect to the Superpumper or Snowshoe books?

9           A     Eventually it was treated as capital contributed by  
10 myself.

11          Q     You understand there is two ways a shareholder,  
12 traditionally in which a shareholder might contribute to a  
13 company he or she owns?

14          A     Yes.

15          Q     What are they?

16          A     Loans and capital infusions as I call them, capital  
17 contributions.

18          Q     The original questioning was did you ever execute a  
19 note in favor of Snowshoe or Superpumper for the \$560,000, you  
20 said no?

21          A     No.

22          Q     Why didn't you execute a note?

23          A     From Snowshoe to Superpumper?

24          Q     Yeah?

1           A     It is one company. It is one pocket or the other.  
2     It's all the same.

3           Q     Well was the \$560,000 that you paid to Paul, was  
4     that treated as a note in the books -- sorry -- was that  
5     treated as a note or a contribution in the Snowshoe Petroleum  
6     books?

7           A     A contribution.

8           THE COURT: I am going to ask a question. You own  
9     fifty percent; is that correct?

10          THE WITNESS: Yes.

11          THE COURT: Was there a like contribution made by the  
12     other fifty percent owner?

13          THE WITNESS: No, not at that time because we were  
14     both --

15          THE COURT: It doesn't matter why.

16          THE WITNESS: No.

17          THE COURT: Was additional stock issued based on  
18     that contribution?

19          THE WITNESS: No. It was still fifty/fifty.

20          THE COURT: Okay. Thank you. Go ahead, counsel.

21     BY MR. GILMORE:

22           Q     What is your understanding of the effect on the  
23     company's balance sheet when you pay in capital? Let me use  
24     these terms: If you own a company and you have to contribute

1       \$10,000 to shore up the financial condition of the company?

2           A     Right.

3           Q     Do you know what the effect of that is to the  
4       company's balance sheet?

5           A     Well, you're paid-in capital account or equity  
6       account would go up.

7           Q     You don't get any certificate of shares issued to  
8       you, do you?

9           A     No.

10          Q     We may use this word capital account or capital  
11       balance in the questioning that will come perhaps shortly.

12          A     Okay.

13          Q     What do you understand that term to be?

14          A     The equity that you have in a business.

15          Q     So what is your understanding as to -- strike that.  
16       When you pay in capital, do you have, I am asking for your  
17       understanding, do you have an expectation you are going --  
18       that is going to be repaid to you at some point?

19          A     Yes. I mean I have an expectation for that, yes.

20          Q     How would it be repaid? Would it be repaid in  
21       installment payments like a note or some other fashion?

22          A     It would be paid in installments or just a payback  
23       if you sold the company. You have distributions.

24          Q     Do you know if-- What is your understanding if you

1 make a contribution to Snowshoe, but Paul, I am sorry, Edward  
2 Bayuk does not, what happens to Mr. Bayuk's capital balance  
3 with respect to yours?

4 A If I make a payment and he doesn't?

5 Q Yes?

6 A So it is unequal. They are unequal.

7 Q What is your testimony as to how the books are  
8 treated with respect to your unequal contribution? He  
9 testified he didn't contribute with respect to the \$560,000.  
10 What would happen?

11 A It would adjust accordingly.

12 Q You get credit on the capital balance he doesn't get  
13 credit for?

14 A That's right.

15 Q And what happens if there is ever a profit  
16 distribution and the capital balance is unequal?

17 A Nothing. I mean you distribute profit and the  
18 capital balance stays the same.

19 Q Let's talk about, there was a lot of talk about you  
20 being an officer or director of Superpumper or Snowshoe before  
21 the merger?

22 A Correct.

23 Q You were pretty adamant that you were not?

24 A Correct.

1 Q Is it fair to characterize your testimony that way?

2 A Yes.

3 Q Is there a document that you have seen in this case

4 so far prior to the event of the merger that identifies you as

5 an officer or director?

6 A No.

7 Q So all the documents that were shown to you by

8 counsel here were all prepared in anticipation of the merger?

9 A Yes.

10 Q You heard testimony for the last three days that

11 Mr. Leonard owns all of Lippes' files, right?

12 A I heard that, yeah.

13 Q Had access to hundreds of thousands of pages of

14 Lippes' files, right?

15 A Yes.

16 Q There is no document that you have been shown in

17 this trial that identifies you as an officer or director of

18 this company that predates the merger, true?

19 A That's correct.

20 Q Now you said something in response to the question

21 that, something with respect to a tax return is what I heard

22 you say?

23 A Yes.

24 Q Tell me what you were talking about.

1           A     I forget. You tell me.

2           Q     I am just asking?

3           THE COURT: Why don't we stop there for lunch?

4           MR. GILMORE: Okay.

5           THE COURT: So I think we'll be in recess until

6     1:15. We'll come back after lunch. Thank you. Court is in

7     recess.

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

9           THE COURT: Please be seated. Turn off your

10    cellphone. Go ahead.

11   BY MR. GILMORE:

12           Q     Thank you. Mr. Morabito, will you please turn to

13   Exhibit 117 which I believe has been stipulated into evidence.

14           MS. TURNER: 117?

15           MR. GILMORE: 117, one of your exhibits.

16           MS. TURNER: Thank you. Okay.

17   BY MR. GILMORE:

18           Q     Okay. Do you recognize this document?

19           A     It looks like an income statement from Superpumper.

20           Q     It says Superpumper Bate stamp. Do you agree with

21   me?

22           A     Yes.

23           Q     Does that suggest it came from your production?

24           A     Yes.



1           Q     Do you know who compiled these documents to have  
2     them produced for this case?

3           A     Well, I would, I would have done that.

4           Q     And this is actually a compilation of income  
5     statements through the year 2010; is that true?

6           MS. TURNER: Counsel is leading.

7           MR. GILMORE: It has already been admitted in  
8     evidence. I don't have to lay any foundation.

9           THE COURT: You do if you're going to ask some  
10    questions.

11          MR. GILMORE: Fair enough.

12    BY MR. GILMORE:

13          Q     The first page is a March 2010 income statement?

14          A     Yes.

15          Q     Now there were some questions in your direct  
16     examination related to Raffles and insurance premiums. Do you  
17     remember that?

18          A     Yes.

19          Q     Your testimony, as I recall, was that you weren't  
20     sure whether or not CWC was paying insurance premiums to Ralph  
21     in 2010. Do you remember that testimony?

22          A     Yes.

23          Q     Let's first look at the income statement for  
24     Superpumper of March 2010?

1           A     Okay.

2           Q     Do you recall when the merger of Superpumper was?

3           A     September of 2010.

4           Q     Do you agree this is pre merger?

5           A     Yes.

6           Q     Even before you bought Paul's interest in

7     Superpumper, this was the 2010 income statement do you agree?

8           A     Yes.

9           Q     March?

10          A     Year and a day.

11          Q     At the bottom of the page it lists the expenses

12     associated with the Superpumper operations; is that true?

13          A     Yes.

14          Q     Can you review those expenses and identify for me if

15     there is an expense to Superpumper that accounts for the

16     Raffles insurance premiums?

17          A     I don't see anything.

18          Q     When Raffles-- When CWC was making insurance premium

19     payments to Raffles, do you know what the annual or monthly

20     premiums were?

21          A     No.

22          Q     Did you hear Mr. Bayuk's testimony a couple days ago

23     when he testified to what it was?

24          A     I don't recall what he said to be honest with you.

1           Q     His testimony was it was 100, or more than \$100,000  
2     a year?

3           A     Okay.

4           Q     So do you see any premiums being paid to Raffles  
5     insurance on the March 2010 income statement?

6           A     No.

7           Q     Now let's go to September. Forgive the highlighting  
8     for a second. This is my binder I am only looking at. That  
9     is a balance sheet. There is an income statement here, too.  
10    Please go to page 1272 which is the December 2010 income  
11    statement?

12          A     Okay.

13          Q     There is the expenses right?

14          A     Yes.

15          Q     Do you see anything in here reflecting that  
16    Superpumper was paying insurance premiums to Raffles in  
17    December of 2010?

18          A     I don't see Raffles' named, specifically. I see  
19    health insurance, but I don't see Raffles.

20          Q     Right. When you took over Superpumper in 2010 after  
21    the merger, what were your responsibilities?

22          A     Of course I was looking after the operations,  
23    looking after banking. And I was on all the leases. I was  
24    President of the company. I was in charge of everything.

1           Q     Were you aware whether or not Snowshoe Petroloelum  
2     was paying insurance premiums to Raffles after you took over?  
3           A     No.  
4           Q     You were not aware?  
5           A     I was not aware.  
6           Q     Sam, where did you grow up?  
7           A     Canada.  
8           Q     Where were you educated?  
9           A     I went to high school at St. Catherine's Ontario. I  
10    went to post secondary school at the University of Western  
11    Ontario in London, Ontario.  
12          Q     Slow down just a bit. You are a fast talker?  
13          A     Okay.  
14          Q     Did you attend college?  
15          A     Yes.  
16          Q     After college, what did you do?  
17          A     Took a year off like most young people, traveled the  
18    world. I started a company in 1986. That is a company I  
19    still have today which is called Classic Car Collection. It  
20    buys and sells old classic cars and restores cars.  
21          Q     Today, do you have a profession or occupation?  
22          A     I am a business owner. I love automotive. Anything  
23    automotive I would call my profession and occupation.  
24          Q     So this company you identified, Classic Cars--

1           A     Collection.

2           Q     -- Collection is still in existence today?

3           A     Yes.

4           Q     After you started it, what did you do after that?

5           A     Well, I worked from '86 or so until 19, well right  
6 through till today, but in 1996 I was visiting with Paul in  
7 California. He was telling me that he wanted to buy these  
8 Quick Lube operations in Colorado Springs, but he couldn't  
9 find a franchisor that would franchise him, because Jiffy Lube  
10 already existed there. And he spoke with Grease Monkey and a  
11 couple other companies. I said why don't you make it a Quaker  
12 State Q Lube. I said it is the Quaker State version of Jiffy  
13 Lube. I got in the shower at 9:00 o'clock in the morning, got  
14 out at 9:07. Hair was totally dry. And Paul had the President  
15 of Quaker State on the phone. The next day we went to Salt  
16 Lake City and talked to them about getting a franchise  
17 agreement on these stores in Colorado Springs. Before I knew  
18 it, we needed six million dollars to buy these stores. And  
19 they had their own in-house finance program, and we were able  
20 to borrow \$900,000 and buy the stores.

21          Q     How long did that entire process take from the  
22 genesis of the idea to owning the stores?

23          A     Not long. Maybe three or four months.

24          Q     So what was your involvement, if at all, in the

1 acquisition of these Q Lubes, Quaker State franchise?

2 A Well, I traveled to Colorado Springs with Paul. I  
3 helped him set up the company, the office there. Met existing  
4 staff. As I was on my way back to Canada, he said where are  
5 you going? I said I am going to back to Canada. He said no  
6 you're not. I said why? He said because I need someone to  
7 run the stores. I said if I am going to stay and run the  
8 stores, I want an equity portion in it. He agreed and gave me  
9 ten percent of company. I started going back and forth  
10 between Colorado and Canada running the stores.

11 Q Prior to that, had you and Paul engaged in business  
12 together?

13 A We always worked on deals and things together. I  
14 don't think we have owned a company together at all.

15 Q Did you accept his offer to work in exchange for  
16 equity?

17 A Yes.

18 Q What did you do from that point on with respect to  
19 that enterprise?

20 A I was visiting Colorado Springs once every six weeks  
21 or so for a week or two at a time getting involved in  
22 operations and learning the Quick Lube business.

23 Q At the time, who were the principals?

24 A Just myself and Paul.

1           Q     At sometime -- By that time had you met Edward  
2 Bayuk?

3           A     Not by 1996.

4           Q     When did you meet him?

5           A     1997.

6           Q     What were the circumstances?

7           A     Actually, Paul and I actually bought a company in  
8 Florida and basically doing the same things in Florida.  
9 Edward Bayuk was introduced to me by Paul. He said I want you  
10 to meet this fellow who is my new boy friend. And we just all  
11 got together and hit it off as basically family. Edward is  
12 like a brother to me. And we just started working together.

13          Q     At that point in time, sometime subsequent to that,  
14 did Mr. Bayuk get an equity stake in this --

15          A     Yes.

16          Q     -- Q Lube Enterprise?

17          A     Yes, he did.

18          Q     After that, was it just the three of you that owned  
19 equity in this enterprise?

20          A     Yes. Yes.

21          Q     Explain the growth of the Q Lube enterprises?

22          A     Well, so we ran Colorado Springs for a few years.  
23 We had a business in Florida which we eventually sold. And in  
24 1999, we were -- the market in Austin, Texas became available

1 to develop Q Lube in Austin, Texas almost to the day -- too  
2 loud?

3 Q Too fast?

4 A Too fast. Okay. Almost to the day that we signed  
5 the Q Lube Franchise Agreement in Austin, Texas was the day  
6 that Q Lube and, sorry, Quaker State and Penzoil merged. Now Q  
7 Lube was going to become Jiffy Lube. The two companies were  
8 going to merge. All Q Lubes became Jiffy Lubes. So subsequent  
9 to that, Jiffy Lube said, okay, you are in Colorado Springs.  
10 There is already a Jiffy Lube franchisee. One of you has to  
11 buy the other one out. Same thing in Austin, Texas. Even  
12 though we just signed an agreement, they said you have to. We  
13 ended up selling both those markets. Paul being the, you  
14 know, 20,000 foot visionary he is -- Q Lube was more of a  
15 company, the operations had a lot of company stores. Jiffy  
16 Lube is more of a franchise operation, a much bigger  
17 operation. Q Lube has a problem. You have all these company  
18 owned stores, they need to divest. Paul being, you know, the  
19 business person that he is, he gets involved at a higher level  
20 of management. He worked with the upper level of Q Lube to  
21 help them divest their stores to either individual franchisees  
22 or executives of the Q Lube world. By doing that, all that is  
23 how we ended up in Reno. Reno is kind of our payoff. They  
24 gave us the Reno market which were Q Lubes, gave it to us at a



1 discounted price I believe with some real estate. We came to  
2 Reno and made the Q Lubes Jiffy Lubes.

3 Q When was that you moved into Reno?

4 A I didn't move to Reno until 2006. The business  
5 moved into Reno I think '99, maybe around 2000.

6 Q At that time, what was your job duties at the Jiffy  
7 Lube Q Lube enterprise?

8 A The same thing. I was working with management,  
9 working with the guys in the stores and the area managers.  
10 Overseeing operations.

11 Q What was Edward Bayuk's job duties?

12 A He was more an HR-insurance office guy, employee  
13 relations. Writing the employee handbook. He was the author of  
14 all the handbooks for our companies. Mostly HR,  
15 employee relations, that type of thing. Insurance, health  
16 care.

17 Q What was Paul Morabito's job in this franchise?

18 A He's strictly the man at the top, the 20,000 foot  
19 guy looking after the finances with the banks and looking for  
20 more opportunities. He's always growing the business. Edward  
21 and I basically ran the business at hand. Paul's looking to  
22 the next step which became quite a big next step. He grew to  
23 60 to 70 Jiffy Lubes. We were the third largest Jiffy Lube  
24 franchisee in 2004, 2005. We grew the business very fast.

1 Very, very fast.

2 Q And then at either at the waning years of the Q Lube  
3 business or sometime thereafter, you got involved in the  
4 Berry-Hinckley enterprise?

5 A That's right.

6 Q Tell us how that happened?

7 A Well, we were already in the Reno market. Paul,  
8 through his political connections and higher level business  
9 connections, was approached by someone who said we should buy  
10 Berry-Hinckley. Paul got into discussions with Art Hinckley.  
11 Eventually in 2005 we bought out Berry-Hinckley.

12 Q And you owned a stake in the company that purchase  
13 Berry Hinckley?

14 A Yes.

15 Q Do you remember what that company was called?

16 A Originally it was TAMCO, then CNC, Consolidated  
17 Nevada Corporation.

18 Q The same CNC we talked about at the beginning of  
19 this line of questioning?

20 A That's correct.

21 Q And did you have an equity stake in CNC?

22 A Yeah, twenty percent.

23 Q What was your involvement, if at all, in the  
24 negotiations or consummation of the transaction between CNC

1 and the Herbsts entities?

2 A I had absolutely nothing to do with that at all.

3 Q You weren't involved in the negotiations?

4 A Not at all, no.

5 Q And then at some point you came to learn that there  
6 was a dispute between Paul and CNC and the Herbsts entities,  
7 true?

8 A Yes.

9 Q And you have heard testimony that Paul commenced a  
10 lawsuit against, Paul and CNC commenced a lawsuit against the  
11 Herbsts?

12 A Yes.

13 Q Did you have anything to do with that?

14 A No.

15 Q How did you get involved in the lawsuit?

16 A The Herbsts counter-sued us I guess, and I was named  
17 in that suit.

18 Q Do you know what the claims were against you?

19 A No. I don't not exactly, no.

20 Q What role did you play at the trial?

21 A I didn't testify. I sat through the trial every  
22 day, was there every single day, but I did not testify. I  
23 wasn't called as a witness. This is the first time I have  
24 ever sat as a witness in my life, but it was a pleasure to

1 have you as my Judge.

2 Q As you said, you sat through every day of the  
3 weeks-long Herbsts trial, right?

4 A Yeah. I think the second floor downstairs.

5 Q At any point in time did you come to an  
6 understanding why you were even involved?

7 A Well, I am involved as an owner of the business. I  
8 guess I got dragged into it. So --

9 Q There has been testimony about September 13, 2010  
10 being a big day in the Herbsts trial, right?

11 A Yes.

12 Q Were you there?

13 A Yes.

14 Q What did you hear?

15 A I heard that I was exonerated. Edward was  
16 exonerated. And Paul had, you know, a ridiculously huge I  
17 guess you would call it an oral Judgment; is that true?

18 Q That is what I have been calling it?

19 A Oral Judgment against him for, I don't know,  
20 \$85,146,000. I don't know how a dispute of a few million  
21 dollars turns into eighty-five million, but it does so.  
22 Welcome to America. I love America and I am an American  
23 citizen, too.

24 Q I can tell from your tone that you were surprised by

1 the amount of Judgment?

2 A Absolutely flabbergasted. I was just floored. I was  
3 stunned.

4 Q Now I will just direct your attention to Exhibit 1.  
5 You don't need to turn there. I will just have you look at  
6 the screen. It is just the one paragraph. You have used the  
7 world exonerated. I want to show you, this is the transcript  
8 verbatim of Judge Adams on that day. He says: "There has been  
9 no evidence that I can recall of any kind creating any  
10 personal liability on the part of Plaintiffs Edward Bayuk,  
11 Salvatore Morabito or Trevor Lloyd, therefore, any claims  
12 against them are dismissed." Do you see that?

13 A Yes.

14 Q So I don't see the word exonerated in there, do you?

15 A No, I don't think I saw exonerated.

16 Q Do you know where that word exonerated came from?

17 A No.

18 Q Is that a characterization of the impact of Judge  
19 Adams' words?

20 MS. TURNER: Objection leading.

21 THE COURT: Sustained.

22 BY MR. GILMORE:

23 Q What did you mean by exonerated?

24 A It means free, not guilty of anything. Free to go.

1           Q     When you heard the oral Judgment, the oral ruling  
2     from Judge Adams, were you glad that you were not subject to  
3     any liability?

4           A     Yes.

5           Q     Did that matter to you?

6           A     Absolutely.

7           Q     Why?

8           A     I don't want to be subject to any liability. I  
9     don't want to have a Judgment against me.

10          Q     Were you upset for Paul?

11          A     Absolutely.

12          Q     Why?

13          A     Because he was totally blind sided by it. It has  
14     devastated his life ever since. He hasn't been able to -- It  
15     is like an amputation, like having both your legs cut off.  
16     That is how I would -- You know, he hasn't been able to -- he  
17     hasn't been himself since that day or the day of his surgery.  
18     I don't want my legs cut off or anything else cut off for that  
19     matter. I mean, that's, you know, it is a terrible thing.

20          Q     So after the oral ruling, did you do anything about  
21     it? What did you do? Did you talk to anybody?

22          A     Well, I sat down with Edward and Paul and our  
23     lawyers and discussed, you know, what the situation was and  
24     what our options were.

1           Q     What type of options did you consider?

2           A     Well, we could do nothing, and, you know, just  
3 because everything we owned was in Nevada LLCs or everything I  
4 owned with Paul and Ed was in Nevada LLCs, or I could take  
5 action and protect what I thought I should protect.

6           Q     Did you discuss other options?

7           A     Either do nothing or do something. What other  
8 option is there?

9           Q     Good point. In the realm of doing something, did  
10 you discuss all kinds of ideas?

11          A     Yes.

12          Q     Did you have an opportunity to consider all the  
13 options you believed were available to you?

14               MS. TURNER: Objection. Vague.

15               THE COURT: Sustained.

16 BY MR. GILMORE:

17          Q     Let's talk about these options. You said your first  
18 option was to do nothing?

19          A     To do nothing.

20          Q     What does that mean?

21          A     Keep continuing on my life, keep owning the  
22 Superpumper business with my share, but I understood all the  
23 Herbsts parties had to do was have a charging order against  
24 the company. My share would be secure and fine and I would

1       just be working there, perhaps getting a salary I would think.  
2       Or, I could take charge and try to take control of the company  
3       that I loved so much, I worked so hard to build. And it  
4       became clear, when the bank was putting Paul in default right  
5       away, the worst of two evils at that point was the bank. The  
6       bank was ready to take the company back. So I am about to lose  
7       my share of Superpumper. I said to Paul and Ed, why don't Ed  
8       and I just buy this company, Paul, and you can be on your way?  
9       Ed and I just wanted to separate our lives from Paul. I love  
10      him. He's my brother. But I don't want to inherit his  
11      issues.

12           Q       When you say the lesser of two evils, the bank was  
13      one?

14           A       Right.

15           Q       That is one. What is the other?

16           A       Well, whatever the Herbst parties can do.

17           Q       Explain what you mean by that.

18           A       They would have a charging order I guess or  
19      something against Paul's assets. I didn't want to be part of  
20      that. Edward didn't want to have a co-tenant in his home. We  
21      wanted to separate ourselves from Paul as much as possible.

22           Q       Why was the bank option worse in your mind?

23           A       Because they are going to take it away like  
24      tomorrow.



1           Q     Explain that. There was some questioning in your  
2 direct examination about this default idea, but you didn't get  
3 a chance to fully explain. Hang on let's go -- Let me go to  
4 that exhibit. Excuse me? I think it is in the -- It was too  
5 many for me to remember quite frankly.

6                     Do you remember when you were shown the Sean  
7 Hollenbach e-mail?

8                     MR. GILMORE: Thank you counsel. I appreciate that.

9                     THE WITNESS: I saw a lot of e-mails, Frank.

10           BY MR. GILMORE:

11           Q     I know. There it is. 33. Can you open that up for  
12 me?

13           A     Yeah.

14           Q     This one, nobody in the direct examination asked you  
15 to actually look at the words of this e-mail from Paul to Sean  
16 Hollenbach. Now is your chance to do that. Paul Morabito says  
17 to Sean: "This is to confirm our conversation where I advised  
18 you we were in default of several of our loan covenants  
19 including but not limited to on liquidity judgments,  
20 collateral and lawsuits." Do you see that?

21           A     Yes.

22           Q     That is as far as you got in the direct examination?

23           A     Yes.

24           Q     "Be advised that it is the intention of myself and

1 my fellow shareholders at Superpumper, Inc., to cure these  
2 defaults, and BBVA Compass has advised us they will work with  
3 us in good faith toward effecting those cures and putting  
4 those loans back into compliance?"

5 A That's right.

6 Q Hollenbach confirms in a response the same day:  
7 "You are correct. That is our intention?"

8 A Correct.

9 Q Right?

10 A Yes.

11 Q So did you understand that the Judgment had some  
12 impact on Superpumper?

13 A Yes, because it affected Paul's covenant. Paul had  
14 some kind of liquidity ratio. He had to have a certain net  
15 worth. I don't know exactly what it was. He had certain  
16 guarantees with the bank which are now in default, because he  
17 put the bank on notice of this oral Judgment as we call it.

18 Q That e-mail from Paul also said default related to  
19 judgements and lawsuits?

20 A Right.

21 Q Do you know the specifics of those covenants?

22 A Paul was required to have?

23 Q Yeah?

24 A Several million dollars of net worth he had to have

1       for, you know, for the security.

2           Q     Do you know if BBVA had a covenant that required him  
3       to not be a judgment debtor?

4           A     More than likely, I can't say for sure, but  
5       probably. I mean Sean Hollenbach --

6           Q     Hold on. Let me ask the questions. Judgments, you  
7       see this?

8           A     Okay.

9           Q     Collateral impairment and lawsuits?

10          A     There you go.

11          Q     Are there documents-- I will ask the question later.  
12       Did you ever get a promise from BBVA in 2010 that Superpumper  
13       was out of the woods?

14          A     No, not at all. I mean on closing. They gave me a  
15       notice, Superpumper and Snowshoe a notice that they were  
16       cutting the line back from three million to 2.5 million. Two  
17       weeks later they put us into default. They were demanding the  
18       payment of the line of credit, demanding the payment of the  
19       term loan immediately on October 15, 2010. Compass is already  
20       you know, breathing down my neck pretty hard.

21          Q     Let's talk about the debt structure of Superpumper?

22          A     Okay.

23          Q     Pre merger?

24          A     Okay.

1 Q So earlier in 2010.

2 A Right.

3 Q How was the operations of Superpumper financed?

4 A I wanted a three million dollar line of credit.

5 Q What was that line of credit used for?

6 A General operations of the business, of the stores,  
7 buying fuel, buying inventory for the C-stores, paying the  
8 daily bills of the company.

9 Q And --

10 A It is a revolving line of credit.

11 Q Tell me what you mean by that?

12 A It goes up and goes down. Zero balance. You can  
13 draw into it, pay it down to zero or go up to three million.

14 Q Give us a day in the life of the revolving line of  
15 credit. An example how that works?

16 A Back in those days, Superpumper would have been paid  
17 by Shell. We were on a five day payment back then, so you  
18 have ebbs and flows. On day one you probably have \$400,000 or  
19 \$500,000 going out.

20 Q For what? Describe this.

21 A Paying for fuel mostly from Shell. That is the big  
22 dollar item. You also have money going out to McLane which is  
23 the company we buy all the convenience store things from.

24 Q Slow down. Explain that?

1           A     McLane is a company that sells you all your potato  
2 chips, all the cigarettes all the things you see in a  
3 convenience store. It is like a one stop shop. You buy all  
4 your product from them. You buy your beer from Arizona, a  
5 company called Hensley which is owned by John McCain's wife,  
6 and you buy your fuel from Shell. So you buy truck loads. If  
7 we sell 20 million gallons of fuel, we did when we owned it,  
8 20 million gallons of fuel a year. So when you are selling  
9 roughly 1.2 million gallons of fuel a month, it is like 60,000  
10 gallons a day. You have trucks coming and going. But you have  
11 to pay for that fuel. You have money going out to pay for it.  
12 Shell processes all the credit cards. So all the money you  
13 get back from the sale of the fuel comes in one lump payment  
14 from Shell. So if you've got \$400,00 or \$500,000 going out  
15 which is a combined payment of fuel and convenience store  
16 product, Shell in five days will send you money back from the  
17 receipt from the sale of that fuel. All the money you get  
18 from the sale of the convenience store products is cash. It is  
19 cash that is at store level that goes into the bank every two  
20 days or every day or so. So you have money going in and money  
21 going out.

22           Q     At the time of the merger, September, late September  
23 2010, what assets did Superpumper own?

24           A     It didn't really have any assets. It had eleven

1 leases. Eleven extremely high rent leases in Scottsdale,  
2 Arizona. That is about it. It had some equipment, owned some  
3 car wash equipment. But, basically, it was just what is  
4 called a cash flow company. It just has leases and the right  
5 to operate and sell fuel.

6 Q Did it own any real estate?

7 A No real estate at all, no.

8 Q Did it own any durable assets?

9 A No. No.

10 Q Its assets consisted of what then?

11 A The fuel on the ground, the potato chips, the Red  
12 Bull, the cigarettes, the beer, the beef jerky, all the stuff  
13 you find in a convenience store.

14 Q At the time of the merger, what was the outstanding  
15 balance roughly on the revolving line of credit?

16 A It was 2.5 million, 2.4 million, something like  
17 that.

18 Q What was the max?

19 A 2.5.

20 Q I'm sorry, how much did you have access to?

21 A At the time of the merger, well, it was maxed out at  
22 about 2.5 because it was being cut down. We were at our limit.  
23 It went from three to 2.5. We were absolutely at the limit.  
24 We couldn't write another check that wasn't going to bounce.

1 We were done as far as having any money.

2 Q What would happen, as of the date of the merger, did  
3 you have an understanding what might happen if the revolving  
4 line of credit was closed or the cap reduced?

5 A We are out of business, shut our doors. We are  
6 done.

7 Q Why?

8 A We need money to operate. We can't -- We could  
9 probably operate for two or three days. That's about it. We  
10 are done.

11 Q You didn't have any other availability for operating  
12 capital?

13 A Well, thankfully, Edward and I had some cash.  
14 Basically Edward and I became the bank. We injected money  
15 back into the company.

16 Q So prior to you reaching a decision in your mind to  
17 buy Superpumper from Paul, what did you understand why and how  
18 the default might impact the viability of Superpumper going  
19 forward?

20 A Compass would have, you know, come in and basically  
21 taken back whatever they could. I don't know how a bank seizes  
22 assets on a convenience store like Superpumper. They  
23 basically said we are going to shut you down, turn off your  
24 line of credit, basically. You are in default. We are going

1 to shut you down.

2 Q Were these considerations that you had given thought  
3 to when you decided to buy Paul's interest in Superpumper?

4 A I mean, of course. I mean I didn't think it was  
5 going to be that dramatic. I didn't think we were getting the  
6 tap closed on us that quickly. I knew it was going to be a  
7 difficult road. I didn't think it was going to happen that  
8 quickly.

9 Q Now you have heard Plaintiff's counsel in this case  
10 say this was all done in a rush?

11 A Well, the bank's in a rush. The bank's in a rush to  
12 close me down. I am in a rush to save me, save the company.

13 Q This rush, what did it have to do with the Herbsts  
14 in your mind?

15 A Nothing. As far as I am concerned, I am just  
16 looking out after my own interests. The Herbsts aren't a  
17 factor in my life. I don't owe them anything. I don't even  
18 know them. I mean I am just out trying to save my company.

19 Q Have you ever in your life spoken to any of the  
20 Herbsts folks?

21 A Oddly enough, the only person from the Herbsts  
22 family is Mrs. Herbst. That was during the trial of 2010. We  
23 were downstairs at the vending machine that doesn't work for  
24 the last two days, and --



1 THE COURT: Are you saying it didn't work then?  
2 THE WITNESS: It didn't work now.  
3 THE COURT: Oh, I didn't know that.  
4 THE WITNESS: There is something going on. You  
5 might want to call maintenance.  
6 THE COURT: Not me. I don't let any of my staff go  
7 down there.  
8 THE WITNESS: Really?  
9 THE COURT: Really.  
10 THE WITNESS: We'll get into that later.  
11 MS. TURNER: Your Honor, I am going to object. This  
12 calls for hearsay.  
13 MR. GILMORE: There has not been any evidence of a  
14 conversation, just what he did.  
15 THE WITNESS: The only person from the Herbst family  
16 I met was Mrs. Herbst. I didn't know who she was. We had a  
17 beautiful conversation.  
18 THE COURT: Don't say what was said.  
19 BY MR. GILMORE:  
20 Q Don't say what she said?  
21 A She's a very pleasant lady. I introduced myself.  
22 And she said, oh, my God, I didn't realize who you were. Just  
23 a side note, I have never even met Tim Herbst, but I have seen  
24 him in court, never spoken. Never met Jerry Herbst. The only

1 person I have spoke to in the Herbst family was Mrs. Herbst.

2 Q That is an interesting but mostly irrelevant back  
3 story?

4 A I know. Sorry.

5 Q When you made this decision to buy Superpumper, why  
6 didn't you pick up the phone and call the Herbsts and let them  
7 know?

8 A Because they are not a factor in my life. I don't  
9 know them. They have nothing to do with Superpumper. I don't  
10 owe them a dime. They are the last person I would call.

11 Q Now, at the time you were considering purchasing  
12 Paul's interest in Superpumper, did you have an understanding  
13 that Paul and Edward Bayuk co-owned a number of other assets  
14 and properties?

15 A Yes.

16 Q And were you involved at all in the conversations  
17 that led up to the exchanges between Edward Bayuk and Paul  
18 Morabito?

19 A No.

20 Q Not at all?

21 A On the house and their properties, no, I wasn't  
22 involved at all, no.

23 Q Today actually, if we get around to it, we might  
24 hear testimony from two people, someone named Sujata

1 Yalamanchili. Sorry Judy there is no other way to say it.

2 THE COURT REPORTER: Spell it.

3 MR. GILMORE: Y-A-L-A-M-A-N-C-H-I-L-I. Her first name

4 is S-U-J-A-T-A.

5 THE COURT: So when you all did your list of

6 witnesses you spelled it wrong. Spell the last name again.

7 MR. GILMORE: Y-A-L-A-M-A-N-C-H-I-L-I, Yalamanchili.

8 THE COURT: The "m" got left out.

9 MS. PILATOWICZ: I am looking at it. I apologize.

10 MR. GILMORE: She prepared it but I didn't catch it.

11 We are both at fault.

12 BY MR. GILMORE:

13 Q Sujata Yalamanchili, and another gnetleman by the

14 name of Gary Graber?

15 A Correct.

16 Q Did you ever retain or seek counsel or advice from

17 Gary Graber?

18 A No.

19 Q Did you ever retain or seek counsel or advice from

20 Sujata Yalamanchili?

21 A Not personally, no.

22 Q Did she ever provide you advice with respect to your

23 intended purchase of Superpumper?

24 A No. She was not part of this transaction at all.

1           Q     Were you privy to any conversations that Paul  
2 Morabito might have had with Gary Graber or Mrs. Yalamanchili?

3           A     No.

4           Q     Now I imagine at some point after you had decided  
5 what to do with Superpumper, Mr. Bayuk had decided what to do  
6 with his joint assets, there would have been conversation  
7 between you and Sam-- you and Mr. Bayuk and Paul regarding  
8 whose intention was to do what, true?

9           A     Say that again.

10          Q     So you all made up your mind about what your  
11 intentions were as to the division of these co-owned assets,  
12 yes?

13          A     Yes.

14          Q     Then did you talk about what your respective  
15 intentions were?

16          A     I talked to Edward. I mean, you know, I was living  
17 in Nevada. And I immediately moved and got a place in  
18 Scottsdale. So October 1st I am an Arizona resident. I moved  
19 straight to Arizona to start looking after business. And  
20 Edward, I mean he came to Scottsdale periodically, but he was,  
21 you know still, from his office he was still helping me on HR  
22 issues, insurance issues, employee handbook, which he loves to  
23 do that type of thing. So Edward and I split up our duties.  
24 We knew what we were doing. Paul was not in the picture as

1 far as Superpumper. He's out looking after his problems, his  
2 issues. I mean I don't even know what Paul did after the  
3 first couple of months.

4 Q Did you retain anybody to assist you with the  
5 Superpumper acquisition?

6 A Dennis Vacco.

7 Q What type of advice did you seek from Dennis Vacco?

8 A Asked him to put the deal together so we could do  
9 the merger, form a new corporation. We asked him to form a  
10 new corporation and buy the company.

11 Q Explain the rationale for creating a new  
12 corporation?

13 A Well, I mean it is owned by CWC and Superpumper.  
14 Edward and I wanted to own it fifty/fifty, so we created a new  
15 corporation.

16 Q Well, you could have just bought Paul's stock in  
17 Consolidated Wester, right?

18 A You mean, personally you mean?

19 Q Yeah. You held ten percent of Consolidated Western?

20 A Yeah.

21 Q Edward Bayuk held ten percent?

22 A Yes.

23 Q Paul held 80 percent?

24 A Yes.

1           Q     Surely one of your options was just to buy Paul's  
2 Consolidated Western stock, right?

3           A     We did through Snowshoe Petroleum.

4           Q     I am asking why the merger and why the creation of  
5 the holding company?

6           A     It is a new entity. It is just Edward and I. We  
7 are getting away from Paul. We are trying to get our lives  
8 away from Paul, separate ourselves from Paul.

9           Q     That decision that you made, did the Herbsts factor  
10 into that decision?

11          A     No. Not at all. Again, the Herbsts are not a  
12 factor in my life. I don't owe them anything. I don't owe  
13 them. Edward and I are acting independently.

14          Q     Why leave Nevada and go to New York?

15          A     Well, I am from that area. I have done a lot of  
16 work there. Half of our Jiffy Lube company was in New York.  
17 The largest part of the business was in New York. I live  
18 across the river from Buffalo. Edward is from New Jersey which  
19 is almost New York.

20               MS. TURNER: Don't tell Bruce Springsteen.

21               THE WITNESS: Yeah, I know. That's true. I always  
22 tease Edward. He's an East coast guy. He has got that  
23 accent. So we were familiar with New York, New York is home  
24 for us. We were also looking -- At that time, there was an

1 opportunity to buy some stores in New York that we had spoken  
2 about, so we love New York as they say.

3 BY MR. GILMORE:

4 Q Now CWC was a Nevada corporation, right?

5 A Yes.

6 Q Did CWC have any actual physical assets in Nevada?

7 A I don't think so, no, I don't think so.

8 Q Did you have any employees working in Nevada?

9 A No.

10 Q Did you have have any operations in Nevada?

11 A No.

12 Q No gas stations, right?

13 A No. Nothing.

14 Q Didn't own any Card Locks here?

15 A No.

16 Q So when you created Snowshoe in New York, were any  
17 assets that were located in Nevada relocated to New York?

18 A No.

19 Q Where were the assets of Consolidated Western at the  
20 time of the merger?

21 A Everything was in Arizona.

22 Q When did you first acquire your interest in  
23 Superpumper or any of its parent companies?

24 A Through Snowshoe, Edward and I acquired 100 percent

1 interest in Superpumper September 29th it was of 2010.

2 Q You owned ten percent of Consolidated Western before  
3 that?

4 A Personally, yes.

5 Q When did you first acquire your membership interest,  
6 it would have been a shareholder interest in Consolidated  
7 Western? When did you get the stock in CWC?

8 A When did I get my stock in CWC? I guess on the  
9 merger, same day, September 29th, September 28th, whatever  
10 2010. My ten percent interest, that was 2000 -- well, it  
11 shows up on my statement as 2009.

12 Q What do you mean your statement?

13 A On my tax return, 2009. Actually, it shows up on the  
14 CWC tax return in 2009.

15 Q Have you already described all of the extent of your  
16 role at the Superpumper operation prior to the merger?

17 A Prior to the merger, I was just, you know, looking  
18 after day-to-day store level operations. I wasn't doing any  
19 upper level management. I wasn't involved with the managers  
20 or even the landlords. It was strictly boots on the ground.  
21 We had a lot of car wash issues. I was dealing with the car  
22 washes. Basically just learning the business, learning the  
23 Scottsdale market which is very unique.

24 Q Were you involved in the decisions to cut



1 distributions or dividends from the corporation?

2 A Prior to the merger?

3 Q Yes?

4 A No, I was not.

5 Q Did you ever -- Were you ever in charge of  
6 negotiating issues related to the company's financing?

7 A No.

8 Q Had you ever executed any guarantees?

9 A No.

10 Q Were you a guarantor of any of the BBVA Compass  
11 debts?

12 A No.

13 Q Were you a guarantor on the Spirit lease?

14 A No.

15 Q Let's talk for a few minutes about the three million  
16 dollar term loan?

17 A Okay.

18 Q What is your understanding as to when the term loan  
19 idea was originated?

20 A It was originated in August of 2010.

21 Q What was the idea of the term loan in August of  
22 2010?

23 A Again, Paul being in charge of the finances, he  
24 initiated a term loan on behalf of Superpumper, three million

1       dollars, with the intent of using it to possibly invest in  
2       other businesses in the fuel industry. Use it for money to go  
3       and buy some more assets.

4           Q     Prior to the oral Judgment, did you anticipate  
5       receiving the proceeds from the term loan directly?

6           A     No.

7           Q     Was that the plan?

8           A     Well, actually, the plan was to get the proceeds  
9       personally, but we were going to fund a new company, a new  
10      company that went out and bought some new stores. That was  
11      the idea.

12          Q     After the oral Judgment, the term loan funded, that  
13      is the stipulated fact, right?

14          A     It funded after the oral Judgment. It was initiated  
15      though to fund on September 8th or 9th. We requested it or  
16      Paul requested it to be funded on the 8th or 9th. By the time  
17      it actually hit the bank, I think it was like the 15th or  
18      something, maybe the 14th of September.

19          Q     Whose decision was it to actually then go through  
20      with the distribution and take the money?

21          A     Paul.

22          Q     Did you tell anybody you had a desire in taking this  
23      money for yourself?

24          A     Did I tell anybody?

1           Q     Yeah?

2           A     No. No, I didn't tell anybody that I had a desire  
3 to take the money for myself.

4           Q     How was it relayed to you you we are going to be  
5 receiving \$939,000 proceeds?

6           A     Edward and Paul and I decided -- That was our  
7 initial plan. We went through with the initial plan, but then  
8 it obviously changed later when we used that money to put back  
9 into the company.

10          Q     We'll talk about that in a minute. Let's talk about  
11 some of Superpumper's contractual obligations. Can you turn  
12 to Volume VII. Specifically tab 226?

13          A     Okay, got it.

14          Q     Let me back up. Prior to the merger, did you  
15 receive a salary from Superpumper?

16          A     Yes.

17          Q     Did you ever receive any stockholder dividends?

18          A     No. No.

19          Q     You didn't?

20          A     No.

21          Q     Turn to tab 226. I don't know if this has been  
22 admitted yet?

23                THE CLERK: It has not.

24                ///

1 BY MR. GILMORE:

2 Q Turn to 226 and please have a look at it. You  
3 mentioned that Superpumper has an affiliation with Shell?

4 A Yes.

5 Q Can you give us the thirty second version of how  
6 that affiliation works?

7 A Well, in 2007, actually Superpumper used to be a  
8 Mobile dealer. Then in 2007, Paul initiated a deal with Shell  
9 to become a wholesaler. Wholesaler means you buy directly  
10 from Shell, so you have a slightly discounted purchase price  
11 from Shell. And you also have the ability to go out and  
12 supply fuels to other dealers if you want to give them credit.  
13 So this is an agreement to buy X number of gallons per year  
14 from Shell for a certain amount of time at a discounted rate.  
15 You become a preferred vendor. So they take care of their  
16 wholesalers first, you know, and other dealers second.

17 Q After you took over, after the merger and the  
18 acquisition of Paul's interest --

19 A Right.

20 Q -- to your knowledge, did Paul have any dealings or  
21 communications with the Shell reps?

22 A No, absolutely not. No, nothing.

23 Q Who became the rep with Shell at the Superpumper  
24 Snowshoe level after merger?

1           A     Primarily me, but Edward was on board for a few of  
2     the discussions with Shell.  Primarily myself.

3           Q     Who is Jan Friederich?

4           A     A consultant from Albuquerque, New Mexico.  He was a  
5     consultant for us in Albuquerque, New Mexico.

6           Q     When was he brought on?

7           A     In 2009.

8           Q     Before the merger?

9           A     Yeah, way before the merger, yeah.

10          Q     Did you work with Jan Friederich prior to the  
11     merger?

12          A     Yes.

13          Q     What did you work on?

14          A     Well, Jan is a thirty-five year convenience store  
15     owner operator, and he's very well respected in the industry.  
16     He has a Master degree, and we worked on -- The reason we  
17     brought him on in the first place was the sales were declining  
18     slightly, so we wanted to bring in an extra set of eyes that  
19     could shore up the business, see where we were going primarily  
20     in the convenience store side.  The fuel was still doing okay,  
21     but the convenience store side was starting to slide.  
22     Actually, after '08, '09 it started.  So we brought Jan in to  
23     change the marketing program.  He changed the coffee program  
24     in late 2009 much to the chagrin of Ed.  He would come in, I

1 forget how much we paid him, maybe \$10,000 a month or  
2 something. He worked closely with our store level managers,  
3 with myself, did a reset on all the stores, changed the way  
4 the stores looked.

5 Q Slow down. What is a reset?

6 A A reset is when you change the way, like one day you  
7 come in and Ms. Vickie's chips are on this wall. You come in  
8 the next day they will be on that wall. Red Bull is going to  
9 be in that container one day, the next day it is going to be  
10 in that cooler. He just changed the way the store looks and  
11 what pops to the customer when the customer walks in.

12 Q Was he given any supervisory role over the staff?

13 A Absolutely. The staff was supposed to report to  
14 him.

15 Q What staff did you have at Superpumper pre merger  
16 when Jan Friederich was brought on?

17 A We had a CPA that did the bookkeeping.

18 Q Was that CPA in house or out house?

19 A We had an in-house CPA. We had two bookkeepers, an  
20 in-house CPA and four area managers. Two of the managers were  
21 the son's of the gentleman, actually son and son-in-law of the  
22 gentleman Paul bought the company from in 2006. So it was  
23 family that was left over from the original purchase and then  
24 two new.

1           Q     How much operational latitude was Jan Friederich  
2 given in his role?

3           A     He was pretty much given carte blanche. He was that  
4 well known and respected. He had the reigns to do everything  
5 operationally. He was the operations manager.

6           Q     When Jan Friederich was brought on, how would you  
7 characterize Paul's involvement in the operation?

8           A     Non-existent. Paul was off doing whatever it is he  
9 was doing. Jan may have spoken to Paul a few times, but I was  
10 the one that interacted with Jan. I was the guy on the  
11 ground. I developed the relationship. Paul was just, okay,  
12 Jan's there, good. Hopefully the sales, let us know when the  
13 sales get better. Okay.

14          Q     At this time when Jan was brought on, how much did  
15 Paul Morabito own of the company?

16          A     Eighty percent.

17          Q     He wasn't involved in the operation?

18          A     Very, very little. I don't even know if Paul ever  
19 came. Maybe once a year he would come to Arizona. He would be  
20 visiting Dan Quayle, rather than going to the Superpumper  
21 store. He was all about politics, not so much about  
22 day-to-day business.

23          Q     Have you had a chance to look at Exhibit 226?

24          A     Yeah, I looked at the first page.

1 Q Do you recognize that document?

2 A Yeah.

3 Q You described it already for us?

4 A Yeah. I did a good job. I told you what it was.

5 Q Where is this document kept? I am sorry, I asked  
6 the question in the wrong words. Does this Exhibit appear to  
7 be an identical copy of the original?

8 A Yes. Definitely, yes.

9 Q Where is the original kept and maintained?

10 A In the Superpumper office in Arizona.

11 MR. GILMORE: Your Honor, I move for admission of  
12 226.

13 MS. TURNER: No objection.

14 THE COURT: Exhibit 226 is admitted.

15 (Exhibit 226 admitted in evidence.)

16 BY MR. GILMORE:

17 Q And give us the thirty second version of what the  
18 wholesale market agreement allows Superpumper to do?

19 A It allows it to buy fuel from Shell at a slightly  
20 discounted rate, but it also requires Superpumper to buy a  
21 minimum amount of fuel and a maximum amount of fuel. So  
22 really it says we are going to sell you X number of gallons of  
23 fuel at so many cents per gallon, but you have to buy at least  
24 this amount, but you can't go over this amount. I am just



1 looking at now. In January we had a million, a million two  
2 seventy-eight and maximum of four million two thirty-eight  
3 just for the month of July. That is gallons.

4 Q Now if you will turn to Exhibit 227. Do you  
5 recognize 227?

6 A Yes.

7 Q What is it?

8 A It is the Wholesale Marketer Facility Development  
9 Incentive Program.

10 Q Is that a true and correct copy of the original?

11 A Yes, it is.

12 Q Where is the original maintained?

13 A In the Superpumper office.

14 MR. GILMORE: Move for admission of 266.

15 MS. TURNER: No objection.

16 THE COURT: You just said 266, but you meant 227?

17 MR. GILMORE: I meant 227.

18 THE WITNESS: Your Honor can you keep up?

19 THE COURT: I can keep up, but I don't know how the  
20 Court Reporter is doing.

21 THE WITNESS: But you are the one that matters.

22 THE COURT: Actually not, she is.

23 THE WITNESS: You're right. I shouldn't have said  
24 that. I am sorry.

1 THE COURT: Just so it is clear by now, I have  
2 admitted 227.

3 (Exhibit 227 admitted in evidence.)

4 MR. GILMORE: Thank you.

5 BY MR. GILMORE:

6 Q Give us the 30 second version of 227. Let's call  
7 this the Incentive Agreement?

8 A So it is an agreement between Superpumper and Shell  
9 signed in, I think in, was there a date here? Signed in 2007.  
10 Anyway, what it is is so by agreeing to buy Shell fuel for in  
11 this case 14 years I think it was, you get a three cent a  
12 gallon rebate monthly on your fuel purchases. So basically  
13 Shell is saying sign up with us, agree to buy Shell products  
14 for 14 years and for the first 7 years I think it is we'll  
15 give you three cents a gallon rebate which in the case of  
16 Superpumper is a lot of money. If you do twenty million  
17 gallons of gas a year, so three cents a gallon, that is  
18 \$600,000. That is a lot of money for a company like  
19 Superpumper. Very important.

20 Q Are there any downsides associated with the  
21 Incentive Agreement?

22 A Well, as I learned after the merger, if you want to  
23 get out of this agreement, because it is front loaded as far  
24 as you get the three sentence a gallon for the first 7 years,

1 after 7 years you don't get that money back. If you want to  
2 get out of that agreement with 7 years to go, you have to pay  
3 all the money back and pay it back at a high interest rate.  
4 In other words, this is what is known as a contingency. In  
5 other words, if you cancel this agreement, it ended in 2011,  
6 if I were to cancel in 2013, Shell says, yeah, fine. You have  
7 to pay us 2.5 million dollars. They basically want all the  
8 money they gave you the first seven years. They want a big  
9 chunk of that back, not all of it.

10 Q When did you come to that understanding?

11 A In 2011, early 2011.

12 Q After you had taken over --

13 A Yes.

14 Q -- operations?

15 A Yes.

16 THE COURT: I am sorry, did you tell me when that  
17 agreement was entered into?

18 THE WITNESS: I think it was 2000 -- I was trying to  
19 find the date here. Actually, well Paul signed it so it had to  
20 be within his -- oh, it was 5-25-06, so that makes sense,  
21 because it ended in 2011. Maybe it is only five years. It is  
22 five years of a three cent rebate. Then you had to have  
23 fourteen years of buying fuel. Usually these agreements don't  
24 go for fourteen years. They go for ten years. But the ten

1 year deal is two cents a gallon, and Paul wanted three cents,  
2 so he negotiated a three cent deal to go for a longer term.

3 BY MR. GILMORE:

4 Q Would you turn to tab 228? Do you recognize this  
5 document?

6 A Yes. It is the Master Lease Agreement between  
7 Spirit Portfolio and Superpumper, Inc.

8 Q Does this copy appear to be a true and accurate  
9 version of the original?

10 A Yes.

11 Q Where is it maintained?

12 A In the Superpumper office in Scottsdale.

13 MR. GILMORE: Move for admission of 228.

14 MS. TURNER: No objection.

15 THE COURT: Exhibit 228 is admitted.

16 (Exhibit 228 admitted in evidence.)

17 BY MR. GILMORE:

18 Q You testified earlier Superpumper owns no real  
19 property?

20 A Correct.

21 Q In how many stores does it operate?

22 A Eleven.

23 Q How many different landlords does it have?

24 A Spirit has two so that is eight stores. And it has

1       Store 6. It has five, five different landlords.

2           Q       How many locations are subject to the Spirit Master  
3       Lease?

4           A       Six.

5           Q       And when was this Master Lease entered into?

6           A       June 2007.

7           Q       So when you took over after merger at Superpumper  
8       you inherited these obligations?

9           A       Yeah.   Snowshoe took over this lease and Edward and  
10       I had to personally guarantee it, actually.

11          Q       Let's talk about these personal guarantees.   Prior  
12       to the merger, were you a guarantor of the Spirit lease?

13          A       No.

14          Q       Do you know who was?

15          A       Paul.

16          Q       Anyone else?

17          A       No, just Paul.

18          Q       And you were shown a document earlier indicating  
19       that Paul continued his guarantee that existed pre merger.   Do  
20       you remember that?

21          A       Yes.

22          Q       What communications -- What is your understanding as  
23       to why Paul Morabito signed a continuing lease guarantee with  
24       Spirit?

1 MS. TURNER: Objection. Lacks foundation. Calls for  
2 speculation?

3 THE COURT: Sustained.

4 BY MR. GILMORE:

5 Q We'll get back to that. Spirit required you to sign  
6 a guarantee?

7 A Yeah, personal guarantee and Edward, too.

8 Q Do you know why?

9 A Well because they didn't -- They kept Paul on as a  
10 guarantor, but they knew that Paul, you know.

11 Q My question is: Why did you sign the guarantee?

12 A Because that is the only way I could assume the  
13 lease. They wouldn't let me assume the lease without giving a  
14 personal guarantee.

15 Q Was there any other security that was offered to  
16 secure the Superpumper obligations under the Spirit lease?

17 A Well, there are certain covenant ratios. Every  
18 three months we would have to give Spirit our financials. If  
19 we didn't make the covenant ratios, they actually sucked money  
20 out of our bank account. It is very complicated ratios.  
21 Please don't even try to make me explain it. You have to be,  
22 you know, a really, really good accountant. They were very  
23 complicated ratios. Every three months we give them our  
24 financials. If we didn't make the number, we would pay the

1 penalty.

2 Q Did Spirit require Superpumper be audited?

3 A Yes, required an annual audit.

4 Q Do you have any understanding as to why that was?

5 A They wanted to make sure we were a good standing

6 company, financially secure company. They also -- I am

7 required to carry six million dollars equity on our books,

8 minimum six million equity.

9 Q Let's turn to Exhibit 113.

10 MS. TURNER: I'm sorry, which one?

11 MR. GILMORE: 113.

12 MS. TURNER: Thank you.

13 BY MR. GILMORE:

14 Q I would like to show you what has been admitted as

15 Exhibit 113. Are you there?

16 A Yes.

17 Q Okay. This indicates it is Superpumper's financial

18 statement of December 31, 2007. Do you see that?

19 A Yes.

20 Q The name at the bottom, Gurseyschneider and

21 Company, do you recognize that name?

22 A Yes.

23 Q Who are they?

24 A They're certified public accountants in California.

1           Q     What did you understand their relationship with  
2     Superpumper was in 2007?

3           A     Yes. They were the ones that did the audit. They  
4     always did the audit on the company.

5           Q     Were any of the members of Gurseey Schneider  
6     employees of Superpumper at any time?

7           A     No.

8           Q     I should say employees or managers to be complete?

9           A     No.

10          Q     Now in taking over the control and operation of  
11     Superpumper after merger, have you come to understand why  
12     Superpumper retains Gurseey Schneider to do an annual audit?

13          A     Yes, because they are very well known, you know, one  
14     of the better firms in the country that do audits.

15          Q     Have you come to understand why an audit is  
16     necessary in the first place?

17          A     It is required by Spirit. Spirit is the one that  
18     requires the audit. It is a condition of their lease.

19          Q     Let's take a look at a couple of numbers here on  
20     2007. Specifically, let's go to the balance sheet.

21          A     Okay.

22          Q     There are a couple of numbers we are going to look  
23     at then we'll move on?

24          A     Page three?



1 Q I am on page three of the balance sheet?

2 A Uh-huh.

3 Q You see here in the asset column there are two line

4 items. One due from affiliates. The other is trademarks. Do

5 you see that?

6 A Yes.

7 Q And you see the number here, stockholder equity?

8 See that at the bottom of the page?

9 A Yes. Yes.

10 Q Where my finger is? 7.6 million dollars. Have you

11 testified to what the relevance of that number is?

12 A That is the requirement. That's the stockholder

13 equity, so that is what is required. At minimum they want six

14 million dollars.

15 Q Now, let's take a look at the statement of

16 operations on the following page which is page 254 of 296.

17 Let's just focus on total revenues. 2007, 100 million dollars

18 in total revenues for its net income of about three million

19 dollars. What do you understand net income to reflect?

20 A I see net income of four million dollars on this.

21 Q Sorry. You're right?

22 A Don't short change me a million bucks.

23 Q This is 2007, right?

24 A Right.

1           Q     It has got a net income of about four million  
2 dollars, do you agree?

3           A     Yes.

4           Q     Now will you turn to the cash flow statement which  
5 is page 6?

6           A     Okay.

7           Q     Two line items I would like you to look at here.  
8 These are cash flows from financing activities. First is  
9 advances to affiliates. The second is distributions to  
10 stockholders. As the owner and operator of Superpumper do you  
11 have an understanding as to what this line item, advances to  
12 affiliates is?

13          A     Yes that would be advances to CWC.

14          Q     When you say advances, what do you mean?

15          A     Cash. Cash out.

16          Q     Money taken?

17          A     Money taken out of Superpumper, Inc., into CWC.

18          Q     What is your understanding as to what this line  
19 item, distributions to stockholder reflects?

20          A     That would be a distribution to Paul.

21          Q     Do you know in the balance sheet how these advances  
22 to affiliates is treated?

23          A     Well, it is treated as a due from.

24          Q     We'll look at that. Let's go to the notes on these

1 financial statements from the auditors. First of all on page  
2 7 of the audit, we are on note one, summary of accounting  
3 policies and practices. Did you understand that the auditors  
4 had attributed 4.3 million dollars as the allocated purchase  
5 price when Paul Morabito acquired Superpumper's interest in  
6 2006?

7 MS. TURNER: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. GILMORE:

10 Q Okay. I will ask it a different way. You see where  
11 the auditors say 4.3 million dollars purchase price was  
12 allocated to Superpumper?

13 A Is this on page --

14 Q Right here where my finger is. I am going to read  
15 the document. 4.3 million purchase price was allocated to  
16 Superpumper's, Inc., net tangible and intangible assets based  
17 on the fair values as of the acquisition dates? Do you see  
18 that?

19 A Yes.

20 Q And above it says the acquisition date was on April  
21 24, 2006, when P. Morabito and Arizona Co., acquired  
22 Superpumper. Do you see that?

23 A Yes.

24 Q So does this at all refresh your recollection you

1 might have as to the purchase price that was allocated to the  
2 assets when Paul Morabito purchased Superpumper in 2006?

3 A It refreshes my memory, yes. Obviously, the auditor  
4 is saying that he paid, you know, 4.3 million for it. That is  
5 what he paid for it.

6 Q Now do you know how that acquisition was structured?

7 A Not exactly. I know it was a sale lease-back. I  
8 can't remember the details of it.

9 Q Was it a traditional purchase, cash or cash and  
10 carry back note?

11 A No.

12 MS. TURNER: Object to the question being leading.

13 THE COURT: Sustained.

14 BY MR. GILMORE:

15 Q Let's go to page 9 of this audit report. I am  
16 looking at the concentration of risks. The auditors say:  
17 "The company currently has a multi-year contract with Shell  
18 Oil Products." Is that consistent with your understanding?

19 A Yes.

20 Q "To purchase a set quantity of fuel ranging from  
21 minimum to maximum quantities each month." Do you agree with  
22 that statement?

23 A Yes.

24 Q "This agreement expires on April 30th 2011." Do you

1       see that?

2           A       Yeah.

3           Q       Do you agree with that?

4           A       Yes.

5           Q       "Without such contracts, the company would have to

6       purchase its fuel supplies at the market spot price which are

7       subject to price and supply volatility." Do you agree with

8       that?

9           A       Yeah.

10          Q       What do you understand the term spot price, market

11       spot price to mean in your business?

12          A       Well, whatever the going rate is at the terminal.

13       To pay the going rate at the terminal as opposed to the Shell

14       market agreement gives you a slightly discounted, a preferred

15       rate through Shell.

16          Q       This says that: "That market spot price which is

17       subject to supply and volatility." What did you understand

18       that to mean?

19          A       Where is that again?

20          Q       Right here?

21          A       Paragraph one.

22          Q       Look where my finger is. "Market spot price which

23       are subject to price and supply volatility?"

24          A       You know, you are not with Shell, sign up with Shell

1 or you run the risk of not being able to buy fuel. If there  
2 is no -- Quite often the terminal would run dry in Phoenix,  
3 but Shell would always do their best to bring in loads from  
4 Texas or California. So Shell is always going to take care of  
5 their dealers. But if you are just hanging out there, an  
6 independent, when the terminal is dry you're dry. It pays to  
7 be a Shell dealer sometimes.

8 Q Now let's look at page 12. This is Note 6 called  
9 related party transactions?

10 A Uh-huh.

11 Q You with me?

12 A Yup.

13 Q This is the due from affiliates. Related parties  
14 represent advances made to the following individuals or  
15 companies as of December 31, 2007. Note receivable shareholder  
16 eight percent due June 15, 2008 in the amount of 2.261 million  
17 dollars. Do you see that?

18 A Yes.

19 Q December 31, 2007, who was the shareholder?

20 A Paul Morabito.

21 Q Paul Morabito was the shareholder of Superpump?

22 A Well, CWC is.

23 Q Advances to shareholder unsecured due on demand 1.4  
24 million and change. Do you see that?

1           A     Yes.

2           Q     Then advances to affiliate unsecured due on demand

3     \$279,000. Do you see that?

4           A     Right.

5           Q     Do you know how the related party transactions are

6     treated in the company's balance sheet. I should not say the

7     company. I should say Superpumper's balance sheet?

8           A     They are treated as a due from.

9           Q     Explain that?

10          A     That would be on the asset column. They had a note

11     receivable.

12          Q     So is it your testimony these are treated as an

13     asset?

14          A     Yes.

15          Q     In fact, here your auditors say: "These amounts

16     have been classified as noncurrent in the accompanying balance

17     sheet because repayment is not anticipated during the next

18     year." Do you see that?

19          A     Yes.

20          Q     Do you agree with that statement?

21          A     Yes.

22          Q     Now, let's go to Exhibit 114. I think 114 has been

23     admitted into evidence?

24                THE COURT: Yes.

1           MR. GILMORE: There are a few pages missing in this  
2 one. 31, 9, 20, 21.

3           MS. TURNER: They are in mine.

4           MR. GILMORE: I will just show him mine. It doesn't  
5 matter. Sorry.

6 BY MR. GILMORE:

7           Q     Just for identification, I am showing you what has  
8 been admitted as Exhibit 114. Do you see that?

9           A     Superpumper financial statement?

10          Q     Yes. Fast forward to 2009?

11          A     Uh-huh.

12          Q     2009 were you a stockholder of CWC?

13          A     No.

14          Q     Now I would like to direct your attention to the  
15 balance sheet on page three?

16          A     Yes.

17          Q     On the other assets sub category on the asset side  
18 of the balance sheet it identifies now 7.6 million dollars due  
19 from affiliates?

20          A     Yes.

21          Q     Do you recollect what it was in 2007?

22          A     What was it, four million something.

23          Q     Just under four million?

24          A     Yeah.



1           Q     Two years later 7.6 million dollars due from  
2 affiliates?

3           A     Correct.

4           Q     Turn to the operations statement on page 254.

5           A     Uh-huh. Yes.

6           Q     Now, the net income of Superpumper year end 2009 is  
7 a million and a half?

8           A     That's correct. Total revenue has taken a thirty  
9 million dollar hit.

10          Q     So in 2007 we saw ninety plus million dollars in  
11 total revenue didn't we?

12          A     Almost one hundred.

13          Q     Now it is down to seventy.

14          A     Correct.

15          Q     What does that mean practically speaking for a gas  
16 station/C-store?

17          A     Generally speaking, it means it is not performing as  
18 well. It is not -- you know, the sales are down. We are not  
19 making as much money.

20          Q     Now does that necessarily mean, Sam, that  
21 Superpumper is selling less gallons?

22          A     More than likely. That would be the first thing I  
23 would look at, because thirty million dollars, we only do 13  
24 or 14 million a year in the C-store. To get a 30 million

1       dollar hit it is going to come from gas.

2           Q       Tell us how the price of gas, as it fluctuates up  
3       and down, even with the Shell agreement, tell us how that  
4       affects the bottom line sometimes?

5           A       Well, you think about credit card fees. So a two  
6       dollar gallon versus four dollar gallon. The credit card fee  
7       is two percent. At two dollars it is going to cost you four  
8       cents in credit card fees versus four dollars in credit card  
9       fees and cost you eight cents. That is a four cent per gallon  
10      discount. When gas gets higher, you actually don't make as  
11      much money because your sales go down, but your expenses go up  
12      because of the credit card fees.

13          Q       Since you have been operating Superpumper, what is  
14      the highest amount that Superpumper has had to pay in credit  
15      card fees annually?

16          A       Oh, God, like it is in the millions of dollars.  
17      Like 2.5 maybe three million. I don't even know. So for the  
18      credit card fees, do the math. I mean 20 million, let's call  
19      it a four dollar gallon, so that is eighty million bucks. We  
20      paid over two million, call it two and a half million bucks in  
21      credit card fees.

22          Q       So in the gas station business, at least  
23      Superpumper, is it better if the gas is higher or lower?

24          A       Lower. Lower. The sweet spot is \$2.20 a gallon.

1 The world is beautiful. At \$2.20 a gallon. Everything comes  
2 into play nicely.

3 Q Would you then turn to 2009 cash flow which is on  
4 page 6. This is a number we saw in 2007, advance to affiliates  
5 1.965 million dollars and change. Do you see that?

6 A Yes.

7 Q Do you know what that represents?

8 A Money going out to CoWes Co. CoWes Co. Is taking  
9 more money.

10 Q Not as a stockholder distribution, right?

11 A No.

12 Q Then on the last page, related party transactions we  
13 show that 7.6 million dollars due from affiliates, the same  
14 thing we saw in 2007, classified as noncurrent. Do you see  
15 that?

16 A Yes.

17 Q Do you agree with that?

18 A Yes.

19 Q We are not going to go through all these, one more  
20 time. 2010, December 31, who owned Superpumper?

21 A December 31 of 2010 you mean?

22 Q Yeah?

23 A Snowshoe.

24 Q By this time you are in control of Superpumper's

1 operations, right?

2 A Yes.

3 Q 2010 did Spirit, after merger, did Spirit still  
4 require an audit being conducted?

5 A Yes.

6 Q So who worked with Gursev Schneider on behalf of  
7 Superpumper to insure the audit was completed?

8 A Well, they actually, they brought in their own  
9 accountant to sit in with our bookkeeper and our in-house  
10 bookkeeper people, and would sit there a month or so and go  
11 over our books.

12 Q How much did it cost Superpumper every year to have  
13 the books audited?

14 A I think it was fifty thousand, fifty-five thousand.  
15 It was a lot of money.

16 Q Now during 2010, you testified that the ownership  
17 structure of Superpumper had changed, correct?

18 A Yes.

19 Q You explained there was a merger?

20 A Yes.

21 Q Who was the parent company?

22 A CWC.

23 Q Who was the subsidiary?

24 A Superpumper.

1           Q     And you already testified that there were related  
2 party transactions due from affiliates that were carried on  
3 the Superpumper books, right?

4           A     Yes.

5           Q     Who was the obligor of those obligations? Who owed  
6 who?

7           A     CWC owed Superpumper the money.

8           Q     The parent owed the subsidiary?

9           A     Yes.

10          Q     So when -- How were those due from affiliates  
11 treated as a result of the merger?

12          A     They were zeroed out on the merger.

13          Q     Explain why?

14          A     Well, I mean, you know, you have a due from and a  
15 due to here let's say of five million dollars. They just  
16 cancel each other out.

17          Q     Do you know how that is treated on the balance  
18 sheet?

19          A     On the Consolidated balance sheet?

20          Q     Yes.

21          A     It goes to zero. So the equity portion goes to  
22 zero.

23          Q     Is there a corresponding entry on the balance sheet  
24 after these assets go away, do you know?

1           A     It would just show a zero.

2           Q     Please turn to Exhibit 115. This is one of  
3     Plaintiff's exhibits that has been admitted in evidence.

4                     MS. TURNER: It is admitted.

5     BY MR. GILMORE:

6           Q     Do you know whose handwriting this is?

7           A     No.

8           Q     Do you see in the bottom right-and corner there is a  
9     Gursey stamp?

10          A     Yes. I am assuming it is one of the gentlemen from  
11     Gursey Schneider.

12          Q     Did you ever work with Gary Krausz?

13          A     Yes.

14          Q     Who is Gary Krausz?

15          A     Senior auditor at Gursey Schneider.

16          Q     Superpumper notes receivable interest income  
17     calculation as of December 31, 2009, right?

18          A     Yes.

19          Q     It has somebody's handwriting. On the left it shows  
20     a description. CWC. PAMAZ, Paul Morabito due from BWH, CWC,  
21     total 7.354. Do you recognize that number?

22          A     Yes.

23          Q     Where do you recognize that from?

24          A     The audit.

1 Q What year?

2 Q Wasn't it 2009?

3 Q Right. So did you ever endeavor to seek advice from  
4 your auditors as to how to treat these notes receivable after  
5 you acquired Superpumper?

6 A Yes.

7 Q What did you do?

8 A I asked them how -- It is very confusing. Some of  
9 them were, after the merger, were eliminated. Some were  
10 carried forward. I asked them, I said, because we went  
11 through so many accountants, and we started with Dave Darata  
12 after the merger, then we went with Stan Bernstein. These  
13 notes, I call them due froms, some of them were eliminated on  
14 the merger. Some of them for some reason carried over. It  
15 was always very confusing at the end of the year how to treat  
16 them. I didn't understand them at first. The auditors or the  
17 accountants didn't either. Are they collectible or not  
18 collectible. So, frankly, we carried a few of them forward  
19 just to, you know, knowing they're probably not going to be  
20 collected but, you know, for the equity portion, because  
21 Edward and our own notes we created for equity. Most of them  
22 were eliminated for whatever reason. The accountants didn't  
23 know how to treat them properly, and they were carried  
24 forward.

1           Q     Let's go forward to Exhibit 120. This is the 2010  
2     audited financial statement for Superpumper, true?

3           A     Yes.

4           Q     So this is -- At this time who are the owners of  
5     Superpumper?

6           A     Snowshoe Petroleum.

7           Q     Now if I use the word unqualified opinion as it  
8     relates to an audit, what do you understand that to mean?

9           A     I understand the auditors doing -- the person doing  
10    the audit is saying there is a condition or a caveat to their  
11    report saying there are are certain things in the audit that  
12    they understand, but they don't necessarily -- they're not  
13    exactly sure or positive as to the collectability of them.  
14    That is why they are giving a qualified statement.

15          Q     In 2010 did Superpumper get a qualified or  
16    unqualified audit opinion?

17          A     A qualified opinion.

18          Q     I am showing you the second or third page which is  
19    the auditors' report 2010 audited financial statement. Are  
20    you with me?

21          A     Page three?

22          Q     Well it doesn't have page three. It is the third  
23    page?

24          A     Okay. Well, okay. Where it says auditors' report.



1           Q     Yes. It says: "In accordance with your  
2 instructions, the scope of our examination did not include an  
3 analysis of the valuation of notes receivable from related  
4 parties. (See note 9.) And by not being able to otherwise  
5 satisfy ourselves as to their evaluation as of that date?"

6           A     Yes.

7           Q     "The notes receivable from related parties comprise  
8 fifty percent of the total assets and 129 percent stockholders  
9 equity at December 31, 2010." Does that comport with your  
10 understanding?

11          A     Yes.

12          Q     "Interest earned from these notes comprises 24  
13 percent of net income during the year earned 2010." Do you  
14 see that?

15          A     Yes.

16          Q     And so then they say to you: "In our opinion,  
17 except for the effects of any adjustments that might have  
18 resulted, had we been able to analyze the valuation of the  
19 notes receivable from related parties as of September 30,  
20 2010, the financial statement referred to above represents  
21 fairly in all respects the financial condition of  
22 Superpumper." What did you understand that to mean, that last  
23 paragraph?

24          A     The one that says in our opinion?

1           Q     Yeah. That last paragraph.

2           A     Oh, it is just they're not giving -- they're saying  
3     the notes that are on the balance sheet are, they're not, you  
4     know, they're not, what is the word, giving their stamp of  
5     approval as to their collectability.

6           Q     Did you understand at the time you took over  
7     ownership of Superpumper that 57 percent of the total balance  
8     sheet assets of the company were due from affiliates?

9           A     Did I understand that? Not initially. I learned to  
10    understand it really quickly.

11          Q     Now I would like to draw your attention to the date  
12    this was signed by Gurseay Schneider April 2011. Had you  
13    worked with Gurseay Schneider prior to April to facilitate the  
14    receipt of this audit report?

15          A     Did I work with them personally?

16          Q     Yes?

17          A     No.

18          Q     Would you please to turn to Exhibit 167 which is one  
19    of the Plaintiff's exhibits. It is in evidence. We are not  
20    going to belabor this document. There are a couple of things  
21    to address. This is identified as the audit conclusions memo.  
22    It came from Gurseay Schneider. Do you understand that?

23          A     Yes.

24          Q     It is several pages long?

1           A     Yes.

2           Q     But this addresses the significant current year  
3 activities. One, it addresses the fact there was a change in  
4 ownership, right?

5           A     Yup.

6           Q     Directing your attention to the sentence that  
7 starts: "CWC was subsequently dissolved and its assets a  
8 liabilities were merged into Superpumper, Inc." Is that true?

9           A     Yes.

10          Q     "CWC's net liability 5.9 million assumed by Snowshoe  
11 Petroleum as part of the merger have been treated as deemed  
12 distributions to it owners." See that?

13          A     Yes.

14          Q     What do you understand that to mean?

15          A     That the notes carried on the books previous to the  
16 merger were treated as distributions to the owner, that being  
17 Paul.

18          Q     So the auditor gives a long paragraph explanation of  
19 the related party transactions. I would like to direct your  
20 attention to the bottom here. "Due to a scope of limitation,  
21 we were unable to satisfy ourselves as to the valuation of  
22 notes receivable from related parties at December 31, 2010."  
23 Is that consistent with your understanding?

24          A     Yes.

1           Q     Let's talk about Snowshoe Petroleum. Did Snowshoe  
2     Petroleum ever have an office in Nevada?

3           A     No.

4           Q     Where is its office located?

5           A     In Arizona. It has an office in New York, too.

6           Q     Does Snowshoe offer any services inside the State of  
7     Nevada?

8           A     No.

9           Q     Does it market services in the state of Nevada?

10          A     No.

11          Q     Does it sell products in Nevada?

12          A     No.

13          Q     Does it have any employees in Nevada?

14          A     No.

15          Q     Does it do any business with any Nevada customers?

16          A     No.

17          Q     Does it have any investments or ownership interests  
18     in Nevada?

19          A     No.

20          Q     Let's take a look at Exhibit 231. After you look  
21     at 231, let me know if you recognize the document?

22          A     Yes, I do.

23          Q     What do you recognize it to be?

24          A     A letter from Compass Bank dated September 30, 2010

1 putting Superpumper, Paul Morabito and CWC on notice that --  
2 Q Hold on. Before you do that, September 30, 2010  
3 were you a shareholder of CWC?  
4 A No.  
5 Q Prior to September 30, 2010 were you a shareholder  
6 of CWC?  
7 A No. Actually, CWC didn't exist September 30, 2010.  
8 It merged into Superpumper, so it was nonexistent.  
9 Q Let me back up. Prior to the merger, were you a  
10 shareholder of CWC?  
11 A No. A shareholder?  
12 Q Yes.  
13 A I was a shareholder. I owned ten percent.  
14 Q After the merger, were you a shareholder of Snowshoe  
15 Petroleum?  
16 A Yes, fifty percent.  
17 Q And can you describe-- sorry. Is Exhibit 231 a true  
18 and accurate copy of the original?  
19 A Yes, it is.  
20 Q Where is the original of this document being held?  
21 A The original would be with Compass Bank and with  
22 Superpumper. I am sure Superpumper has a copy, too.  
23 MR. GILMORE: Your Honor, I move for admission of  
24 Exhibit 231.

1 MS. TURNER: No objection.

2 THE COURT: Exhibit 231 is admitted.

3 (Exhibit 231 admitted in evidence.)

4 BY MR. GILMORE:

5 Q What is the significance of September 30 as related  
6 to Superpumper?

7 A As far as this document is concerned you mean?

8 Q Just general significance of the date?

9 A That is around the time that the merger occurred  
10 between CWC and Superpumper, and now Snowshoe is the owner of  
11 the company. This is the beginning of the new ownership. The  
12 new era is being ushered in as they say.

13 Q Okay. Let's talk about this letter from Compass?

14 A Yes.

15 Q It first discusses three million dollars revolving  
16 loan. What do you understand that to mean?

17 A That is the line of credit, original line of credit  
18 Superpumper had.

19 Q Then here it is addressing on the second page a  
20 three million dollar term loan?

21 A That was the term loan that was initiated in August  
22 of 2010.

23 Q Okay. I would like to direct your attention to this  
24 paragraph that starts: As a result of acknowledged events of

1 default, BBVA Compass is entitled to exercise its rights and  
2 remedies under the revolving loan document. See that?

3 A Yes.

4 Q And BBVA Compass is not obligated to make any  
5 advances available to Superpumper. What did you understand  
6 that to mean?

7 A It means they're putting us on notice they can cut  
8 us off at any time.

9 Q Okay. The paragraph above indicates they are aware  
10 Mr. Morabito acknowledges that Superpumper is in default, and  
11 in addition, Mr. Morabito has advised Compass that the events  
12 of default have been triggered by the entry of an  
13 approximately seventy-five million dollar Judgment against  
14 Morabito and the other defendants. Does that refresh your  
15 recollection as to what might have caused the default among  
16 other things?

17 A Well, yes, it is, obviously it is the Judgment  
18 against Paul which they think is five million which is  
19 actually higher.

20 Q Now please turn the page to page 442 in the bottom  
21 right corner. I will direct my finger: "In accordance with  
22 the revolving loan document, Superpumper is required to reduce  
23 the amount outstanding under the revolving line to 2.5  
24 million. Superpumper's failure to do so will result in

1 further events of default under the revolving loan document  
2 and the term document." See that?

3 A Yes.

4 Q What did you understand Compass was requiring as of  
5 September 3th.

6 A Well, let me read that again. Can you move it down  
7 again, please? No, the other way. In accordance with the  
8 revolving loan document -- basically, like I said before,  
9 they're cutting the line down to 2.5. At that time, we were  
10 pretty much maxed out at 2.4 something. You know, it is not a  
11 good day.

12 Q And did you understand that they had put some time  
13 limitations on Superpumper to cure the obligations?

14 A Yes. I don't know, I can't remember what they were.  
15 But it was pretty much immediate or close to immediate. I  
16 know in two weeks they gave us a demand, so it is within a  
17 couple weeks.

18 Q Let's turn to Exhibit 232. By October 15th who  
19 owns -- Are you a director and officer of Superpumper?

20 A October 10, 2010, yes.

21 Q Do you recognize Exhibit 232?

22 A Yes.

23 Q What is it?

24 A It is a letter from the lawyer of Compass Bank to



1 Dennis Vacco letting him know on our behalf, this is basically  
2 a demand note. They want the three million loan back, and the  
3 three million term loan back.

4 Q Is this a true and correct copy of the original?

5 A Yes.

6 Q Where is the original kept?

7 A Superpumper's office.

8 MR. GILMORE: Move for admission of 232.

9 MS. TURNER: No objection.

10 THE COURT: Exhibit 232 is admitted.

11 (Exhibit 232 admitted in evidence.)

12 BY MR. GILMORE:

13 Q By this time, October 15th, Mr. Morabito, had you  
14 engaged personally with anyone at Compass to discuss the  
15 issues of default?

16 A Oh yeah. Yes.

17 Q Who were you dealing with?

18 A Sean Hollenback and Lynn Herndon who was the head of  
19 Compass Bank for Phoenix.

20 Q And what had you sought from them financially?

21 A I just -- Well, I mean some relief. I told them, I  
22 said, you know, Edward and I bought the company. Everything  
23 is the same. Nothing has changed. They were saying, well,  
24 Paul has a Judgment. His guarantee is gone. We want you to

1 give some kind of guarantee. I said what do you want? They  
2 said if you want a three million dollar line of credit you  
3 have to put three million dollars in our bank. And that was  
4 basically the beginning of the back and forth. They wanted us  
5 to actually deposit money in their bank to guarantee the line  
6 of credit.

7 Q Is that something you were willing to do?

8 A No. I was not go to put -- I mean why would I give  
9 someone three million to give me three million back? Might as  
10 well just use my money, I wasn't willing to do that. Edward  
11 certainly wasn't willing to do that. I mean he, you know, he  
12 had other reasons for not wanting to do that. So this fight  
13 went on for the better part of a year. We didn't actually  
14 settle this until November of 2011. So it took a year and  
15 four forbearance agreements to come to the terms with the  
16 bank. They said we could keep, in this case, 2.5 million line  
17 of credit. We settled as long as Edward and I had 1.25  
18 million each in our respective banks which were verified by  
19 the bank every three months or so, that they would be happy.  
20 And but I mean it was, it was a tough, tough fight with these  
21 people. Lynn Herndon, she has to be the most brilliant woman  
22 I have met with in my life. She's actually the head of Compass  
23 Bank in Houston, Texas. Hard as nails. Super smart. Really  
24 actually fun to deal with but she'll just, she could spit

1 numbers out like nobody's business. She was really, really  
2 good.

3 Q Throughout this process in 2011, did Paul Morabito  
4 have any role in the forbearance efforts with Compass?

5 A Not really. I mean they still had him as a  
6 guarantor I believe for some reason. I don't know why. They  
7 actually weren't going to release Paul until Edward and I, you  
8 know, made our final deal with Compass. So he didn't have any  
9 role in the negotiations other than maybe, you know, somebody  
10 may have called him once or twice because he still was friends  
11 with Sean or something. I don't know. It basically was  
12 Edward and I dealing with Compass, and Lippes was representing  
13 us. Christian Lovelace had a lot of back and forth with  
14 Compass Bank.

15 Q In 2011 did Paul Morabito have any operation role at  
16 Superpumper?

17 A Nothing. No.

18 Q Did he have any decision making at Superpumper?

19 A No, nothing.

20 Q How about Snowshoe, same two questions?

21 A Nothing. No.

22 Q So let's take a look at the specifics of this  
23 Exhibit 232. Do you know who Quarles and Brady is?

24 A The legal firm that represents Compass Bank.

1           Q     Page 132 they say to Superpumper: "As a result of  
2     the acknowledged event of default, Compass is entitled to its  
3     rights and remedies." Do you see that?

4           A     Yes.

5           Q     Then they say: "Accordingly, with respect to  
6     discussion, borrower agrees as follows: Compass has no  
7     obligation to enter into any further agreement with borrower."  
8     Do you see that?

9           A     Yes.

10          Q     What did you understand that to mean?

11          A     It means they don't have to keep advancing us money  
12     on the line and they want their money back.

13          Q     So --

14          A     It is basically, you know, put up the money right  
15     away to secure the loan or we are going to close you down.

16          Q     So October 15th, did you have an agreement with  
17     Compass they were going to forebear?

18          A     I am not sure when the first forbearance agreement  
19     came into play, but it was certainly looming. They put me on  
20     notice they were, you know, I mean they didn't want to  
21     negotiate with me. It was basically pay up or get out of town.

22          Q     This says: "Compass does not waive and hereby  
23     reserves all its rights and remedies under the loan  
24     documents?"

1           A     Right.

2           Q     October 15, 2010 was Superpumper out of the woods?

3           A     No. Oh, God no. It was just the beginning. Like I  
4     said, four forbearance agreements. It went into November of  
5     2011.

6           Q     Let's go to Exhibit 80. You with me?

7           A     Yes.

8           Q     After you had made the decision to buy Paul's  
9     interest in Superpumper, did you engage anybody to assist you  
10    with the formal transaction?

11          A     Yes, the law firm of Lippes in Buffalo. Mathias

12          Q     Do you know who drafted this agreement, Shareholder  
13    Interest Purchase Agreement?

14          A     I think it was Christian Lovelace.

15          Q     You testified earlier that you agreed that the  
16    initial purchase price of Paul Morabito's share was \$1,035,094  
17    right?

18          A     That was the initial downstroke.

19          Q     Then the note continues or the document agreement  
20    continues that: "The initial purchase price will be adjusted  
21    upward based on a final appraisal." Do you see that?

22          A     Yes.

23          Q     What involvement did you have in the appraisal  
24    process?

1           A     None.  None at all.

2           Q     So it is September 30th and there is a Shareholder  
3     Purchase Agreement signed by you.  You don't yet know what the  
4     final purchase price is going to be, do you?

5           A     No.

6           Q     Why would you sign an agreement to buy Superpumper  
7     if you didn't know what the purchase price was going to be?

8           A     Edward and I sat down.  We had a pretty good idea  
9     what the value was going to be and pretty comfortable we could  
10    do this deal.

11          Q     Why didn't you just wait until you know all the  
12    pieces fell in place, the appraisal and everything else?

13          A     Because -- Before we closed, you mean?

14          Q     Yeah?

15          A     Because I wanted to show the bank, in particular I  
16    was showing the bank my true and Edward's true intention to  
17    buy this company, make it happen, make it run.  I don't want  
18    the bank to come in and seize it.  I had a good relationship  
19    with the bank in general.  But, you know, they have to go  
20    through their motions with their legal team and everything.  I  
21    knew it was going to be a fight, and turned out to be a larger  
22    fight than I thought it was going to be.

23          Q     What is your recollection as to the basis for Paul's  
24    requirement that he be paid \$1,035,094 as the initial purchase

1 price?

2 A What is my recollection of what?

3 Q How did you get to that number, \$1,035,094?

4 A That's a good question. For some reason, Christian  
5 came up with that number as a number we had to give him as a  
6 deposit. I don't know how he arrived at it. Perhaps Christian  
7 asked Paul, you know, what he wanted as an initial downstroke.  
8 I can't remember.

9 Q You don't know?

10 A I don't know.

11 Q You weren't involved in that, in arriving at that  
12 number?

13 A No, no, no.

14 Q The last sentence of this agreement says: "The  
15 parties further acknowledge that the seller may assign the  
16 principal and interest payments from the company pursuant to  
17 the note to a third party creditor." Do you see that?

18 A Yes.

19 Q What did you understand was the expectation there?

20 A Meaning that eventually Paul could assign whatever  
21 payments were due to him for the purchase of this company to  
22 whoever he wanted.

23 Q You didn't put any restrictions on Paul's ability to  
24 use this Superpumper note to satisfy the obligation?

1           A     No restrictions on it.

2           THE COURT:   Okay.  We are going to stop there for  
3     our afternoon recess.  Court's in recess.

4                     (Short recess taken.)

5           THE COURT:   Thank you.  Please be seated.

6     BY MR. GILMORE:

7           Q     Mr. Morabito, I left off talking about the  
8     Shareholder Interest Purchase Agreement whereby Snowshoe  
9     Petroleum agreed to pay Paul Morabito some certain cash and a  
10    note.  Do you see that?

11          A     Yes.

12          Q     Now there was some testimony on your direct  
13    examination about these notes, right?

14          A     Yes.

15          Q     Would you open up to Exhibit 103?  You have seen  
16    this before, true?

17          A     Yes.

18          Q     This is the note that was shown to you on your  
19    direct examination.  I think we're missing one up here.  Do  
20    you have it?  There it is.  My fault.  103 please.  You  
21    testified earlier that this was a note made in favor of Paul  
22    Morabito by Snowshoe Petroleum, right?

23          A     That's correct.

24          Q     In the original amount of \$1,462,000?



1           A     That's correct.

2           Q     Now you were also shown Exhibit 105 which was  
3 referred to as the Successor Promissory Note dated February 1,  
4 2011. Do you see that?

5           A     Yes.

6           Q     Why are there notes being executed in February 2011  
7 that deal with the original purchase price Snowshoe was going  
8 to pay to Paul?

9           A     Well, because in February 2011 we realized Paul had  
10 kept \$939,000 of Snowshoe/Superpumper's money, therefore, we  
11 wanted a credit for it. So that is what is going on here. We  
12 are making adjustment to the minutes.

13          Q     To the note? By February 11th this was -- What did  
14 you understand about Paul's intent to return the \$939,000 that  
15 he had taken from the Compass terminal?

16          A     He wanted to keep it.

17          Q     What had you done with the lion's share of your  
18 portion of the three million dollar term line?

19          A     I put it back into the Superpumper's bank account.

20          Q     Did that have any effect to the debt Superpumper was  
21 carrying when you paid your amount?

22          A     When I put it back in the bank?

23          Q     Yeah?

24          A     It reduced it somewhat. Well, it reduced the line.

1 We used it on line. It didn't affect the overall debt, but it  
2 made things, you know, easier.

3 Q When we were talking about a revolving line of  
4 credit, you testified earlier it was almost maxed out?

5 A On closing, on September 30, or 29th, yes.

6 Q You saw a letter from BBVA Compass that spoke to a  
7 reduction in the line. Did you see that?

8 A Right.

9 Q So did you contribute any money to pay down the  
10 revolving line of credit?

11 A Yes.

12 Q What was that payment?

13 A It was \$659,000.

14 Q Who else made that payment?

15 A Edward, same amount.

16 Q What was the end result of those payments as it  
17 related to the line of credit?

18 A It injected 1.3 million. \$1,318,000 into the line  
19 of credit. Now it brought the line of credit down to  
20 somewhere, if I look at that date again, I think it brought  
21 the outstanding balance maybe 1.4, 1.3. We have now 1.1  
22 million dollars of breathing room to operate the business.

23 Q So February 1, 2011?

24 A Yes.

1           Q     Had there been any payments by Snowshoe Petroleum to  
2 Paul pursuant to this note?

3           A     Pursuant to which note?

4           Q     The 1.4 million dollar note. Go to Exhibit 103?

5           THE COURT: 103?

6 BY MR. GILMORE:

7           Q     103?

8           A     We did make a few payments on that note.

9           Q     That note was originated in November?

10          A     Right.

11          Q     What we're going to have to do to make sense of this  
12 is flip between 103, 104 and 105, okay?

13          A     Okay.

14          Q     I will do my best to keep it straight. The original  
15 purchase money note -- that is not a good term. Let's call  
16 this Snowshoe Petroleum's note for 1.4 million dollars?

17          A     Right.

18          Q     Your testimony is there were some payments made to  
19 Paul between November 21st 2010 and February 2011?

20          A     Yes.

21          Q     And so explain to us February 2011. What did you  
22 understand about Paul's intention to repay the \$939,000?

23          A     He didn't want to repay it. He wanted to keep it.  
24 He was keeping the money. He said, I'm going to keep this

1 money.

2 Q What was your response to that?

3 A Well, if you are going to keep \$939,000, the  
4 company's money, we want a credit against that 1.4 million  
5 dollar note.

6 Q And so let's look at a document?

7 MR. GILMORE: The E.L.M.O. binder is missing a copy.

8 MS. TURNER: She made copies of that. Here, this  
9 one is clean. Teresa made copies of this agreement. We  
10 couldn't figure out why. Now we know.

11 MR. GILMORE: Okay. I will add it.

12 MS. TURNER: You can have that one. That is fine.

13 BY MR. GILMORE:

14 Q This was also partially my fault. I left it out in  
15 the first version. Fault all around I guess. Okay. Do you  
16 have Exhibit 244 in front of you?

17 A Yeah.

18 Q So in your direct examination you were shown the  
19 Successor Promissory Notes?

20 A Right.

21 Q You were not shown, I will pull it out, not shown  
22 Exhibit 244 which is admitted. It is not that easy to read,  
23 but I think this is an Assignment Agreement dated the first  
24 day of February between Superpumper as the assignee and Paul

1 Morabito as the assignor and Snowshoe Petroleum referred to  
2 here as Snowpack. Do you agree?

3 A Yes.

4 Q It gives some recitals: "The parties hereto are  
5 parties to a certain term note dated September 1, 2010 in the  
6 principal amount of \$939,000." Do you see that?

7 A Yes.

8 Q So does that perhaps explain why Exhibit 105 is  
9 called a Successor Promissory Note instead of simply an  
10 original Promissory Note?

11 A Yes.

12 Q Now back to 244. "Whereas assignor" -- that is Paul  
13 Morabito, right?

14 A U-huh.

15 Q -- "is a holder under a certain Promissory Note  
16 dated November 21 in the principal amount of 1.4 million  
17 dollars."

18 A Right.

19 Q "However, the assignor, Paul Morabito, wishes to  
20 assign, and the assignee which is Superpumper, desires to  
21 assume payments in the principal amount of \$939,00." Explain  
22 what is going on here.

23 Q Because Paul is holding \$939,000 in cash, Snowshoe  
24 would like a reduction in that 1.4 million note to the tune of

1       \$939,000. So we are going to reduce that 1.4 million dollar  
2       note down to four hundred, what is it? Which one is it? 106,  
3       105, \$939,000 off that 1.4, and make a new note. The money  
4       was owed to Superpumper because the purchase is on the  
5       Snowshoe side. Superpumper is assigning the note to Snowshoe.  
6       Snowshoe technically owes Superpumper \$939,000.

7           Q       Why not do a straight offset?

8           A       It is two different entities.

9           Q       I think this explains it. Successor Notes: "On the  
10       date hereof the Successor Notes to the Snow Pet note, be  
11       delivered to assignee." Which is Superpumper?

12          A       Right.

13          Q       "And assignor" which is Paul "by Snow Pet in the  
14       principal amount of \$939,000 and \$492,000." Do you see that?

15          A       Yes.

16          Q       There are two notes that replace the original note  
17       of 1.4 million, true?

18          A       Yes.

19          Q       Will you turn to Exhibit 126. You have seen 126  
20       before, true?

21          A       I believe so.

22          Q       And there was some discussion -- now it is sideways.  
23       I can't make it fit -- there was some discussion that your  
24       statement of assets and liabilities identifies fifty percent

1 interest in Snowshoe Petroleum at 4.5 million dollars. Do you  
2 see that?

3 A Right.

4 Q That same exact number shows up on Mr. Bayuk's  
5 statement, true?

6 A Right.

7 Q Where did that number come from?

8 A Gursey was requiring us to put a personal statement  
9 of assets and liabilities together in February 1, 2011. So,  
10 you know, I quickly put together a quick balance sheet as did  
11 Edward. But the 4.5 would have come from the balance sheet of  
12 Superpumper. So you want me to break it down?

13 Q Explain what you mean by that.

14 A The balance sheet would show what we paid for the  
15 company, what the company was bought for or the value of the  
16 company and also show the notes on the receivable side that  
17 Edward and I respectively initiated.

18 Q So while you have got that in front of you. Go back  
19 to 120. Exhibit 120?

20 A Uh-huh.

21 Q So at year end 2010, just for an example, year end  
22 2010 end, this balance sheet would identify the total assets  
23 and the total liabilities, right?

24 A Yeah, I guess it would.

1           Q     Is it your testimony that the 4.5 million dollar  
2     number came from the company's balance sheet?

3           A     Yeah, the internal company balance sheet. I would  
4     have been in the office probably and said to our accounting  
5     staff, what is the balance sheet looking like? What are the  
6     notes? What is the company valued at? I would have pulled  
7     that number from the balance sheet in-house.

8           Q     Is the 4.5 million dollar number attributed to --  
9     Did you come up with it?

10          A     Yes.

11          Q     Did you provide that number to Edward?

12          A     Yes.

13          Q     Now, did you understand that the 4.5 million dollar  
14     value, the 4.5 million dollar valuation put on here  
15     included -- strike that. Did you understand that the 4.5  
16     million dollar valuation included things like due from  
17     affiliates?

18          A     Well, yeah, yes it would, because that is where the  
19     notes would be parked, right.

20          Q     When we looked at the qualified --

21          A     Actually, no, it wouldn't be due from affiliates.  
22     It would be due from shareholders. A due from, it is due from  
23     someone. It wouldn't be due from affiliates.

24          Q     When we looked at 2010 audit, Gurseey Schneider



1 indicated something to the effect that a substantial portion  
2 of the company's assets was comprised of these related party  
3 notes, right?

4 A Uh-huh. Yes, that's correct.

5 Q When you prepared that 4.5 million dollar number,  
6 did you include the shareholder notes as part of your  
7 computation?

8 A Yes.

9 Q Now do you understand, in your mind is there a  
10 distinction between what the assets net of liabilities that is  
11 reflected on a balance sheet as opposed to the concept of fair  
12 market value?

13 A The two aren't related at all. There is no --

14 Q When you created this number 4.5 million dollars  
15 what was your intention to reflect?

16 A I was just, it was probably, you know, a quick  
17 calculation to make the auditor happy. They probably called  
18 and said, hey, Sam, we're finishing up the audit. You have  
19 got to give me a balance sheet, personal balance sheet,  
20 personal financial statement rather as of whatever that date  
21 was, and I quickly ran something down.

22 Q Was it your intention to mislead the auditors?

23 A No, not at all. No.

24 Q Now do you see on that exhibit your personal

1 statement of assets and liabilities, that there are no  
2 significant liabilities on your personal balance sheet?

3 A That's correct. What was the number again?

4 Q I am sorry, it is 126.

5 A Okay.

6 Q So if you look at 126, you have no liabilities  
7 associated with anything that appears to deal with Snowshoe  
8 Petroleum, right?

9 A That's correct.

10 Q But you did testify that in December 2010 you had  
11 executed a term note?

12 A Yes.

13 Q Okay. So you were obligated-- I am sorry. Why isn't  
14 the term not reflected on your balance sheet?

15 A It was a mistake on my part. Again, this is  
16 something that I put together really quick just to satisfy the  
17 audit people. I wasn't presenting this to a bank. You know,  
18 it wasn't for financing purposes or anything. It was let's  
19 get this audit done. I was new to Gurseyschneider and their  
20 procedures, so it is like they kind of caught me off guard. I  
21 said okay, I will get it together for you, here you go.

22 Q Help me do some math?

23 A Right.

24 Q If between your and Edward's share of fifty percent

1 of Snowshoe Petroleum aggregated 4.5 million dollars, what do  
2 you come up with based on your number for the value of the  
3 company?

4 A Well, you take nine million less whatever the notes  
5 were.

6 Q And what were the notes total?

7 A At that time, probably six million. Close to six  
8 million dollars.

9 Q So this valuation--

10 MS. TURNER: Leading?

11 MR. GILMORE: I am sorry.

12 BY MR. GILMORE:

13 Q So if you do the math, between these two numbers,  
14 what do you come up with net of debt?

15 A Approximately three, you know, three or 3.3,  
16 something like that. I mean I don't know. I would have to go  
17 back and see what the notes were at February 1st on the  
18 original balance sheet at Superpumper. I am guessing they  
19 were probably, you know, at least five million for Edward and  
20 I, and whatever else was on there, so close to six million  
21 dollars.

22 Q All of that netted out, if all that is netted out,  
23 what did you determine? Can you determine what the value  
24 would be net of all those notes?

1           A     Approximately three, 3.3, something like that.

2           Q     Okay. Please to go Exhibit 112? I am sorry, 248.

3           A     I have got a broken thing-a-majigger here. What was

4     it, 248?

5           Q     Those are brand new. Let me know when you are there?

6           A     Okay. Here we go. All set.

7           Q     Do you recognize 248?

8           A     Yes.

9           Q     What do you recognize it to be?

10          A     It is the internal Superpumper accounting of capital

11     advances that Edward and I each put into the company.

12          Q     Now are you the one that acquired this document for

13     the original production?

14          A     Yes.

15          Q     Who was it acquired from?

16          A     The internal accounting of Superpumper.

17          Q     Is this a printout from the company's accounting?

18          A     Yes.

19                MR. GILMORE: Your Honor, I move for admission of

20     248.

21                MS. TURNER: Your Honor, there is a lot more than

22     just a printout. There is handwriting and then there is Sal

23     Morabito's bank statements attached so it.

24                MR. GILMORE: I will lay some more foundation. Yeah,

1 she's right.

2 BY MR. GILMORE:

3 Q On 248, do you recognize any handwriting?

4 A Yeah, it is my handwriting.

5 Q Attached to 248 are some other documents. Can you  
6 review then and identify them?

7 A That is my, I believe it is my personal Wells Fargo  
8 account and my personal Belo Harris.

9 MS. TURNER: With that, I have no objection.

10 MR. GILMORE: Okay. Thank you.

11 THE COURT: You're offering Exhibit 248. It is  
12 admitted.

13 (Exhibit 248 admitted in evidence.)

14 BY MR. GILMORE:

15 Q What does 248 show us?

16 A It shows the Capital account, Capital advance  
17 account of Superpumper on behalf of Edward and myself, i.e.  
18 the money to be put into the company.

19 Q This version is even worse than the other ones. But  
20 let's see if we can get through this. 9-30-2010 it shows EBITA  
21 \$659,000 do you see that?

22 Q Do you know what that refers to?

23 A His \$659,000 that matched my \$659,000 we put in the  
24 bank account to pay down the line of credit.

1           Q     Do you remember I asked you why there was no note  
2     associated with the \$659,000?

3           A     No, I don't remember.

4           Q     When you took the money from the Compass terminal?

5           A     Right.

6           Q     Paul Morabito signed a note for \$939,000 but you  
7     didn't, did you?

8           A     No.

9           Q     Do you know why you didn't sign a note?

10          A     Because I planned on putting it back.

11          Q     So this \$659,000, is this reflective of money you  
12     put into Superpumper?

13          A     That looks upside down to me.

14          Q     It is not upside down?

15          A     That is \$650,000 I put in. There is a corresponding  
16     wire credit there.

17          Q     And --

18               MR. GILMORE: Excuse me?

19               MS. TURNER: You are testifying is what he said.

20               MR. GILMORE: I can hear him talk.

21               MS. TURNER: Sorry. He said you were testifying.

22     BY MR. GILMORE:

23          Q     Do you see the next entry, January, 2011?

24          A     Yes.

1 Q Capital Advance fifty thousand. What is that?

2 A That is more money put into Superpumper.

3 Q What are all the subsequent entries?

4 A All the money I put into Superpumper.

5 Q Do you know, as the officer and director of

6 Superpumper, after the merger what these numbers reflect at

7 the top where my finger is?

8 A The top number, that is the money Edward put into

9 the account.

10 Q What are the subsequent documents to this exhibit?

11 A They are my bank statements and copies of wires from

12 my personal bank account that went into the Superpumper bank.

13 Q Why did you provide these documents?

14 A To show that the money came from my own personal

15 account.

16 Q So not including the \$659,000 you used to pay down

17 the Compass line, how much money did you contribute in 2011 to

18 Superpumper?

19 A Looks like one million dollars, at least one million

20 dollars. There were other checks that don't even show here,

21 at least a million dollars.

22 Q How much did Paul Morabito contribute to Superpumper

23 in 2011?

24 A Zero.

1           Q     Why were you contributing monies to Superpumper at  
2 all?

3           A     Because to keep the bank happy. It is all about  
4 making the bank happy, because we were running short of cash.  
5 We don't have the operating line, and we lost 500,000 day one  
6 on the operating line, and we needed to keep the bank balance  
7 within -- and Compass actually requested us to put some money  
8 in, I believe. I am basically trying to show Compass that we  
9 are, you know, we are committed to keeping this company  
10 afloat.

11          Q     I would like to show you what has been admitted as  
12 Exhibit 158. You don't have to turn to it, I can just show  
13 you to save the time. Do you recognize this document?

14          A     2011 tax return for Snowshoe.

15          Q     Okay. How did Superpumper and its qualified --  
16 sorry -- Snowshoe and its qualified successor, Superpumper, do  
17 in 2011.

18          A     Lost a million one one one one.

19          Q     And did you receive a K-1 in 2011?

20          A     I believe so, yes. It should be there, yes.

21          Q     Is this your -- This is Mr. Bayuk's K-1. This is  
22 your K-1?

23          A     Yes.

24          Q     So did you report a loss?



1           A     Yes.

2           Q     Explain this?

3           A     That is the interest on the notes. So I am being  
4 charged interest on those notes that were carried on the  
5 books.

6           Q     Which notes?

7           A     The equity notes, the ones, personal notes from me  
8 to Superpumper, and likewise Edward's note and my note. We  
9 were charged interest per the note agreement.

10          Q     Now there was -- In 2011 were you booked any  
11 distributions as a shareholder of CWC?

12          A     I don't recall. We might have taken some  
13 distributions but I honestly don't recall. I mean if they  
14 were, they were probably small, I mean in relation to the  
15 money we put in. They were a lot less than the money we put  
16 in, at least a million bucks. We didn't take a million bucks  
17 out. We might have been maybe \$100,000, \$20,000. I am  
18 guessing right now.

19          Q     Do you understand if any due from affiliates notes  
20 associated with you were written off in 2011?

21          A     I think we were still carrying some of the  
22 affiliated notes.

23          Q     Would you turn to Exhibit 132? While we are there,  
24 how did Superpumper do financially in 2012?

1           A     It lost money in, 2012, 2013. So '10, '11, '12 we  
2 lost money then started to make money in '14 and '15.

3           Q     I believe 132 has been admitted.

4           THE COURT: I do not show it admitted.

5           MR. GILMORE: This is one of Plaintiff's exhibits.  
6 I will offer it. Do you have any objection.

7           MS. TURNER: No. You can get any of our exhibits in  
8 and I will stipulate.

9           MR. GILMORE: I figured that is what you would say.

10          THE COURT: You're offering 132?

11          MR. GILMORE: I am.

12          THE COURT: There is no objection?

13          MS. TURNER: No objection. Your Honor.

14          THE COURT: Exhibit 132 is admitted.

15                 (Exhibit 132 admitted in evidence.)

16          MR. GILMORE: It may surprise you, Judge. A lot of  
17 those were jointly offered originally when they merged the  
18 exhibit list.

19          THE COURT: You just forgot to stipulate to them?

20          MR. GILMORE: Well, you never know how they are going  
21 to be used.

22          BY MR. GILMORE:

23                 Q     Mr. Morabito, I am handing you -- I am showing you  
24 an exhibit marked 132 which is an e-mail from Paul Morabito

1 and Christian Lovelace and others. The subject is Nella  
2 financial proposal?

3 A Right.

4 Q Do you know if you received a copy of that e-mail?

5 A No, I didn't.

6 Q There are a number of attachments to this e-mail,  
7 but they don't appear to be included in this exhibit. Do you  
8 have any idea what those might be?

9 A No.

10 Q Let's identify a couple of terms. Have you ever  
11 heard the name Ceberus?

12 A Yes.

13 Q What is Ceberus?

14 A I believe it is an investment bank.

15 Q Now this is an e-mail from Paul dated April 15,  
16 2011?

17 A Correct.

18 Q What is the condition of Superpumper's debts with  
19 BBVA Compass as of April, 2011?

20 A I am still in the million dollars of a Forbearance  
21 Agreement war with them. The things aren't great at  
22 Superpumper. We are still in a downturn economy. We are  
23 keeping our heads above water but not doing wonderful. Things  
24 weren't that great at the time back in 2011.

1           Q     Paul Morabito has an e-mail he is sending to his  
2     lawyers: "Attached is an initial sixty-five million dollar  
3     loan offer from Cerberus. They made it out to CWC, but I am  
4     having it changed to Snowshoe Petroleum, Inc." See that?

5           A     Yes.

6           Q     Are you aware of Snowshoe Petroleum ever applying  
7     for sixty-five million dollars from Cerberus?

8           A     No. It would have to go through me. I didn't know  
9     anything about it.

10          Q     Did you have an opinion in April 2011 whether  
11     Snowshoe Petroleum had any credit worthiness?

12                 THE COURT: I am sorry, I couldn't hear you.

13                 BY MR. GILMORE:

14          Q     Did you have an opinion in April 2011 as to the  
15     credit worthiness of the company you ran, Superpumper?

16          A     Um, it wasn't very good. I am in a Forbearance  
17     Agreement. I am actually trying to seek other financing. I'm  
18     getting turned down by every bank in Scottsdale/Phoenix. It is  
19     certainly not a great company to go ask for money. It is a  
20     difficult time.

21          Q     So then Paul says: "This loan, coupled with the 2.7  
22     million dollar sale leaseback from Getty Realty would allow  
23     Snowshoe Petroleum to acquire Nella Oil Company." Do you see  
24     that?

1           A     Yes.

2           Q     What do you understand this first sentence to mean  
3 with respect to what Paul's mindset is?

4           A     That is my brother. He's a larger than life  
5 promoter. He's an idea guy. He's out trying to put deals  
6 together. That is fine. He's not copying me. I would love to  
7 be able to go out raise sixty-five million dollars, buy a  
8 bunch of things. It is just not reality for me as a small  
9 operator in Scottsdale. I don't know how to generate the  
10 money. It doesn't hurt to dream. It is always good. That is  
11 how we got there the first time. Paul is a big idea guy. I  
12 am a small idea guy. A boots on the ground manager sort of  
13 guy. So go to it, but show me the money. You want to do a  
14 deal? No problem. All ears, but show me how it is done.  
15 This is not a very good time in my wife to be honest with you.  
16 It was difficult from the end of 2010 right through basically  
17 2013 at Superpumper. We were struggling.

18          Q     What do you understand to be the gross size of the  
19 proposed transaction here with the combination of Cerebus and  
20 Getty Realty?

21          A     Looks like 137 million, maybe 140 million.

22          Q     Do you know who Getty Realty is?

23          A     Not really. I understand it is a RET, but I don't  
24 know who they are.

1           Q     Do you know what a sale lease-back method of  
2     financing is?

3           A     Generally speaking.

4           Q     Generally speaking what is it?

5           A     You buy the underlying real estate in a business or  
6     a company and you turn around to sell it to a RET and lease it  
7     back.

8           Q     In that proposal, hypothetically, like this one,  
9     would you need to have 72 million in cash to do a sale  
10    lease-back?

11          A     I don't know. That is way above my pay grade. I  
12    have to sit there and, you know, figure that one out. Sure,  
13    anything can be done, but at this time it is pie in the sky.  
14    But that is what I love about my brother. That is why I have  
15    been able to enjoy all these businesses and experiences over  
16    the last thirty years, twenty years. That is who he is, so.

17          Q     Did you ever come to an understanding that there was  
18    an agreement between Snowshoe Petroleum and Nella Oil or any  
19    of the other entities identified on this e-mail?

20          A     No. No.

21          Q     Did Snowshoe Petroleum ever get a loan from Cerbeus?

22          A     No.

23          Q     Did Snowshoe ever do a deal with Nella Oil?

24          A     No.

1           Q     Now had you, I am asking about you personally, ever  
2 expressly authorized Paul to go off and try to make a deal on  
3 Snowshoe Petroleum's behalf?

4           A     No, I didn't give him carte blanche permission to go  
5 work deals on behalf of Snowshoe. But that being said, he's  
6 my brother. I know who he is. I know his character. He has  
7 all the capability in the world, brilliance in the world to  
8 put any deal together. Any deal he brought to me I am  
9 absolutely going to look at it. I will entertain any of his  
10 thoughts even then, even today. He's a bright, bright guy. I  
11 am not going to -- just because he has a Judgment and he has  
12 problems, he's still my brother. I love him. He's probably  
13 one of the smartest guys I have met in my life.

14          Q     April 2011 did Paul Morabito have an active role in  
15 the operations of Superpumper?

16          A     No.

17          Q     What is Superpumper Properties?

18          A     It is a company that owned Car Locks in northern  
19 Nevada.

20          Q     And after the oral Judgment, did you make a decision  
21 as -- strike that. I will ask another question. At the time  
22 of the oral Judgment did you have an ownership interest,  
23 membership interest in Superpumper Properties?

24          A     Yes. I believe I owned twenty-five percent of that

1 company.

2 Q Okay. What was Superpumper Properties' business  
3 model?

4 A It owned three Car Locks in Nevada and it leased  
5 them back to Western Energetics/Nella Oil, I believe.

6 Q Did it receive income?

7 A Yes.

8 Q Was it cash flow positive?

9 A I believe so, yes.

10 Q When the decision was made after the oral Judgment  
11 to divide your assets, what did you consider with respect to  
12 your ownership stake in Superpumper Properties?

13 A I considered it was a good investment. Paul for  
14 some reason said he would like to own it because he wanted to  
15 own Nevada assets. I said sure if you want to buy it out, buy  
16 it out. We had a recent appraisal on it. I said if you want  
17 to buy my share, go ahead.

18 Q Do you recall what the valuations were you were  
19 referring to?

20 A I remember I got a check -- The valuation, it was  
21 probably 1.5 or 1.6 million dollars, I am guessing with like a  
22 million dollars debt, something like that.

23 Q I would like to show you a document to refresh your  
24 recollection. If I showed a document, would that refresh your



1 recollection as to the appraised value?

2 A Sure.

3 Q Please take a look at 253. Spend a moment and look  
4 through the pages of 253 and let me know when you're done. Has  
5 reviewing that document refreshed your recollection as to the  
6 appraisal you were talking about?

7 A Yeah. Yeah. Those are the three properties in  
8 Elko.

9 Q I don't want you to describe the document. I just  
10 want you to put the document away. Now you have had your  
11 recollection refreshed, what is your recollection as to the  
12 value of the Card Locks at the time, roughly about the time  
13 you decided to -- don't look at the document. You just  
14 refreshed you recollection?

15 A Sorry. The three properties are worth somewhere I  
16 believe \$1,650,000, something like that.

17 Q Okay. And so was your portion of Superpumper  
18 Properties ever purchased from you?

19 A Yes.

20 Q In exchange for what?

21 A I think \$146,000, something like that, \$145,000.

22 Q Will you turn to Exhibit 254. Do you recognize this  
23 document?

24 A Yes, it is a wire.

1 Q Just describe the document first?

2 A It is my personal Bank of America -- Actually it is  
3 a wire receipt. It is a receipt for a wire.

4 Q How did you acquire that document?

5 A From my bank.

6 Q Is that a true and correct copy of the original?

7 A Yes, it is.

8 MR. GILMORE: Move for admission of 254.

9 THE COURT: I am sorry, I thought you said 252.

10 MR. GILMORE: I might have misspoke.

11 THE COURT: Were you looking at Exhibit 254?

12 THE WITNESS: Yeah.

13 THE COURT: Any objection?

14 MS. TURNER: No, Your Honor.

15 THE COURT: 254 is admitted.

16 (Exhibit 254 admitted in evidence.)

17 BY MR. GILMORE:

18 Q What are we looking at here, Mr. Morabito?

19 A It is a copy of my personal Bank of America, it is a  
20 wire receipt for a wire I received at my personal Bank of  
21 America account.

22 THE COURT: You are showing him 254?

23 MR. GILMORE: I am showing him 254.

24 THE COURT: You just said what is this.

1 BY MR. GILMORE:

2 Q Exhibit 254, there is actually two entries. What is  
3 going on with that?

4 A It is the wire and the \$25 wire fee. It came from  
5 Paul Morabito.

6 Q I may be done for now. Couple more maybe. Just one  
7 more. Would you go to Exhibit 119?

8 A 119. All right.

9 Q Are you there?

10 A Yeah. I am destroying everything, but I am there.

11 Q You bought them. They were brand new.

12 A Okay.

13 Q We can fix it during the break. 119, go to the last  
14 two pages. This has been admitted into evidence. Go to the  
15 last two pages only?

16 A Okay.

17 Q I have got it up on the screen.

18 A Okay.

19 Q Do you recognize this document?

20 A Yes. Those were -- These are Superpumper budgets we  
21 were required to submit for someone, I forget who. I think it  
22 might have been for McGovern. I think it was for McGovern.

23 Q When you say required to submit, tell me what you  
24 mean?

1           A     One of your Interrogatories or requests, that is  
2     what I was told to do was give you Superpumper's budget  
3     information.

4           Q     Okay. How were these numbers compiled?

5           A     Well, they were compiled from the Superpumper  
6     office.

7           Q     What do they reflect? For example, pick a number  
8     where my finger is. Cigarettes?

9           A     It was the cigarette sales for 2014.

10          Q     Are these actual sales?

11          A     Yes, they are actual sales. These are actually  
12     historical budgets, actually. It says for 2010, 2011, 2012,  
13     2013, 2015 actual sales, actual gallons, actual cigarette  
14     sales. Everything is actual.

15               MR. GILMORE: I will pass the witness.

16               THE COURT: Redirect.

17               MS. TURNER: Yes, Your Honor.

18

19                       REDIRECT EXAMINATION

20     BY MS. TURNER:

21           Q     Okay, Mr. Morabito, you indicated that there was  
22     fifty/fifty ownership of Snowshoe Petroleum at the time it was  
23     formed?

24           A     That's right.

1           Q     With you and Ed Bayuk, and you said that you funded  
2     the Lippes law firm that \$560,000 and that that was your  
3     payment from your bank account to the Lippes firm. We already  
4     establish that?

5           A     Yes.

6           Q     Now you testified in response to Mr. Gilmore's  
7     questioning that there was no capital equalization from Bayuk.  
8     There was no capital contribution from Mr. Bayuk, right?

9           A     Not initially. Not initially.

10          Q     You are saying Ed Bayuk made a subsequent capital  
11     contribution to match your \$560,000.

12          A     I believe so. It wasn't immediate, but I believe he  
13     did, yes.

14          Q     So the payment to the Lippes firm was in 2011?

15          A     Uh-huh.

16          Q     Is that a yes?

17          A     Yes.

18          Q     November of 2011, certainly by the end of 2011 there  
19     was nothing to indicate any increase in your capital account  
20     on the books of Snowshoe Petroleum, correct?

21          A     That's correct.

22          Q     And in 2012, there was nothing on the books of  
23     Snowshoe Petroleum to show that you had made a contribution of  
24     \$560,000?

1           A     I'm not sure. The thing is, we were changing  
2     accountants back in those days. We had Dave Darata '10, '11,  
3     and '12, then transferred over to Stan Bernstein the end of  
4     '12, '13. So I think there was a lapse. It did get booked  
5     but it got booked late. You're right, it got booked late.

6           Q     It wasn't in 2010. It wasn't in 2011. It wasn't in  
7     2012. And you are saying it was subsequent to that that there  
8     was something placed on the books of Snowshoe Petroleum?

9           A     It was after the date I put the money in. It was  
10    definitely booked. I can't tell you when. I made an issue  
11    about that with Stan. That became a big issue with my  
12    accountant, Stan Bernstein, because he just, you know, with  
13    the transition from Darata back to Stan Bernstein, he sort of  
14    dropped the ball.

15          Q     Was an amended return ever prepared for 2010, pardon  
16    me, 2011 when the payment was made and you say that it was a  
17    capital contribution?

18          A     There was an amended return made for 2011, yes.

19          Q     Not an amended return that provided recognition of  
20    \$560,000 being added to your capital account?

21          A     I am not sure when it was booked. I can't tell you  
22    that. But there was an amended 2011 return, I know that.

23          Q     Yeah. Let's go to that return. 158. Your counsel  
24    showed it to you, but I don't think it was admitted.

1 THE COURT: 158 was previously admitted.  
2 MS. TURNER: It was by stipulation?  
3 THE COURT: Yes.  
4 MS. TURNER: Okay. Then that makes sense.  
5 BY MS. TURNER:  
6 Q Now, if we go to your K-1, if you go to Superpumper  
7 262 bottom right-hand corner.  
8 A Uh-huh.  
9 Q I don't say this to be rude, but is that a yes?  
10 A Yes. Yes.  
11 Q That is for the Court Reporter?  
12 A Sorry about that. I tend to do that a little bit  
13 Q Uh-huh can be negative or positive, so it doesn't  
14 come out in the transcript. Okay. 262, that is your K-1 in  
15 2011 on the amended U.S. Income Tax Return for Snowshoe  
16 Petroleum?  
17 A Is this the Amended one?  
18 A Go to page 1. I think it says amended.  
19 A Okay. That is fine.  
20 Q And then if you go to, it is number 253?  
21 A Yes.  
22 Q You see that Ed Bayuk's K-1 is the same except for  
23 an extra dollar when the numbers were split, but they are  
24 substantially the same in the Amended Return for 2011. Do you

1 see that?

2 A Yes.

3 Q So not only is there not any e-mail, letter or other  
4 correspondence referencing this \$560,000 to be applied to the  
5 Superpumper, pardon me, the Snowshoe obligation to Paul  
6 Morabito, but there is nothing reflected in the 2011 Amended  
7 Tax Return either, correct?

8 A I don't know that for sure, but I will take your  
9 word for it. I wouldn't know where to look for it. I am not an  
10 accountant, but if you say so.

11 Q Sir, do you know any place else in the Amended Tax  
12 Return that reflects \$560,000 paid to Snowshoe Petroleum or  
13 for its benefit to Paul Morabito?

14 A Do I know where that would sit on this tax return?

15 Q Yes?

16 A I couldn't tell you where it would sit.

17 Q And you said you prepared or you were familiar with  
18 the balance statements, the income statements that we saw  
19 earlier?

20 A Yes.

21 Q There is no reference to \$560,000 being paid by you  
22 for the benefit of Snowshoe Petroleum, correct?

23 A I don't know, because we looked, remember we looked  
24 at that capital account, internal capital account of



1 Superpumper. I am not sure if it shows up there, if there was  
2 a credit on that. I don't know. Again, I am not a  
3 bookkeeper. I don't know how the books -- I do know that Stan  
4 made an adjustment on that and I made a point to ask him, it  
5 might not have been in 2011, made a point to ask him to  
6 correct whatever capital imbalance Edward and I may have going  
7 forward. So that was corrected. I can't tell you the time,  
8 place or year that was done.

9 Q Not in the year, but the payment was made for  
10 certain?

11 A I can't say that for sure.

12 Q Now you mentioned that Paul Morabito wasn't the same  
13 after the judgment and the surgery?

14 A Correct.

15 Q You don't mean to say that Paul Morabito's surgery  
16 had any connection to the Herbst judgment?

17 A No, no, no.

18 Q Mr. Morabito's surgery was gastro bypass?

19 A Exactly, yes.

20 Q Now you described your motivation for the  
21 transaction that occurred on September 30, 2010. You knew  
22 there was a lender, Compass?

23 A Right.

24 Q And you knew that Paul, you and Ed had taken a

1 substantial majority of the three million dollar loan?

2 A Yes.

3 Q And taken them to your personal accounts?

4 A Yes.

5 Q And you knew there was a landlord, right?

6 A A landlord? A landlord where?

7 Q A landlord, one or more landlords for the  
8 Superpumper Properties?

9 A Yes.

10 Q And so you described the obligation to get together  
11 with the lender and fix things?

12 A Correct.

13 Q And to go to the landlord and fix things. That is  
14 something that any buyer would anticipate having to do when  
15 they purchase an 80 percent interest in a company, right?

16 A You don't normally buy a company that is in default  
17 the day you buy it. I mean that is an unusual circumstance.  
18 You know, Superpumper is a difficult company. You're dealing  
19 with a RET that owns six of your stores, and they are  
20 extremely high market, way above market rents. I knew that  
21 going in. I mean there is a lot of challenges here.

22 Q Now before you acquired Paul Morabito's interest on  
23 September 30th, there was zero capitalization that you had  
24 done as a shareholder of CWC, correct?

1           A     No. That is not true. I did put some money into  
2     CWC. I can't tell you how much, but I did put money into CWC.

3           Q     So it was not unusual to take distributions subject  
4     to recapitalization?

5           A     Out of the CWC.

6           Q     Out of the CWC?

7           A     For myself?

8           Q     Yes?

9           A     I never took any distributions from CWC.

10          Q     The \$939,000 distribution was the first time?

11               MR. GILMORE: Objection to the use of the term, legal  
12     term of art. It is ambiguous.

13     BY MS. TURNER:

14          Q     The \$939,000 dollar payment you did not characterize  
15     that as a contribution?

16          A     No.

17          Q     Had you taken prior loans from CWC?

18          A     No.

19          Q     Now your counsel went through Exhibit 248 with you  
20     describing the money that had been recapitalized provided to  
21     Snowshoe Petroleum after you acquired your interest in  
22     Snowshoe Petroleum. Do you recall that?

23          A     Yes.

24          Q     About 1.6 something million from you, about the same

1 from Mr. Bayuk?

2 A Correct.

3 Q When you add those together, it is about 3.3 million  
4 total, right?

5 A Yes.

6 Q And that is about \$300,00 more than the three  
7 million dollar loan that went to you, Paul and Ed?

8 A Yes.

9 Q Now the three million dollar term loan, that was  
10 actually a loan from August, the documents were executed in  
11 August of 2010, correct?

12 A Yes.

13 Q And Paul and you and Edward, you agreed you were  
14 going to pay that money back?

15 A Yes.

16 Q But when it became apparent that Compass was going  
17 to shut you down or bring your line down, you decided to hold  
18 onto that money?

19 A No. That is where the \$659,000 came from. We each  
20 put \$659,000 back in the bank on September 30th. We held the  
21 money for all of two weeks.

22 Q When it became apparent that Compass was going to  
23 shut you down or bring your line down, you decided to hold on  
24 to the money, though?

1           A     No, because on closing I am putting the money back  
2     in and then some.

3           MS. TURNER:   Publish the deposition please of  
4     Mr. Morabito.

5           THE COURT:   Okay.   Do want to give me that  
6     deposition so the Court can follow along?

7           You may approach.

8           THE CLERK:   Deposition of Salvatore Morabito taken  
9     August 21, 2018 opened and published. Here you are.

10          MS. TURNER: Thank you.   May I approach the witness?

11          THE COURT:   You may.

12     BY MS. TURNER:

13           Q     If you would go to page 96?

14           A     Okay.   I have it. You said 96?

15           Q     96, sir?

16           A     Uh-huh.

17           Q     If you go to page, pardon me, line 21?

18           A     Yes.

19           Q     I need my readers.   "When it became apparent Compass  
20     was going to shut us down or bring our line down, we decided  
21     to hold on to that money."   Did I read that correctly?

22           A     Uh-huh.   Yes.

23           Q     "We had three million dollars which we drew on and  
24     we formed this loan in August of 2010.   We drew on it on

1     personal, either open a Snowshoe account or own a personal  
2     account, get a bunch of cash in the bank and leave it there to  
3     secure these loans. So in other words, we would have to put up  
4     dollar for dollar security for all these loans." Do you see  
5     that?

6             A     Which line are you reading?

7             Q     I went 96 to 95. We drew on it on September 9th.  
8     Pardon me. "We drew it on September 9th, I believe. It was  
9     2010. So we had the money in our account, and rather than pay  
10    it back like we intended to do, we decided to keep it, not  
11    knowing what was going to happen with the line of credit, you  
12    know. Shut us down."

13            Now September 9th, that was prior to the oral ruling  
14    from Judge Adams, correct?

15            A     September 9th was.

16            Q     If we go up to 95, I want to make sure the record is  
17    clear. I misread from the point where I read: "We drew on it"  
18    on. I started with "personal." That was incorrect from  
19    personal all the way through loans, dollar security for all  
20    these loans. That was incorrect I would just like the record  
21    to reflect that. I apologize.

22            Now Edward, Paul and you decided you were going to  
23    take the money before what happened in the Judgment, before  
24    what happened with the oral ruling, and you were going to

1 invest it in another entity and use that money for equity in  
2 another business, correct?

3 A That's correct, a similar business.

4 Q And the decision to, one, take the money on  
5 September 9th and the decision to keep it and use it for  
6 another investment, that was a choice, right?

7 A That was a choice as of --

8 Q It was a choice September 9th when you took the  
9 money?

10 A That was our choice to take the money. And we were  
11 going to use it to start up a new company, I believe, invest  
12 in some other like business.

13 Q And there was risk as there always is when you  
14 distribute money out to a person, that that person can then  
15 say, no, I don't want to give it back, right?

16 A That's a risk.

17 Q And that is a risk that came to fruition here when  
18 the money was paid to you, you paid the money back. To Ed, Ed  
19 paid money back. But to Paul, Paul said I don't want to pay  
20 it back, right?

21 A He decided to keep the money. That's true.

22 Q Now, if we just, by Paul Morabito not giving the  
23 money back, that hurt the company. It hurt the company  
24 because they didn't have the recapitalization equal to yours

1 and Edward's right?

2 A The money Edward and I put in was sufficient to keep  
3 things going, so I didn't need his \$939,000.

4 Q The value of \$939,000 being taken by Paul and not  
5 being returned, it was 933, but with interest, it was \$939,000  
6 right?

7 A It became \$939,000.

8 Q By taking that out and not returning it, that was a  
9 loss of value when CWC ultimately merged with Superpumper,  
10 correct?

11 A I'm not sure if I would characterize it as a loss of  
12 value. I am not sure about that. I would have to think about  
13 that one.

14 Q \$939,000 was borrowed from Compass, and there was an  
15 obligation to repay it, right?

16 A No. The initial loan is three million dollars, so  
17 the debt obligation is always three million dollars.

18 Q Yes. The debt obligation is three million dollars.  
19 \$939,000 of that was taken from the company and not  
20 redeposited for use to pay back the three million dollars,  
21 right?

22 A It was used -- It was not used to go back in for the  
23 company, that is correct.

24 Q By Paul Morabito, not redepositing the \$939,000 in



1       September, September 30th, then Superpumper and its parent  
2       company have to go find that money from somewhere else to  
3       repay Compass, right?

4           A       Well not just the \$939,000. They're responsible for  
5       three million not just \$939,000.

6           Q       I understand that. But \$939,000 that Paul took could  
7       have been used like yours, like Ed's, to repay Compass and now  
8       you have to take it from some place else to pay Compass,  
9       right? I know you don't want to agree with me. Tell me how  
10      you come up with the \$939,000 if you don't get it from Paul?

11          A       It is an added-- Its part of a three million dollar  
12      debt that is already incurred by the company. I am not  
13      focused on \$939,000. I am focussed on the three million line  
14      of credit that is going to 2.5. That is all I care about.  
15      Those are the obligations of the company. Regardless what we  
16      do with the money, those are the obligations of company.

17          Q       And whether or not Paul deposits his \$939,000 or  
18      \$659,000 back with the company on September 30th, that has no  
19      regard or that has no affect on value? I just want to  
20      understand your position?

21          A       If Paul puts his \$939,000 back into the company  
22      against the line of credit, does that affect the value of the  
23      company?

24          Q       Yes?

1           A     I don't know. I have to think about that. I am not  
2     a valuation expert. I am not sure how I would characterize  
3     that.

4           THE COURT: This might be a good place to stop. So  
5     I know that you all thought, you told the clerk you thought we  
6     were back on schedule. We are not. I don't want to be the  
7     bearer of bad tidings. I do seem to be having some difficulty.  
8     Tomorrow is Thursday, November 1st. It is my understanding we  
9     have this witness and then do you plan on having Mr. Kimmel  
10    tomorrow?

11          MS. TURNER: Mr. Kimmel is out of town, so he will  
12    be here Monday morning. We are going to work diligently to  
13    have him be the last witness for us, we hope.

14          THE COURT: Okay. Do we still have Mr. McGovern on  
15    Friday afternoon?

16          MS. TURNER: No. Mr. McGovern will probably be  
17    tomorrow. He's from out of town. We will probably have  
18    Mr. Leonard on Friday, because he has a late flight out so he  
19    can fit.

20          THE COURT: He will probably be Friday afternoon?

21          MS. TURNER: Friday afternoon. McGovern tomorrow.  
22    Mr. Kimmel Monday morning and the rest will be the video  
23    deposition and reading of depositions.

24          THE CLERK: Did you say you have a video deposition?

1       How are you applying it?

2               MS. TURNER: We do it by a computer.

3               THE CLERK: So you have it all arranged?

4               THE COURT: Do you have a transcript?

5               MS. TURNER: We do.

6               THE COURT: The transcript, are you going to mark

7 that and put it in?

8               MS. PILATOWICZ: It has already been marked and

9 provided.

10              THE COURT: I have it, yes, I do have it. But the

11 Court Reporter isn't going to take it down. How is the record

12 going to reflect what you play.

13              MS. TURNER: We have the original transcript, Your

14 Honor. We will publish it.

15              THE COURT: Okay. We can, the court reporter can do

16 it, but we don't normally do it.

17              MS. TURNER: That's fair.

18              MR. GILMORE: I have a question. Is the video

19 sunked to the portions of the transcript that we are reading?

20              MS. PILATOWICZ: Yes.

21              MR. GILMORE: It will be section for section?

22              MS. PILATOWICZ: It is. It is not one of the ones

23 the video and transcript going at the same time. We took both

24 my designation and your designation. Both designations are in

1 the same video continuously.

2 MR. GILMORE: Got it.

3 THE COURT: That is the only one that is video? The  
4 rest are live reading?

5 MS. TURNER: They are a lot briefer than we thought  
6 they would be.

7 THE COURT: So you have a transcript that has been  
8 reduced to reflect what you're actually playing. That is what  
9 you need to have for us for the record rather than the whole  
10 transcript, because then we don't know which part was read or  
11 was viewed.

12 MS. TURNER: It is highlighted.

13 MS. PILATOWICZ: We have a highlighted copy.

14 THE COURT: Just cut and paste it. We'll have a  
15 redacted transcript of the video that will show actually what  
16 was played?

17 MS. TURNER: Yes.

18 THE COURT: You're going to play it using a computer  
19 so there won't been a CD marked or anything like that?

20 MS. TURNER: No.

21 THE COURT: Is everyone comfortable with that?

22 MR. GILMORE: That is my understanding. I have a  
23 binder that matches all the highlighted transcripts as well.

24 THE COURT: Okay, great. We are scheduled to start

1 tomorrow morning at 8:00. Mr. Morabito you will be off the  
2 stand. I am going to let you go down and sit for the next two  
3 minutes and we'll see you back tomorrow morning.

4 THE WITNESS: Thanks very much.

5 THE COURT: Is there anything else that needs to be  
6 revolved before we call it a day?

7 MR. GILMORE: Not that I am aware of.

8 MS. TURNER: No. I have the two minutes of  
9 follow-up with Mr. Bayuk on the executed documents.

10 THE COURT: Okay. We can do it whenever you want to  
11 do it. Now did you have any trouble getting in today?

12 MS. TURNER: None. They recognized us.

13 THE COURT: Okay. Maybe that is good. I don't know  
14 if you want to be here long enough the people at the front  
15 door start recognizing you, but that is the reality. So we'll  
16 see you all back here tomorrow morning at 8:00 and we'll have  
17 Mr. Bayuk and Mr. Morabito available to testify.

18 MS. TURNER: Thank you.

19 THE COURT: Court's in recess.

20 (Whereupon, the proceedings were concluded.)

21 --o0o--

22

23

24

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

4  
5     I, Judith Ann Schonlau, Official Reporter of the Second  
6     Judicial District Court of the State of Nevada, in and for the  
7     County of Washoe, DO HEREBY CERTIFY:

8             That as such reporter I was present in Department  
9     No. 254 of the above-entitled court on Wednesday, October 31,  
10    2018 at the hour of 8:00 a.m of said day and that I then and  
11    there took verbatim stenotype notes of the proceedings had in  
12    the matter of WILLIAM LEONARD, JR. TRUSTEE   vs. SUPERPUMPER,  
13    ICN. ET AL, Case Number CV13-02663.

14            That the foregoing transcript, consisting of pages  
15    numbered 1-262 inclusive, is a true, true and correct  
16    transcription of my said stenotypy notes, so taken as  
17    aforesaid, and is a true, true and correct statement of the  
18    proceedings had and testimony given upon the trial of the  
19    above-entitled action to the best of my knowledge, skill and  
20    ability.

21    DATED:   At Reno, Nevada this 11th day of October, 2018.

22  
23  
24   /s/ Judith Ann Schonlau  
  JUDITH ANN SCHONLAU CSR #18