

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

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

Real Party in Interest.

Case No.

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PETITIONERS' APPENDIX,
VOLUME 38
(Nos. 6553–6817)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

11/1/18

NON-JURY TRIAL – DAY FOUR

HONORABLE Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony
CONNIE Morabito, present with counsel, Teresa Pilatowicz, Esq., Erika Turner, Esq., and
STEINHEIMER Gabrielle Hamm, Esq. Defendant Edward Bayuk present, individually and as
DEPT. NO.4 representative for Edward William Bayuk Living Trust, Superpumper, Inc., and
M. Stone Snowshoe Petroleum, Inc., and Defendant Salvatore Morabito present,
(Clerk) individually and as representative for Superpumper, Inc., and Snowshoe
J. Schonlau Petroleum, Inc., with counsel, Frank Gilmore, Esq.
(Reporter) Chris Kemper, Esq., counsel for the Herbst Family present in the gallery.
8:07 a.m. Court convened.

EXHIBITS 225, 283 and 284 ordered admitted into evidence based on stipulation of respective counsel.

Discussion ensued regarding the schedule of witnesses for the day.

Witness Salvatore Morabito, heretofore sworn, resumed the stand and was further re-examined by counsel Turner.

EXHIBIT 294 offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Morabito further re-examined by counsel Turner.

EXHIBIT 30 offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

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

Edward Bayuk, heretofore sworn, recalled by counsel Turner and examined; excused.

Discussion ensued regarding the procedure to be utilized during deposition testimony.

Colton Loretz sworn to read the deposition testimony of Gary Graber, Sujata Yalamanchili and Gary Krausz into the record.

***Depositions of Gary Graber taken July 12, 2017 and May 1, 2018 opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

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

11/1/18

NON-JURY TRIAL – DAY FOURJ. Schonlau
(Reporter)**EXHIBIT 29** offered by counsel Pilatowicz; objection by counsel Gilmore;
objection overruled and ordered admitted into evidence.

9:21 a.m. Court recessed.

9:35 a.m. Court reconvened with respective counsel and parties present.

***Deposition of Sujata Yalamanchili taken May 1, 2018 opened and published.
Designated portions read into the record. Respective counsel advised the Court
of the number of the trial exhibit that correlates with the deposition exhibits.**EXHIBIT 32** offered by counsel Pilatowicz; no objection by counsel Gilmore;
ordered admitted into evidence.**EXHIBIT 300** (Exhibit 8 to the Deposition of Gary Graber) marked and offered
by counsel Gilmore; stipulated by counsel Pilatowicz; ordered admitted into
evidence.Respective counsel advised the Court that Exhibit 15 to Sujata Yalamanchili's
deposition needs to be located and marked as a trial exhibit at a later time.

James McGovern called by counsel Pilatowicz, sworn and testified.

***Witness McGovern deemed qualified to provide opinion testimony as to
business valuation.

Witness McGovern further direct examined.

***Deposition of James McGovern dated March 28, 2018 opened and
published.

Witness McGovern further direct examined.

Counsel Gilmore objected to testimony regarding matrix valuation.

Witness further direct examined.

Counsel Gilmore withdrew his objection to the testimony regarding matrix
valuation.

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE THREE

APPEARANCES-HEARING

CONT'D TO

11/1/18

NON-JURY TRIAL – DAY FOUR

J. Schonlau
(Reporter)

Witness McGovern further direct examined; examined by the Court; cross-examined by counsel Gilmore.

11:50 a.m. Court recessed for lunch until 1:00 p.m.

1:04 p.m. Court reconvened with respective counsel and parties present.

EXHIBIT 301 (Exhibit 15 to Sujata Yalamanchili's Deposition) marked and offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence.

Witness McGovern, heretofore sworn, resumed stand and was further cross-examined; redirect examined; recross-examined; further examined by counsel Pilatowicz; excused.

***Deposition of Paul Morabito taken March 21, 2016 opened and published. Designated portions played via video. Transcript of the designated portions marked for the record as **EXHIBIT 302**. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

Discussion ensued regarding the trial schedule for the remainder of the day and the next day.

2:33 p.m. Court recessed.

2:48 p.m. Court reconvened with respective counsel and parties present.

Video deposition of Paul Morabito continued.

5:40 p.m. Court recessed.

4:51 p.m. Court reconvened with respective counsel and parties present.

***Deposition of Gary Krausz dated March 16, 2016 opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

Additional discussion ensued regarding the trial schedule for the next day.

5:54 p.m. Court recessed until 10:15 on November 2, 2018.

**11/2/18
10:15 a.m.
Ongoing
Non-Jury
Trial – Day
Five**

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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.)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

THURSDAY, NOVEMBER 1, 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>
SALVATORE MORABITO			7	19
EDWARD BAYUK	24			
GARY GRABER	27	49		
SUJATA YALAMANCHILI	57	87		
JAMES L. McGOVERN	111	134	190	195
			198	
PAUL MORABITO	207			
GARY KRAUSZ	211			

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<u>EXHIBITS:</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
29		48
30		18
32		84
225	5	6
236	208	208
283		6
284		6
294		9
300	104	104
301	146	146
302	201	201

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RENO, NEVADA; THURSDAY, NOVEMBER 1, 2018; 8:00

-oOo-

THE COURT: Good morning. Please be seated. Good morning.

MS. TURNER: Good morning.

MR. GILMORE: Good morning.

THE COURT: Do we we have some business to take care of? You marked an exhibit.

MS. TURNER: Your Honor, we did. There is a new exhibit, Exhibit 225 that by stipulated will be admitted.

THE CLERK: Exhibit 225 marked.

(Exhibit 225 marked for identification.)

MR. GILMORE: Yes, Your Honor. 225 has been stipulated to and to facilitate the examination of the experts. The live witnesses on the expert testimony, we stipulated to admission of their reports.

THE COURT: Do you have those marked?

MR. GILMORE: Yes, we do.

THE COURT: Tell me the numbers.

MS. PILATOWICZ: Plaintiff's are 53 and 55. 53 is the

1 report -- 53 which is the report of William Kimmel which was
2 stipulated to admission prior. Exhibit 91 which is the expert
3 report of James McGovern. That was already marked.

4 THE COURT: That was admitted already also. So you
5 have 53 and Exhibit 91. Was there a 60?

6 MS. PILATOWICZ: No, Your Honor. I apologize.

7 THE COURT: Plaintiff's are already admitted. Then
8 we just need this 255 is being marked by the Plaintiff's; is
9 that correct?

10 MS. TURNER: Yes.

11 MR. GILMORE: Yes, Your Honor.

12 MR. GILMORE: Now Your Honor, the Defendants expert
13 report of Michelle Salazar.

14 MS. TURNER: 284.

15 MR. GILMORE: I will get the number. That is her
16 rebuttal. Oh, here it is. It is 283 and 284.

17 THE COURT: Expert witness report 283 and 284.

18 MS. PILATOWICZ: Is the rebuttal report. Are those
19 the ones?

20 MR. GILMORE: That's it, Your Honor.

21 THE CLERK: That is stipulated.

22 MS. TURNER: Yes.

23 THE COURT: Those are admitted.

24 (Exhibits 225, 283 and 284 admitted in evidence.)

1 THE COURT: So today's schedule, tell me what you
2 plan to do.

3 MS. TURNER: We still have Mr. Morabito on the
4 stand to start with, then the one question I have of Mr. Bayuk
5 just to put that aside, and then we have the reading in of the
6 deposition and Mr. McGovern will be here at 1:00.

7 MS. PILATOWICZ: Unless we can get him on earlier.

8 THE COURT: Your planning on just getting him on and
9 off today?

10 MS. PILATOWICZ: Correct. We'll fill in with the
11 deposition so everything makes sense to make sure we get the
12 most efficient use of time.

13 THE COURT: Okay. Mr. Morabito should go back on
14 the stand. Your still under oath. You may continue your
15 inquiry.

16 MS. TURNER: Thank you.

17

18 REDIRECT EXAMINATION CONTINUED

19 BY MS. TURNER:

20 Q Yesterday we looked at two documents from September
21 of 2010 that were communications with Compass and/or their
22 counsel. The e-mail from Paul Morabito to Sean at Compass. Do
23 you recall that?

24 A Vaguely.

1 Q If we can go to Exhibit 33.

2 A Okay, yeah.

3 Q So Exhibit 33 is the e-mail, do you recall that,
4 from yesterday?

5 A Yes, I do.

6 Q Where Paul Morabito e-mailed Sean Hollenbach to
7 confirm a conversation. At the end it says there will be --
8 "There was confirmation they will work with us in good faith
9 towards effecting those cures and putting the loan back into
10 compliance." And the Compass representative said: "You're
11 correct, that is our intention."that was September 24th,
12 correct?

13 A Yes.

14 Q And then the next communication from Compass
15 regarding any default or alleged default was September 30th
16 the letter to their counsel, Quarles and Brady. Do you recall
17 that?

18 A Yes, I recall that, yes.

19 Q September 30th was the day that the restructuring of
20 Superpumper and the transfer from Paul Morabito to Snowshoe
21 Petroleum, a New York corporation, that is when that
22 transaction was finalized?

23 A That was the day Snowshoe became 100 percent owner
24 of the merged entity.

1 Q So between September 24th and September 30th that is
2 when the papers were being put together and you executed
3 documents to effectuate the restructuring and ultimate
4 transfer of Paul Morabito's interest to Snowshoe Petroleum,
5 correct?

6 A That's when all the documents were being prepared by
7 Lippes and they were executed at the Lippes office.

8 Q And before I go to the next exhibit, I want to make
9 sure we are very clear. In September of 2010 you were a
10 client of the Lippes law firm?

11 A Yes.

12 Q As was Paul Morabito?

13 A Yes.

14 Q If you would go to Exhibit 294.

15 A Okay.

16 Q Exhibit 294 are some redacted billing records from
17 the Lippes firm in that September time frame. Have you seen
18 these bills before?

19 A No.

20 Q Let's go to the entries. Before we do. I move for
21 admission of 294. These are in the Defendants' books, so I
22 don't anticipate there being an issue?

23 MR. GILMORE: No objection.

24 THE COURT: Exhibit 294 is admitted.

1 (Exhibit 294 admitted in evidence.)

2 BY MS. TURNER:

3 Q If we could go to the second page of the exhibit at

4 the top of the page it says: Conference with attorney Vacco

5 reflects verdict. Do you see that?

6 A Yes.

7 Q Was that a conference with you?

8 A I don't believe so. This is Paul Morabito's bill.

9 I don't believe-- Paul is getting billed for his legal work.

10 This is not my legal work. I would say no, that isn't a

11 conference with me. I don't believe so.

12 Q So there was nothing that was done in this bill set

13 forth in Exhibit 294 that was for you? You had a separate

14 bill?

15 A I believe I did, yeah.

16 Q Okay. And anything that was done in bills that were

17 sent to Paul Morabito for September 2010, they were on behalf

18 of Paul Morabito not you?

19 A Say that again.

20 Q The matters that were billed to Paul Morabito for

21 September 2010, those were on behalf of Paul Morabito. You

22 were separately billed for those things that were at your

23 request or on your behalf?

24 A Correct. Paul pays his bills. I pay my bills, and

1 I pay Snowshoe bills. Snowshoe pays Snowshoe's bills. I sign
2 the checks.

3 Q That is kind of a different answer to the question.
4 Let me make sure I'm clear?

5 A Okay.

6 Q When the Lippes firm billed Paul Morabito for work
7 done, that was for work done on his behalf alone?

8 A Yes.

9 Q And if the Lippes firm was doing work on your behalf
10 or Snowshoe's, there would be a separate bill to you that you
11 would be responsible for?

12 A That's correct.

13 Q At any point in time, did Paul Morabito say split
14 this bill because there was work done on behalf of all of us?

15 A I don't believe so.

16 Q Okay. And that's true for September 2010 as well?

17 A To my best recollection.

18 Q And if there is reference in a bill to Paul
19 Morabito, to client, that would be Paul Morabito's?

20 MR. GILMORE: Calls for speculation.

21 THE WITNESS: I am not sure how Lippes does the
22 billing. I don't know. I'm not sure.

23 THE COURT: Okay. The answer is out there so we'll
24 go ahead and let the answer stand.

1 BY MS. TURNER:

2 Q Now, you testified yesterday about the financial
3 statement provided to the Gursey firm, the auditors of
4 Snowshoe Petroleum and Superpumper that you certified as
5 accurate. And I believe your testimony was something to the
6 effect you did a quick calculation to make the auditor happy.
7 Do you recall that testimony?

8 A Yes.

9 Q And now you knew that if it was going to be used by
10 the auditor, the information was to be used by the auditor
11 and, the auditor would be relying on your certified statement,
12 correct?

13 A I mean, the problem is that it seems every year when
14 we do accounting with whether it be Stan Bernstein or Darata
15 we do our taxes, when the auditor is preparing the audit, it
16 is always a fire drill. Everything always comes down to the
17 last minute so it is always, can you get this ready, can you
18 do this, can you do that. So I don't recall exactly, but I
19 was actually surprised to see that net worth statement, but I
20 know it was something he said. I believe it was Gary called
21 me and said we just need this for our file to verify you and
22 Ed have the wherewithal to pay the note. Just put together a
23 quick statement of your net worth and send it to me so I can
24 close the file. I don't think I was giving it as reliance to

1 show to anyone except for him. It wasn't for a bank. It
2 wasn't for an appraisal. It was just one of those quick
3 things you have to do to satisfy what do they say call it, a
4 CYA, CYA document. He just required that for his file.

5 Q So the certified financial statement was a CYA
6 document?

7 A On behalf -- In other words, he requires that.

8 Q And you didn't feel you had any obligation do verify
9 the accuracy of the information provided before giving it to
10 the auditors of Snowshoe Superpumper?

11 A He said give me the best of your knowledge. I need
12 a fast statement of net worth for my books. I'm not sure what
13 certified means. Does signing it mean it is certified? I
14 don't know what that means. I wouldn't use the term certified.

15 Q Let's go to Exhibit 126.

16 A 126.

17 Q Yes, sir.

18 A I am doing this slowly. I don't want to have
19 another ripped binder like we had yesterday. I am ruining it
20 already. So, okay, here it is.

21 Q Can you read the sentence above the signature?

22 A I certify the attached to be true. I couldn't read
23 the rest of it, to the best of my knowledge.

24 Q I certify the attached to be true?

1 A To the best of my knowledge, I guess I certified it
2 to be true. That was the best of my knowledge at that point
3 in time.

4 Q Superpumper -- strike that. You testified that you
5 are not a financial person or something to that effect
6 yesterday. You are not CFO of Superpumper?

7 A I am the President, no, Vice-President of
8 Superpumper. President of Snowshoe.

9 Q And Superpumper. At least when you were President
10 had a controller?

11 A Yes.

12 Q Did you go to the controller and ask the controller
13 to help verify your statement of assets and liabilities before
14 certifying it?

15 A Yes, I did. I asked him to pull the records from
16 his internal accounting.

17 Q Now you understood that the auditors were asking for
18 the information because they would be relying on it?

19 A I don't know what you mean by that. I mean, again,
20 he asked me to get a quick statement of net worth. That's
21 what I gave him. I am not sure why he needed it. I believe it
22 was just to show I had the financial wherewithal to cover the
23 notes he was putting in the audit. I think that is the reason.

24 Q You testified yesterday that it was a mistake to not

1 include the note payable to Snowshoe on the right-hand side of
2 this statement of assets and liabilities. Do you recall that
3 testimony?

4 A Yes. It was definitely an oversight on the part of,
5 you know, myself to not include that.

6 Q If we go back to Exhibit 122.

7 A 122, 122. Where is 122?

8 Q It is in that same book.

9 A Yes.

10 Q Exhibit 122 is your note payable to Superpumper,
11 correct?

12 A Correct.

13 Q That was the only note payable from you to
14 Superpumper as of the date of your statement of assets that
15 you did on February 2011, correct?

16 A Well, this is December 31, 2010. On February it was
17 February 1, 2011.

18 Q Yes?

19 A I can't tell you what the balance was. It would have
20 been similar. It would have been in that range. I am not
21 exactly sure of the number. It definitely would have been in
22 that range.

23 Q The only note executed by you in favor of
24 Superpumper that was in place as of the date of your statement

1 of assets and liabilities was the one that is set forth at
2 Exhibit 122, right?

3 A I don't know, because the note fluctuated with the
4 interest charges and stuff. I don't know if this is the
5 exact. It is basically this note. I don't know if that is
6 the amount on February 1st.

7 Q It was the only note that you had executed in favor
8 of Superpumper?

9 A I just had one note, yes.

10 Q Now yesterday when I was talking to you about this
11 note, you indicated that it lacked consideration. Do you
12 recall that?

13 A Yes.

14 Q I need to understand your testimony. Has that
15 changed now? Have you recalled that you received
16 consideration for the term note for \$2,563,042?

17 A No, I didn't receive that money from Superpumper.

18 Q So you didn't receive the money, and the term note
19 set forth at Exhibit 122 was ultimately cancelled, correct?

20 A Eventually, yes. Yeah.

21 Q And --

22 A Like five years later.

23 Q And you're still taking the position that it should
24 have been included as an offset against your determination of

1 value for Superpumper as of February 1, 2011?

2 A Yes, because it is recorded as a, well, it's a
3 liability on my side and asset on the Superpumper side.

4 Q September 20th -- Actually, at all points prior to
5 September 30th, Paul Morabito was the President of
6 Superpumper?

7 A Yes, I believe so.

8 Q And the director?

9 A He was the director.

10 Q And also Consolidated Western Corporation?

11 A Yes.

12 Q Now, September 21st, 2010, prior to the September
13 24th e-mail we saw from Compass, Paul Morabito was advising
14 third parties that he was going to continue heading
15 Superpumper, but there would be ownership by a combination of
16 you and Edward Bayuk, correct?

17 A I don't know. Can you show me where he said that?

18 Q Do you know that independent of a document?

19 A I don't know that for a fact. I don't know that for
20 an absolute fact, no.

21 Q If we could go to Exhibit 30 which is in, we can
22 probably put aside the other one if you don't want to be
23 overwhelmed with binders.

24 A But I have destroyed that one. I will put them

1 back. Don't worry, I will put them in a nice condition.

2 Q Exhibit 30, before we read the contents, if you
3 could read it to yourself?

4 A Okay. Okay.

5 Q So certainly as of September 21st, 2010, Paul
6 Morabito was advising third parties he was going to continue
7 to head, but you were going to own Snowshoe Petroleum,
8 correct?

9 A He seems to be indicating that.

10 MS. TURNER: I move for admission of Exhibit 30.

11 MR. GILMORE: No objection.

12 THE COURT: Exhibit 30 is admitted.

13 (Exhibit 30 admitted in evidence.)

14 BY MS. TURNER:

15 Q That Exhibit 30 we have Paul Morabito saying as of
16 September 21st to Kevin Krausz he would no longer be actively
17 seeking to accumulate assets in companies that I am a
18 shareholder in, and instead will be acting as an advisor to
19 amongst other entities, Snowshoe Petroleum, LLC, a company to
20 be owned and operated by my brother, Sam, Edward Bayuk and
21 Dennis Vacco. Do you see that?

22 A Yes.

23 Q And if you go further down to the fourth paragraph
24 it says: " Spoke with Kevin Krausz and he's comfortable

1 making an equity commitment of 150 million to facilitate this
2 acquisition. I advised him that a company to be head by me
3 but owned by a combination of Edward Bayuk, Sam Morabito, John
4 Richman as well as Petroski and his management team would be
5 created to make this offer." Do you see that?

6 A Yes.

7 MS. TURNER: I will pass the witness.

8 THE COURT: Counsel.

9

10 RECROSS-EXAMINATION

11 BY MR. GILMORE:

12 Q Sam, please stay on Exhibit 30. You have got it
13 there?

14 A Yes.

15 Q Yesterday we discussed this Ceberus California LLC,
16 right?

17 A Yes.

18 Q This was associated, you testified yesterday on
19 direct examination this was associated with that Nella Oil
20 opportunity. We looked at an e-mail where Paul was discussing
21 that. Do you remember that sixty-five million dollar Ceberus
22 line and seventy-two million dollar sale lease-back from
23 Getty?

24 A That was in 2011 or 2012 though, wasn't it?

1 Q Same players, right?

2 A Same players.

3 Q Here is that Ceberus again?

4 A Yes.

5 Q Let's, actually rather than characterizing it
6 through statements of counsel, let's actually read the e-mail
7 and see what it says.

8 MS. TURNER: Your Honor, I move to strike.

9 THE COURT: Sustained.

10 BY MR. GILMORE:

11 Q Now, it has been established that the oral ruling
12 was September 13th, correct?

13 A Yes.

14 Q This is a week after the oral ruling, right?

15 A Yes.

16 Q Now he says he would no longer be actively seeking
17 to accumulate assets in companies that I am a shareholder in.
18 Do you see that right here?

19 A I will no longer be acting as an advisor to-- I am
20 sorry what paragraph is this?

21 Q Second line of the first paragraph?

22 THE COURT: If you have a question for him great.
23 You're just reading it into the record. I can read it.

24 MR. GILMORE: I do have a question.

1 THE COURT: Just ask the question.

2 THE WITNESS: Okay. Yes.

3 ///

4 BY MR. GILMORE:

5 Q Did you ever have a conversation with Paul Morabito
6 who is the Declarant of the e-mail why he was no longer
7 seeking to accumulate assets in companies that he owned?

8 A No. I mean this is classic Paul just throwing out
9 ideas and brainstorming. You know, I don't know what he's
10 talking about here. Nothing ever came to pass of this. It is
11 just what he does. It is a white board conversation. It is,
12 you know, it is just the way he operates. So I don't know.
13 Nothing ever came of any of this, but it is fun to dream, but,
14 you know, it didn't happen.

15 Q Do you know what he's talking about in this seven
16 hundred fifty million dollar number associated with Kevin Shay
17 from Getty? Do you know what he's talking about?

18 A No. I have no idea.

19 Q Do you know who Ray Whiteman is?

20 A Vaguely.

21 Q Did you ever have any dealings with Walt Dwelle, the
22 CEO of Nella?

23 A Not directly, but they purchased the Card Locks of
24 Berry-Hinckley. They purchased the wholesale end of

1 Berry-Hinckley.

2 Q Can you turn back to 294 which was the Lippes
3 Mathias billing statement? Did Snowshoe Petroleum receive its
4 own bills from the Lippes Mathias firm in September, October
5 2010 going forward?

6 A Yes.

7 Q Exhibit 294, have you had a chance to look at it
8 long enough to identify whether or not your name is mentioned
9 in any of these pages?

10 A I had a quick scan of it. I don't see my name in
11 here.

12 Q Would you turn to the last page of the first bill?
13 Would you turn to page LMWF 536.

14 A They aren't marked like that.

15 Q Well, in the top right corner. This is the Lippes
16 Mathias?

17 A 563?

18 Q Yeah?

19 A Okay.

20 Q Do you see the disbursements column?

21 A Yes.

22 Q Do you know who Alves Appraisal is?

23 A No, I don't.

24 Q You don't no why they would have been paid \$2,500

1 from the Lippes firm?

2 A No.

3 Q Do you know who Mark Lehman is?

4 A I know he's an attorney in California, but I don't

5 know him very well.

6 Q He never represented you, right?

7 A No, he never represented me.

8 Q Do you know why he was paid \$2,500?

9 A No idea.

10 Q Do you know who Justmann and Associates is?

11 A No.

12 Q You don't know why two different disbursements of

13 \$4,000 each to Justmann?

14 A No. I never heard of these people. I know who

15 United Parcel Service is.

16 Q Now, prior to September 30th, did Dennis Vacco

17 represent Consolidated Western prior to the merger?

18 A I believe he did. I believe so. I can't say for

19 sure, but I believe he did.

20 MR. GILMORE: No further questions.

21 THE WITNESS: Thank you.

22 THE COURT: Anything further?

23 MS. TURNER: No.

24 THE COURT: Thank you, sir. You may step down.

1 THE WITNESS: Thank you very much.

2 THE COURT: Mr. Morabito, you don't have to worry
3 about that.

4 THE WITNESS: Okay.

5 THE COURT: If we have a live witness, the clerk is
6 happy to do that.

7 THE WITNESS: Sorry about that.

8 THE COURT: No, that's okay.

9 THE WITNESS: I didn't want to get into that mess we
10 did yesterday. Everything was turned.

11 MS. TURNER: We are going to recall Mr. Bayuk for
12 one follow-up.

13 THE COURT: I keep forgetting.

14 MS. TURNER: That is why I want to do it now. I
15 will forget, too.

16

17 EDWARD BAYUK

18 called as a witness, having been previously duly sworn,

19 took the witness stand and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MS. TURNER:

23 Q Good morning?

24 A Good morning.

1 Q This morning we stipulated to a new Exhibit, 225.
2 There is no tab associated with it.

3 MS. TURNER: If I could approach the witness just to
4 help him find the exhibit.

5 THE WITNESS: I looked up stuff on the Internet last
6 night. So last night on the Internet I looked up and found
7 the Bank of America did record a Deed to 570, and I did indeed
8 sign that document which I forgot. And two and a half months
9 later I paid the bank \$735,000 then they released the Deed
10 from the property. So I did a Deed. I forgot, honestly
11 forgot I signed that, so the answer is yes, I did sign it.

12 BY MS. TURNER:

13 Q You signed the Deed on September 5, 2012 the day
14 after receiving the e-mail that we had with the drafts that we
15 have previously discussed, correct?

16 A That Bank of America document?

17 Q Yes?

18 A They wanted that to record a Deed because money was
19 owed.

20 Q That was part of the settlement on behalf of Paul
21 Morabito, correct?

22 A Correct.

23 MS. TURNER: Your Honor, I have no further
24 questions.

1 THE COURT: Okay. You may step down.

2 (Witness excused.)

3 MS. PILATOWICZ: Your Honor, just a couple of quick
4 housekeeping matters on the deposition transcripts before we
5 begin reading them. Mr. Gilmore and I have discussed and
6 agreed that if a question was read by the Plaintiff, we will
7 read in the question and the answer regardless of who
8 designated it. And if a question was read or proposed by
9 Defendants in the deposition, he will read in the question and
10 answer regardless of who designated it so we can move things
11 along. There are exhibits that are referenced in the
12 depositions that are exhibits in the books. When those come
13 up, I will read the number of the exhibit that is in the
14 Court's record. There will be some referenced numbers that we
15 are not seeking to admit. When that happens, we won't read a
16 corresponding Court exhibit.

17 I would ask Mr. Gilmore, during a designation of
18 Mr. Gilmore's there is an exhibit I don't reference the Court
19 Exhibit, if you want it introduced, you just make sure to let
20 me know. I think I marked them all.

21 MR. GILMORE: And I endeavored to mark all the
22 exhibits I intended to offer pursuant to those deposition
23 transcripts I already marked, and I expected they had done the
24 same. Again, there may be some referenced that are not going

1 to be offered, but, obviously, either one of us as part of the
2 stipulation reserve the right to offer it if we think it needs
3 to be offered.

4 THE COURT: Who do you want to start with?

5 MS. PILATOWICZ: Your Honor, we'll start with Gary
6 Graber dated July 12, 2017.

7 THE CLERK: Deposition of Gary Graber dated July 12,
8 2017 owned and published.

9 THE COURT: He will be sworn in.

10 (Whereupon the reader of the depositions, Mr. Loretz
11 Was sworn by the clerk.)

12 MS. PILATOWICZ: The book of transcripts is on the
13 shelf.

14 THE COURT: We need to start with the reader's name
15 and affiliation.

16 THE READER: Colton Loretz, L-O-R-E-T-Z. I work for
17 Woodburn and Wedge. I am an attorney.

18 THE COURT: You may proceed.

19 BY MR. PILATOWICZ:

20 Q Could you turn to page 14 of the first deposition,
21 the first tab of the deposition of Gary Graber dated July 12,
22 2017?

23 A It says Gary L. Krausz is number one.

24 Q Can you turn to the deposition of Gary Graber dated

1 July 12, 2017?

2 A Okay.

3 Q Starting at page 14 line 13.

4 BY MS. PILATOWICZ:

5 "Q How are you currently employed?

6 A I am a partner in Hodgson Russ, LLP.

7 Q How long have you been employed in that capacity?

8 A Since -- as a partner?

9 Q A partner?

10 A Since 1986.

11 Q And before that were you an associate?

12 A I was."

13 Q Turning to page 16.

14 BY MS. PILATOWICZ:

15 "Q: When was the first time you met Paul Morabito?

16 A I can't give you the exact date without doing a

17 little research, but it was shortly after the judgment that you

18 just mentioned?

19 Q Okay. When was the --

20 A The entry of it.

21 Q Thank you. When was the first time you heard of

22 Paul Morabito?

23 A Around that same time. I knew nothing about him

24 before. I spoke to Sujata and/or him about the

1 judgment.

2 Q And, again, explain to me how you came to know
3 Paul Morabito?

4 A I was introduced to him by Sujata.

5 Q And you mentioned it was in connection with the
6 judgment that was entered?

7 A Yes, it was.

8 Q So explain to me, did Sujata come into your
9 office and say, I need your help on something?

10 A Yes. I am one of those guys around here who
11 engages in assisting clients who have issues that may require
12 my area of expertise, including bankruptcy.

13 Q And what were you asked to do for Paul Morabito?

14 A I was asked to consider whether there were ways in
15 which he could evade the judgment through bankruptcy, or I
16 shouldn't say evade the judgment. That's not correct. If
17 there are ways he could protect himself against -- protect his
18 assets and/or escape liability on account of the judgment."

19 MS. PILATOWICZ: Your Honor, that is the conclusion
20 of the deposition designation of Gary Graber from July 12,
21 2017.

22 Turn next to the deposition transcript of Gary
23 Graber dated May 1st, 2018.

24 THE CLERK: Deposition of Gary Graber dated May 1,

1 2018 opened and published.

2 BY MS. PILATOWICZ:

3 Q Turn to page 8 of that deposition starting at line 12.

4 "Q: Now we went over the topics of the person most
5 knowledgeable, so I am not going to do that again, and we
6 talked last time, too, about what you had done to prepare for
7 deposition since we were here last July. Did you do anything
8 to prepare for the deposition?

9 A I had a discussion this morning with my partner,
10 Sujata Yalamanchili, just to refresh my recollection.

11 Q What were those discussions?

12 A They consisted of the the discussions we had with
13 Mr. Morabito.

14 Q Anything specific?

15 A Yes. What we discussed with him.

16 Q What --

17 A We only discussed one subject. I only discussed
18 one subject with him.

19 Q Okay, and what was the subject you discussed with
20 him?

21 A How he could protect his assets from the claims of a
22 particular creditor.

23 Q When we broke last time, we had been discussing
24 your retention or the work you were doing for Mr. Morabito

1 which I think you just indicated was to protect his assets
2 from the judgment?

3 A Give him advice with respect to that, correct.

4 Q Okay. Do you recall how you became engaged in
5 that manner?

6 A I was asked by my partner, Sujata Yalamanchili, to
7 become involved.

8 Q Do you recall the first time you had a conversation
9 with Paul Morabito regarding that matter?

10 A Yes.

11 Q What is -- What was the first conversation?

12 A You know, I can't tell you what happened on every
13 call. I had about three calls, and that's all -- those are
14 the only communications I had with Mr. Morabito.

15 Q Did you communicate with him by e-mail?

16 A I may have.

17 Q Okay.

18 A I don't know.

19 Q And I take your testimony to be that there was never
20 an in-person meeting with Mr. Morabito?

21 A Never. Never met the man.

22 Q Now by way of background, there was a judgment that
23 was entered in State court, or a judgment that was announced
24 in the state court on approximately September 13th of 2010.

1 Do you recall how soon after that you were engaged?

2 A Nope.

3 Q Do you know specifically who you were retained by?

4 A No.

5 Q Do you know who paid the retainer for your firm?

6 A I do not.

7 Q Do you know if your firm ever got paid for the work
8 it did with respect to the work that you performed for
9 Mr. Morabito?

10 A I do not. Ms. Yalamanchili was the relationship
11 partner, and she was responsible for the relationship, and it
12 was she who asked me to get involved.

13 Q Can you describe for me generally what Mr. Morabito
14 asked you to do and what your response was?

15 A Well, he never really asked me to do anything other
16 than to consider his circumstances and give him advise that
17 would create the possibility of him being able to protect his
18 assets from a judgment creditor who I understood to have just
19 gotten a judgment that was large, in the millions. That's all
20 I remember, though. I don't remember the exact amount, nor do
21 I remember the name of the Plaintiff. I never read the
22 pleadings in the matter. I have just learned that he had a
23 judgment.

24 Q Do you recall what assets he was seeking to protect?

1 A Well, I think he was seeking to protect them all.

2 Q Okay. Any specifically that come to mind?

3 A Well the -- I believe one of his principal assets
4 which he expressed concerned was his stock and his equity
5 interest in an entity that was in the auto service business, I
6 believe, and I believe that was this Superpumper entity.

7 Q Do you recall specifically what he told you about
8 Superpumper?

9 A No.

10 Q Do you recall what asset protection strategies you
11 were looking at?

12 A Yes. I told him that, based on my learning and
13 experience, which even then had been, I don't want to say
14 substantial for fear of sounding like I am boasting, but told
15 him that it's very difficult to protect assets after a
16 judgment has been entered. Often, even after a lawsuit has
17 been initiated. And that in my opinion, there were only,
18 really, two things he could do. One was put assets offshore
19 in countries that assist people in doing that, or invest them
20 in assets, the possession of which nobody would know about
21 such as precious metals or bearer bonds, works of art,
22 collectible cards, and that kind of thing. And if, in the
23 even of a bankruptcy or a lawsuit, to either talk about that
24 and disclose what he did or commit perjury.

1 Q Let's talk about the first method you talked about
2 which is putting money offshore. Did you have any specific
3 discussion with Mr. Morabito about putting money offshore?

4 A I just told him that it was an option.

5 Q Did you tell him where he could put them offshore?

6 A I told him there were a number of places. I don't
7 know which ones I may have mentioned. As far as I was
8 concerned, it didn't matter, because, despite 40 years in this
9 practice, I have yet to see anybody actually put their assets
10 in irrevocable trusts in a Caribbean island or whatever. I
11 just told him it was out there as a possibility. We never
12 really went further into it.

13 Q Are you aware of who Sefton Trustees are?

14 A I'm sorry?

15 Q Have you ever heard the name Sefton Trustees?

16 A No. What is that? Is that the name of a trustee?
17 You don't know. Okay. Whatever.

18 Q With respect to investing funds and assets, people
19 wouldn't be generally able to locate like precious metals
20 income, do you know if what-- or what was Mr. Morabito's
21 response to that?

22 A I don't recall that he had a response. He listened.

23 Q Do you know if he ever put money in assets that
24 couldn't be located?

1 A I don't know anything about anything he did
2 ultimately with his assets. We had two or three conversations.
3 He then terminated his relationship with us, and I never heard
4 anything about him until I got the initial notice of
5 deposition.

6 Q Do you know when the relationship was terminated?

7 A It was terminated within a week or two of my getting
8 involved.

9 Q Do you have a specific recollection of why it was
10 terminated?

11 A Yes, he didn't like the advice I was giving him.

12 Q What advice, specifically?

13 A The advice I couldn't give him even a degree of
14 probability that he would have success.

15 Q Was there ever any discussion regarding a bankruptcy
16 filing?

17 A Only in the sense that in the event of a bankruptcy
18 filing, that would be the forum in which the issues involved
19 would be vetted. That would be a context in which any transfer
20 he made would be avoided, or one of the potential--the most
21 likely place, in my opinion.

22 Q Do you know if Mr. Morabito ultimately ever
23 transferred any assets?

24 A I know nothing except what I have read in the very

1 few papers that I have looked at in this lawsuit.

2 Q So beyond just providing initial advice, you never
3 drafted documents?

4 A Never. We did nothing. Did nothing except give him
5 cautious advice in the course of two or three telephone
6 conversations and an e-mail that I my have sent him. But
7 maybe you know differently, but I would be very surprised if I
8 wrote him a treatise on all of this stuff.

9 Q Did you advise Mr. Morabito that transferring his
10 assets would be considered a fraudulent transfer?

11 A Absolutely. Well, I can't say I advised him that it
12 would, but I told him that it could likely be. Would imply
13 some conclusion that I didn't even know enough to reach.

14 "Q Mr. Graber, I hand you what has been marked as
15 Exhibit 3"-- which is Exhibit 25 in the court record. It has
16 been admitted by stipulation.

17 THE COURT: Exhibit 25?

18 MS. PILATOWICZ: Correct.

19 BY MS. PILATOWICZ:

20 "Q it is identified on the bottom right-hand corner by
21 Bates Nos. LMWF Supp. 082393 and 082394. It appears to be an
22 e-mail chain, sorry between, Sujata and Paul Morabito and
23 Dennis Vacco on which you are copied. Do you see that?

24 A I do.

1 Q I want to start with -- or do you have any
2 recollection of receiving this e-mail?

3 A No.

4 Q Do you have any reason to believe you didn't receive
5 this e-mail?

6 A No.

7 Q Do you recognize the e-mail address that's listed to
8 be Sujata's e-mail address at Hodgson Russ?

9 A Yes.

10 Q At the bottom of the page, Sujata says, 'Garry had a
11 number of additional ideas, including possible marital split
12 between Paul and Edward pursuant to which Edward could retain
13 some of Paul's assets.' Do you see that?

14 A I do.

15 Q Do you remember discussing a marital split?

16 A Yes.

17 Q What was your basis for the marital split?

18 A Well, in this particular circumstance, I can't, you
19 know, give you my exact basis, but one way in which assets do
20 get divided from time to time, that survive challenge is in
21 the context of a divorce.

22 Q Do you know if there -- if Paul and Edward were a
23 couple at this time?

24 A I understood they were.

1 Q Do you know if they had been intending to split up
2 at this time?

3 A No.

4 Q No, you don't know, or no, they didn't?

5 A I don't know. I don't know.

6 Q Did you have any discussions with Paul regarding
7 that?

8 A Nope.

9 Q You have been handed Exhibit 5 with a Bates-- or
10 identified by Bates number on the bottom right-Hand corner as
11 HR0000311."

12 MR. GILMORE: I'm sorry. I think you missed a spot,
13 I believe.

14 MS. PILATOWICZ: This was the amended one.

15 MR. GILMORE: Was this one the portions I agreed to
16 remove? I am sorry. Hang on.

17 THE COURT: Where are you in the transcript? You're
18 on page 16; is that correct.

19 MS. PILATOWICZ: We moved on to page 19 line 16.

20 THE COURT: What you previously told me we were
21 going to use that you didn't use.

22 MS. PILATOWICZ: It was page 17 line 22.

23 THE COURT: And all of 18?

24 MS. PILATOWICZ: Everything up to 19 had been

1 removed. Your Honor, I apologize. I didn't -- I thought we
2 provided updated pages. And up to 179 in yellow or green.

3 We are starting on page 19 line 16 in green?

4 THE COURT: Thank you.

5 BY MS. PILATOWICZ:

6 Q Let's start back at page 19 line 16.

7 "Q you have been handed Exhibit 5 with a Bates-- or
8 identified by Bates number on the bottom right-hand corner as
9 HR0000311. It appears to be an e-mail from Sujata to you
10 dated September 20, 2010 at 3:47 p.m. Do you see that?

11 A I do.

12 Q Do you have any recollection of receiving this
13 e-mail?

14 A A vague recollection.

15 Q What is your--

16 THE COURT: I am going to stop you there. What
17 exhibit is that?

18 MS. PILATOWICZ: It has not been marked as an
19 exhibit, I do not believe. We did not mark it.

20 MR. GILMORE: I am still trying to catch up. We are
21 on 19?

22 MS. PILATOWICZ: Exhibit 5.

23 MR. GILMORE: That is Exhibit 42.

24 MS. PILATOWICZ: My apologies, Your Honor.

1 Which has been admitted.

2 THE COURT: Go ahead. Thank you.

3 ///

4 BY MS. PILATOWICZ:

5 "Q Do you have any recollection of receiving this
6 e-mail?

7 A A vague recollection.

8 Q What is your recollection, or do you -- is there
9 anything in there that triggered your recollection?

10 A My recollection is that Paul was interested in the
11 consequences of bankruptcy and, therefore, before one can give
12 him that advice, one needs to know what the assets are of the
13 person contemplating bankruptcy.

14 Q Did you ever become aware of any other assets
15 besides the ones listed on this e-mail?

16 A Not that I recall.

17 Q There is a reference in the second paragraph with a
18 discussion of Superpumper and Consolidated Western Corporation
19 which is identified later as -- insured as CoWest Co., and
20 Sujata indicating-- I am looking at the third to last line,
21 second paragraph under Subsection A. 'I would like to
22 preserve this business and protect it from the Herbsts, since
23 it pays salaries to Edward, Sam and Paul and it is a strong
24 going business.' Did you ever have any specific discussions

1 with Sujata about protecting Superpumper or CoWest Co.?

2 A In a general sort of way.

3 Q Do you recall what those discussion were?

4 A Well, I believe-- and again this is based on eight
5 year old recollection -- that Superpumper had shareholders in
6 addition to Paul.

7 Q Do you recall who those were?

8 A I think Sam and his friend whose name I don't
9 remember.

10 Q Edward Bayuk, does that sound --

11 A Edward Bayuk, yeah. Obviously, their welfare had to
12 be considered in the entire planning process per Paul's
13 insistence.

14 Q Do you recall anything else about the conversation
15 regarding Superpumper?

16 A We talked about whether or not Superpumper could be
17 conveyed to Paul and Ed, but I pointed out to Paul that that
18 was fine, but any consideration that he got would be subject
19 to the claims of his creditors, and that the transaction could
20 be potentially voided if it was determined to have been for
21 less than fair value or done to hinder, delay or defraud
22 creditors.

23 Q Did you have any discussions with Paul about the
24 consideration for the transfer?

1 A There was talk about him getting cash or notes or
2 combination of those. I think, if I recall correctly, neither
3 Paul nor-- excuse me -- neither Sam nor Ed nor the combination
4 of them had enough cash to just buy him out, so the discussion
5 revolved on how to structure the transaction.

6 Q What were those discussions?

7 A We never really got that far.

8 Q Did you have any discussions about the value of
9 Superpumper?

10 A Only in the sense that I told him the value would
11 need to be determined in advance of the conveyance so as to
12 make sure that it was fair value and thereby create the least
13 chance that it would be avoided in a bankruptcy on that basis.

14 Q As we sit here, you don't know what the value was or
15 was determined to be?

16 A No, I don't. Never did."

17 MS. PILATOWICZ: Moving to page 32, Your Honor, I
18 believe there was previously a designation at page 38 that was
19 removed.

20 THE COURT: 23, 24, 25, 26.

21 MS. PILATOWICZ: Those were removed.

22 THE COURT: Okay. And 27 are all removed?

23 MS PILATOWICZ: Correct, Your Honor.

24 THE COURT: You're beginning on page 32?

1 MS. PILATOWICZ: Correct.

2 THE COURT: Thank you.

3 ///

4 BY MS. PILATOWICZ:

5 Q Page 32, line 3.

6 "Q Now Exhibit 8 is identified, or you've been handed

7 Exhibit 8. Its identified on the bottom right-hand corner

8 Bate label HR0000373 through 381. It appears to be a second

9 e-mail from Sujata to you on September 20, 2010 at 9:50?"

10 THE COURT: Do we have that one marked?

11 MS. PILATOWICZ: We do not, Your Honor. This moves on

12 to refer to another exhibit.

13 THE COURT: Okay.

14 BY MS. PILATOWICZ:

15 "Q It appears, based on what we just read in Exhibit 7,

16 that would be the second e-mail that was forwarded that she

17 referenced she was going to forward. Do you remember

18 receiving this e-mail?

19 A Vaguely, yeah.

20 Q What do recall about it?

21 A I recall, now that this has refreshed my

22 recollection, I'm recalling that there was -- go ahead.

23 Q When you refer to 'this' you're talking about

24 Exhibit 7"--

1 MS. PILATOWICZ: Which is Exhibit 29 in the exhibit
2 binder which has not yet been admitted.
3 ///

4 BY MS PILATOWICZ:

5 "Q When you refer to 'this' you're talking about Exhibit
6 7?

7 A I'm sorry, Exhibit 7. I do recall there were
8 e-mails following the terminating of my call with him at the
9 hotel where -- when my cell ran out of juice. I never spoke to
10 him after that. I was just thinking that was the last time
11 that I talk to him, and it was basically over, and I forgot
12 this -- about this chain of e-mails. If you had shown them to
13 me in advance of today, I would have a better memory on it.

14 Q On Exhibit 8 do you recall having any discussions
15 with Sujata regarding these e-mails?

16 A Now I do, yeah.

17 Q What were those? What were those discussions?

18 A The fact that Paul wasn't, you know, liking the
19 advice we were giving him.

20 Q Do you recall anything else?

21 A No, not really. I recall Sujata being concerned
22 that he was going to fire us and not use us as his lawyers
23 anymore. Frankly, I didn't care. I didn't like the guy.

24 Q Did Sujata have any other response to-- in your

1 discussions?"

2 MS. PILATOWICZ: Your Honor, there is an objection.
3 It was by Mr. Graber's counsel at the deposition. I don't
4 know if Mr. Gilmore has an objection?

5 MR. GILMORE: No, I don't.

6 "THE WITNESS: I don't know. Our communications
7 were scant following that call.

8 Q Your communications with Paul or your communications
9 with Sujata?

10 A Even with Sujata. You know, as far as I was
11 concerned, I was done with it. He was upset during the
12 conversation. It was clear to me that he didn't want -- he
13 didn't like what I was telling him, and I didn't like the
14 attitude he was conveying that I ought to be able to be more
15 specific, because it's not a subject on which you can
16 guarantee results. He didn't like that. And this e-mail from
17 Sujata to him says it exactly. I don't think it simply says
18 you can transfer assets for value. She's talking about what
19 the law says. 'I think Gary was trying to say that fraud
20 conveyance laws are complicated, and they look at a lot of
21 factors including whether you have an intent to defraud your
22 creditors.' And that says it all with respect to what our
23 conversations were about.

24 Q And at that time, was it your understanding of

1 whether Paul had an intent to default his creditors?"

2 MR. GILMORE: There is an objection.

3 THE COURT: Do you want to make it?

4 MR. GILMORE: Yes, I do.

5 THE COURT: What is it.

6 MR. GILMORE: Calls for speculation.

7 THE COURT: Counsel.

8 MS. PILATOWICZ: Your Honor, it was asking

9 Mr. Graber, Mr. Morabito's counsel's understanding what his

10 intent was.

11 THE COURT: Overruled.

12 "THE WITNESS: I have no idea what his intent was.

13 I think he had an intent to avoid paying the judgment, whether

14 that's by winning on appeal or divesting himself of his

15 assets."

16 MR. GILMORE: And I move to strike the answer. The

17 witness testifies he has no idea what the intent was, and then

18 goes and offers what he believes the intent was. That is why

19 I objected.

20 THE COURT: Okay. Counsel.

21 MS. PILATOWICZ: Your Honor, clearly during the

22 response he was able to respond to the question and recall

23 that he did have some sort of intent -- or recollection or

24 understanding of what his intent was at the time.

1 THE COURT: I am going to overrule the objection, I
2 am not going to strike. I am going to admit it. It goes to
3 the weight. The vacillating back and forth and the fact the
4 witness gave two versions, that would be considered and may be
5 considered.

6 MS. PILATOWICZ: Your Honor, there was further
7 designations that have been removed in an attempt to
8 streamline the testimony. That is the conclusion of the
9 questions that Plaintiff posed in Mr. Graber's deposition.

10 Your Honor, I would move for admission of Exhibit
11 29.

12 THE COURT: Counsel, any objection?

13 MR. GILMORE: Yes. Exhibit 29 is a hearsay
14 statement. The Declarant is Paul Morabito. The recipients
15 are Dennis Vacco and Sujata Yalamanchili. And it's clear on
16 Mr. Graber's testimony, this is a subject matter concerning
17 the scope of their representation. Mr. Morabito did not
18 testify to this document in his deposition, and for that
19 matter neither did Mr. Vacco or Sujata Yalamanchili. This
20 exhibit is being offered through the testimony of Gary Graber
21 who was not a recipient of the Declarant's statement.

22 THE COURT: Counsel.

23 MS. PILATOWICZ: Your Honor, the statement of
24 Mr. Gilmore indicated the Declarant is Mr. Morabito whose

1 intent is issue in this case. It is a present sense
2 impression. That goes to the intent, plan or motive. It is
3 an exception to hearsay under the presence sense impression.

4 MR. GILMORE: Present sense impression exception to
5 hearsay refers to a situation where someone would say I just
6 saw somebody shoot somebody. That is not what this is. This
7 is an e-mail amongst many between Mr. Morabito and his counsel
8 talking about things related to what Mr. Graber was
9 discussing, but the Declarant is not here to be
10 cross-examined. I don't get to offer him and say what did you
11 mean when you said this? Why were you saying this? So it is
12 hearsay. It lacks foundation. For that reason, pursuant to
13 the Points and Authorities that I offered earlier in the week.

14 THE COURT: Counsel.

15 MS. PILATOWICZ: Your Honor, a present sense
16 impression doesn't require it be an excited utterance. That
17 is what counsel is referring to. It is describing the mindset
18 as to plan, motive and intent, and Mr. Morabito's intent is
19 directly relevant to the matters of this case.

20 THE COURT: Objection is overruled. Exhibit 29 is
21 admitted.

22 (Exhibit 29 admitted in evidence.)

23 THE COURT: Mr. Gilmore, are you going to start on
24 page 43 of the deposition?

1 MR. GILMORE: That is my intention.

2 THE COURT: You may proceed.

3 MR. GILMORE: For the record, I am sorry, Your
4 Honor, I would like to identify the exception to the hearsay
5 rule that was offered. Present sense impression, was that the
6 correct one? Which one was it?

7 MS. PILATOWICZ: Under 51 --

8 MR. GILMORE: A statement describing or explaining
9 an event or condition made while the Declarant was perceiving
10 the event or condition or immediately thereafter.

11 THE COURT: You wanted the statute number in the
12 record?

13 MS. PILATOWICZ: Yes, Your Honor, the statute was
14 NRS 51.105.

15 MR. GILMORE: Yes, Your Honor, I will start at 43.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. GILMORE:

19 "Q Mr. Graber, my name is Frank Gilmore, and I am the
20 attorney for the Defendants in the State court action which is
21 pending in Washoe County presently carrying the caption as
22 evidenced in Exhibit 2.

23 A So you represent all these Defendants?

24 Q My client is, correct, Superpumper, Edward Bayuk,

1 the Bayuk Living Trust, Salvador or Sam Morabito and Snowshoe
2 Petroleum, Inc., okay?

3 A Yup.

4 Q Were you previously aware of that before I just made
5 that representation?

6 A That you were Defendants -- the attorney for all
7 these Defendants?

8 Q Correct?

9 A No, because I had never given it much thought.

10 Q Of those Defendants which I just identified, can you
11 please tell me if you ever maintained an attorney-client
12 relationship, based on your understanding of that term, with
13 any of those Defendants?

14 A To the best of my knowledge, we had a relationship
15 with Paul Morabito, and I don't know about any of the others.

16 Q Okay. So --

17 A I never felt that I had a relationship with anybody
18 but Paul Morabito.

19 Q Thank you. So you don't have a memory of delivering
20 any legal advice with any of the named Defendants?

21 A No.

22 Q Did you ever consult the possibility of ultimately
23 arriving at an attorney-client relationship with any of the
24 Defendants?

1 A No.

2 Q Okay. Do you recognize the name Snowshoe Petroleum?

3 A No.

4 Q Do you recognize or were you previously made aware
5 of an Edward Bayuk Living Trust?

6 A No."

7 MR. GILMORE: I continue on page 45, line 21.

8 BY MR. GILMORE:

9 "Q Thank you. Have you -- has your practice emphasis
10 been the same or been consistent throughout your career?

11 A Yes, I was hired by Hodgson Russ for the specific
12 purpose of augmenting its bankruptcy practice in view of the
13 passage in 1978 and the resulting increased use of the
14 Bankruptcy Reform Act.

15 Q When you say "bankruptcy" do you refer to yourself
16 as a bankruptcy attorney?

17 A Among other kinds of attorneys, yes.

18 Q Okay. What other kind of attorney would you
19 consider yourself?

20 A Oh, I do a lot of things. You know, bankruptcy
21 takes you into a lot of areas. I consider myself a litigator.
22 I consider myself, sometimes, a transactional lawyer. Most of
23 the work, however, is done in the context of troubled--
24 financially troubled business entities or business people.

1 Q Is it a fair characterization that your practice
2 primarily represents debtor individuals or entities?

3 A No. My primarily focus has always been creditor
4 work.

5 Q Okay. And --

6 A But there's a lot of players in a bankruptcy. I've
7 represented committees, creditors' committees. I've
8 represented lawyers. I've represented buyers of assets.

9 Q Is it possible to characterize generally what a
10 bankruptcy attorney does in his every day practice?

11 A Yes. He advises clients with respect to the
12 desirability of filing a bankruptcy and/or the consequences of
13 doing so and represents parties in interest in actual
14 bankruptcy proceedings. And there is also something we call
15 'workouts' which is a process by which financial difficulty
16 between a debtor and its creditors are worked out without
17 bankruptcy."

18 MR. GILMORE: Excuse me one second. I am continuing
19 on page 48. Line 9.

20 BY MR. GILMORE:

21 "Q Thank you. I don't pretend to be an expert, but I
22 just have some-- but the concept of the discharge, is that
23 upon the completion of the bankruptcy, those obligations owed
24 by the debtor to various creditors might be, for lack of a

1 better word, forgiven, true?

2 A That's the goal of a bankruptcy, of an individual
3 who files bankruptcy. A corporation is a different situation.
4 And by the way, corporate discharge is under Section 1141, I
5 think.

6 Q Let's focus for the most part, unless I state
7 otherwise, on the individual bankruptcies.

8 A And just so I can give you a complete answer, family
9 farmers are governed by yet a different division. I didn't
10 just say that for the humor of it. Individuals also sometimes
11 seek relief under Chapter 13 which the goal is also a
12 discharge.

13 Q Okay. The goal, ultimately of a discharge is to
14 avoid having creditors seize upon their assets, right?

15 A Of course. So the process of bankruptcy is best
16 described as the process of getting a discharge and keeping as
17 many assets as are possible.

18 Q Now you provide advice to clients related to asset
19 protection that doesn't necessarily involve bankruptcy; isn't
20 that true?

21 A Well 'provide' is a-- yeah I suppose that's
22 accurate. I've had many discussions with my people over the
23 years who seek to protect substantial amounts of assets from
24 their creditors more than the exemption statutes generally

1 allow. However, there are certain states like Florida, I
2 believe Nevada might be one, Texas is another, there are
3 several of them which gives an unlimited homestead exemption.
4 And prior to the amendment of the bankruptcy law in 2005, it
5 used to be a common tactic among debtors who had a lot of
6 money, Bowie Kuhn, the former baseball commissioner, would be
7 a good example, of buying a home in a place like Florida,
8 using all their financial wherewithal to buy that home and
9 being able to get a discharge and keep the home.

10 MR. GILMORE: Continuing on page 50 line 18.

11 BY MR. GILMORE:

12 "Q So when you are providing advice to various clients
13 who might have the desire to move to Florida and take
14 advantage of the unlimited homestead exemption, you don't
15 believe that's a wrongful intent of the client, do you?"

16 MR. GILMORE: Then there was an objection by
17 Mr. Graber's attorney. The question and answer continues on
18 page 54, line 8. That would be you, sir.

19 "THE WITNESS: I don't believe there is anything
20 immoral in people exercising their full and -- their full
21 rights under the law, under what law you're talking about.

22 Q Thank you. In your should I say first volume of
23 depositions, one of the first answers that you gave to a
24 question asked by Ms. Polatowicz, the question was, 'what were

1 you asked to do for Paul Morabito?' Your response, verbatim,
2 'I was asked to consider whether there were ways in which he
3 could evade the judgment through bankruptcy, or I shouldn't
4 say 'evade the judgment' that is not correct. If there are
5 ways he could protect himself against-- protect his assets and
6 escape liability on account of the judgment.' I'll represent
7 to you that quote has been reproduced in three or four filings
8 ever since the statement was made. Emphasis --

9 A I'm famous.

10 Q Mr. Graber, emphasis on the word 'evade'.

11 A Ah.

12 Q As though 'evade' signifies or connotes something
13 wrongful, immoral, illegal, okay? I will make that
14 representation to you that that's how your words have been
15 portrayed in the filings that have been made in this case.
16 You understand?

17 A Are you asking me if I agree with you?

18 Q I'm asking if you understand?

19 A I understand.

20 Q And then I will ask you --

21 A I didn't say it is true.

22 Q -- do you believe, when you used the word 'evade' in
23 our first session, did you intend to signify something
24 wrongful, immoral, illegal, inappropriate?"

1 MR. GILMORE: There was an objection to form.

2 MS. PILATOWICZ: No objection.

3 "THE WITNESS: I was recently driving and a car

4 coming from my right went through a stop sign. I successfully

5 evaded a crash. I don't think there is any subjective

6 connotation that necessarily has to be put on that word, and I

7 certainly didn't mean for there to be one attached to it."

8 MR. GILMORE: I believe that concludes the reading of

9 Mr. Graber.

10 THE COURT: Okay. So Mr. Graber is finished?

11 MS. PILATOWICZ: Mr. Graber is finished. The good

12 news is the depositions are going much faster than the

13 scheduled proposed witnesses.

14 THE COURT: Okay.

15 MS. PILATOWICZ: Sujata Yalamanchili.

16 THE COURT: How long is that deposition going to be?

17 MS. PILATOWICZ: It should probably take about the

18 same amount of time, about a half hour.

19 THE COURT: We should probably take a recess now

20 before we start into it. So we'll take our short recess now.

21 And then are there any changes to the deposition as you

22 previously marked?

23 MS. PILATOWICZ: Your Honor, I believe there are. I

24 will mark those for the Court. Your Honor, so the record is

1 clear, my apologies, I had sent an amended designation to
2 Mr. Gilmore I believe it was two weeks ago. Mr. Gilmore
3 requested some of the ones we remove be added back in, remain
4 in. The books as we are reading them reflect those changes.
5 I will make sure the Court has copies of the changes.

6 THE COURT: Okay. That is great. So while we are
7 taking our recess, you can just do Sujata Yalamanchili. We
8 will be in recess.

9 (Short recess taken.)

10 MS. PILATOWICZ: Your Honor, the next witness is
11 Sujata Yalamanchili.

12 THE CLERK: Deposition dated May 1, 2018 opened and
13 published.

14 MS. PILATOWICZ: We are starting at page 11 line 3.

15 THE COURT: Sir, you are still under oath as you
16 proceed with this deposition. Go ahead.

17

18 DIRECT EXAMINATION

19 BY MS. PILATOWICZ:

20 "Q Okay. Did you have any involvement or are you aware
21 documents were requested to be produced as part of a subpoena?

22 A Yes.

23 Q Were you involved in the production of documents in
24 response to the subpoena?

1 A Somewhat. Go ahead.

2 Q What was your involvement?

3 A I helped identify which files were involved and made
4 information available, physical files.

5 Q Do you know who else was involved in the production
6 of documents in response to the subpoena?

7 A I don't.

8 Q Who did you provide the information to?

9 A To our office's general counsel.

10 Q Is that Mr. Kearney?

11 A Actually, his assistant, Colleen Thomas.

12 Q And did you produce everything you had that was
13 responsive to the documents --

14 A Yes.

15 Q -- or the document request? Other than identifying
16 files and providing physical files, did you do anything else
17 to obtain responsive documents to the subpoena request?

18 A No.

19 Q Did you check your e-mail folders?

20 A Yes. That was part of identifying which files were
21 involved.

22 Q So did you look for communications? Do you use
23 Microsoft Outlook or something similar?

24 A Yes.

1 Q Did you look for responsive e-mails in your Outlook
2 folder?

3 A Yes.

4 Q And then did you provide those?

5 A Yes, or I directed Colleen where to find them.

6 Q Was there anywhere else on your system that you
7 searched for electronic records?

8 A No.

9 Q Do you maintain all documents relative to a file in
10 your physical files?

11 A Yes and no. Yes.

12 Q Well let me-- what I am trying to get at is, could
13 there be documents that are responsive, in electronic form
14 somewhere on a computer or system somewhere that haven't been
15 produced?

16 A I don't know, but we responded to the best of our
17 ability, so I don't think there are.

18 Q So you searched electronic information the best that
19 you could?

20 A Correct."

21 MS. PILATOWICZ: Turning to page 14 line 6.

22 BY MS. PILATOWICZ:

23 "Q How are you currently employed?

24 A I am a partner at Hodgson Russ.

1 Q How long have you been a partner at Hodgson Russ?

2 A About 15 years.

3 Q Why don't you give me a brief overview of your

4 employment history starting from when you graduated, I assume,

5 law school.

6 Q Graduated law school in '93. Worked at three

7 different firms in the Connecticut area, relocated to Buffalo

8 in February '99, and I've been an employee and partner at

9 HodgsonRuss since then.

10 Q And where did you go to law school?

11 A Cornell.

12 Q Where did you go to undergrad?

13 A State university of Buffalo.

14 Q Were you terminated from any of the three law firms

15 in Connecticut?

16 A No.

17 Q What is your -- Do you have a specialty?

18 A I work in our real estate and finance practice area.

19 Q And describe to me generally what you do as part of

20 your practice?

21 A Transactional real estate work, buying and selling

22 property, leasing property, those sorts of transactions.

23 Q Has that been consistent throughout your career?

24 A Yes."

1 MS. PILATOWICZ: Moving to page 16 line 9.

2 BY MS. PILATOWICZ:

3 "A I don't actively practice in the state, so that was

4 my -- I elected to take inactive status.

5 Q How long has it been inactive?

6 A Probably since 2000.

7 Q Is there a reason you did -- is there a specific

8 reason you obtained your license in Pennsylvania?

9 A Yes, as a way to get into New York, to waive into

10 New York.

11 Q Okay. And when were you licensed in New York?

12 A 1999.

13 Q When did you first meet Paul Morabito?

14 A Probably in the Summer of 2005.

15 Q Tell me about how you met Mr. Morabito?

16 A I was on a trip to Laguna Beach, California and met

17 him there.

18 Q Was the purpose of your trip to meet him?

19 A I was doing work for his companies. I didn't know I

20 would actually meet him, but I did meet him as part of that

21 trip.

22 Q Okay. Let's back up to when you first talked to

23 Mr. Paul Morabito?

24 A I couldn't recall, but probably somewhere in the

1 2004 or '5 time frame.

2 Q And how did that first communication come about?

3 A It was probably a phone call, and probably
4 facilitated by his in-house counsel at the time with whom I
5 was working closely."

6 MS. PILATOWICZ: Page 19 line 7.

7 BY MS. PILATOWICZ:

8 "Q Have you ever been retained by Salvatore 'Sam'
9 Morabito?

10 A Possibly. We did represent him on certain
11 transaction involving his brother.

12 Q When was the most recent one?

13 A I can't recall.

14 Q Do you know if he has remained or if Hodgson Russ
15 has been retained by him since 2010?

16 A I don't think so, but I don't know for sure.

17 Q What about Edward Bayuk?

18 A Same answer. We did represent him in connection
19 with some of the larger transactions with Paul.

20 Q What about Superpumper, Inc.? Other than what you've
21 already testified to.

22 A I'm sorry, I don't understand the question.

23 Q I'm sorry. Has Hodgson Russ been retained by
24 Superpumper, Inc?

1 A We were retained by them in that 2007, 2008 period.

2 Q Other than that transaction, has Hodgson Russ been
3 retained by Superpumper?

4 A After the acquisition by the Morabito company, we
5 did work on some lease-back transactions with Superpumper, but
6 since 2010 we have not done any work for then.

7 Q What about Snowshoe Petroleum?

8 A I don't recall that property.

9 Q What about Snowshoe Properties?

10 A I don't recall that property.

11 Q Does Hodgson Russ still represent Paul Morabito?

12 A No.

13 Q When did that representation cease?

14 A Probably around 2010.

15 Q Do you recall when in 2010?

16 A No.

17 Q Do you recall the reason for the termination of the
18 relationship?

19 A He engaged different counsel.

20 Q Do you know who he engaged?

21 A He engaged Dennis Vacco at the Lippes law firm, and
22 he may have counsel in Nevada and Arizona. I don't know.

23 Q So Hodgson Russ has not performed any work for Paul
24 Morabito after 2010?

1 A Not that I'm aware of.

2 Q Was there any specific event in 2010 that led to the
3 termination of the relationship?

4 A No.

5 Q Was there any advice that Hodgson Russ provided to
6 Paul Morabito that he refused to follow that lead to the
7 termination?"

8 MR. GILMORE: No objection.

9 "THE WITNESS: Most of our clients object to our
10 advice at some point or other, but, no, there was no specific
11 termination related to advice.

12 BY MS. PILATOWICZ:

13 Q Was it Mr. Morabito that terminated the relationship
14 or Hodgson Russ that terminated it?

15 A I can't recall, so I'll leave it at that.

16 Q Do you recall being specifically engaged following
17 the entry of a judgment in September of 2010 against Paul
18 Morabito to perform certain work?

19 A There was an extension of our exiting engagement.
20 There was not a new engagement.

21 Q Okay. What was the purpose of the extension of the
22 engagement?

23 A We were giving him advice in the aftermath of the
24 judgment, and we had been involved in a lawsuit, as I said. I

1 gave deposition testimony, so it was sort of dealing with the
2 aftermath of the judgment.

3 Q What specifically about the aftermath of the
4 judgment?

5 A Developing strategy on an appeal, asset protection,
6 that sort of thing.

7 Q Do you know who specifically retained Hodgson Russ?
8 Was it Paul Morabito?

9 A As I said, it was an extension of our existing
10 engagement, so we were representing a number of his different
11 companies. I don't know -- I don't recall if we had a file
12 open specifically for Paul, individually, but we were working
13 on behalf of his companies.

14 Q What companies specifically?

15 A We represented a number of his companies that-- for
16 example, real estate holding companies that may have only
17 owned one piece of real estate, but certainly Superpumper,
18 Inc, and I don't recall the company that was the subject of
19 the lawsuit, but we would have been representing them as well.

20 Q Consolidated Western Corporation, does that sound
21 like it?

22 A That could be.

23 Q Other than Superpumper and Consolidated Western
24 Corporation, do you recall any other entities that Hodgson

1 Russ was representing?

2 A Are you talking about --

3 Q Specific to Paul Morabito?

4 A Specific to that September period?

5 Q Yes?

6 A I don't recall any other specific companies."

7 MS. PILATOWICZ: Moving to line 12 page 23.

8 BY MS. PILATOWICZ:

9 "Q You mentioned that one of the reasons for the
10 extension of the engagement was as asset protection. Tell me
11 about what specifically asset protection you were engaged to
12 do.

13 A I guess to discuss, you know, what assets were
14 subject to the lawsuit judgment, what assets were not subject
15 to the asset -- or the lawsuit judgment, and, you know, how
16 Mr. Morabito was going to either address the judgment or pay
17 it, whether a personal bankruptcy might be in the offing,
18 whether -- the whole range of topics related to the judgment.

19 Q Was Mr. Morabito seeking to protect his assets from
20 collection on the judgment?

21 A Yes.

22 Q Any specific asset or all of his assets?

23 A All of his assets.

24 Q Are there any specific assets you recall discussing

1 with Mr. Morabito?

2 A We did talk about Superpumper and his ownership
3 interest in that company.

4 Q Any other ones you recall as you sit here?

5 A No.

6 Q What were your discussions regarding Superpumper?

7 A What Paul's ownership interest was, who else was an
8 owner of Superpumper, and what strategies might be involved to
9 deal with the assets.

10 Q What was the extent of your involvement in the asset
11 protection piece of the representation?

12 A Are you asking in terms of what specific things we
13 did?

14 Q So let's speak first generally about what Hodgson
15 Russ was engaged to do specifically with regard to the asset
16 protection?

17 A We had probably two or three phone calls with Paul
18 and Dennis and various other advisors to talk about what the
19 law allows, what strategies there are under the bankruptcy
20 code, that sort of thing.

21 Q What, specifically, was your involvement?

22 A I was on three or four phone calls subsequent to
23 that period going into more of later September and then
24 through December. I was providing information to Mr. Vacco.

1 So we had most of Paul's corporate records, so, you know,
2 Bylaws, Certificates of Incorporation, things like that for
3 various entities. So whatever requests he made, we would try
4 to be responsive to them.

5 Q Did you draft any documents in response to the asset
6 protection?

7 A I don't recall.

8 Q Did you provide any proposed transaction structure
9 for the asset protection?

10 A We talked broadly about Superpumper and some
11 strategies about how to perhaps sell Paul's interest in the
12 company.

13 Q And what specifically was -- was there a structure
14 you personally proposed?

15 A I don't recall if I personally proposed it, but
16 there were structures discussed,.

17 Q What were the structures that were discussed?

18 A One structure was to sell Paul's interest to the
19 company to the other shareholders for value, and whether that
20 was a payment made in cash or through some sort of --

21 Q Before the break, we were discussing proposed
22 strategies. You mentioned selling Paul's interest to other
23 shareholders. Were there other proposed structures to that
24 transaction?

1 A Not that I recall.

2 Q Who came up with that proposed structure?

3 A I don't recall.

4 Q Were you concerned about fraudulent transfers when

5 discussing the asset protection for Paul Morabito?

6 A It was part of what we discussed with him, what the

7 law provides around that.

8 Q What were your concerns regarding the fraudulent

9 transfers?

10 A Well, I don't know if we had concerns around it, but

11 we did explain to him -- because the other shareholders were

12 relatives or close people, that we explained to him how the

13 law would look at that or what the rules are pertaining to

14 that.

15 Q What specific advice can you recall that you

16 provided to Paul regarding the transfer of his assets?"

17 MS. PILATOWICZ: There was an objection.

18 MR. GILMORE: No objection.

19 MS. PILATOWICZ: By Ms. Yalamenchili's personal

20 counsel. You're not adopting that?

21 MR. GILMORE: I am not.

22 "THE WITNESS: I think it was really around the

23 Superpumper potential transfer that I just mentioned. I don't

24 recall discussing any of his other assets.

1 Q Do you recall specifically what advice you provided?

2 A I think it was around how a transaction like that
3 could be accomplished, what were the mechanics that were
4 needed, as I said, what would be the fraudulent conveyance or
5 preference laws be around that.

6 Q What was your advice in that regard?

7 A I think it was if he wanted to do that, he would
8 need to get a business valuation of the company, determine --
9 I don't recall what his percentage ownership was -- but
10 determine what percentage ownership made sense, and if they
11 didn't pay in cash, if the other shareholders paid him with a
12 Promissory Note, the Promissory Note would be an asset of
13 Paul's that would be subject to the judgment.

14 Q Do you recall any specific response from Paul
15 Morabito regarding that advice?

16 A Not specifically no.

17 Q You've been handed Exhibit 14"--

18 MS. PILATOWICZ: Which is Exhibit 28 in the court
19 exhibit binders?

20 BY MS. PILATOWICZ:

21 --which is identified as Bates label on the bottom right-hand
22 corner HR000220."

23 MS. PILATOWICZ: This has been admitted.

24 BY MS. PILATOWICZ:

1 "Q It purports to be an e-mail from you to Eileen
2 Crotty?
3 A Yes.
4 Q Sent September 20, 2010 at 11:38. Do you see that?
5 A Yes.
6 Q Do you recall -- well do you recall sending this
7 e-mail?
8 A Not specifically, no.
9 Q Is that your e-mail address listed in the firm line?
10 A Yes.
11 Q Do you have any belief that you didn't send this
12 e-mail?
13 A I'm sorry, can you say that again?
14 Q Sorry. Do you have any reason to believe that you
15 didn't send this e-mail?
16 A No.
17 Q Who is Eileen Crotty?
18 A She's the CFO of Hodgson Russ.
19 Q Okay. In the second paragraph of the e-mail you
20 indicate, 'Paul has been waiting for resolution of this court
21 case before making arrangements to pay us. With this
22 unfavorable ruling, I'm not sure how this will play out. The
23 good news is he may be -- he may now be motivated to get us
24 paid, since, if he doesn't, the money will be taken by the

1 judgment creditor. The bad news is he may be motivated to
2 move assets around to keep them away from the creditor. I
3 have discussed this with Paul, and he wasn't committed either
4 way what he intends to do.' Your reference there to this court
5 case is that, and the unfavorable ruling, is that the
6 September 2010 judgment we have been talking about?

7 A Yes.

8 Q When you say 'the bad news is he may be motivated to
9 move assets around to keep them away from the creditor' what
10 do you mean by that?

11 A I don't recall.

12 Q When you say you've discussed with Paul and he
13 hasn't committed either way, what do you mean by that?

14 A I think I was talking about our fees, whether he was
15 committing to pay our fees or not.

16 Q Do you know if Paul ever paid Hodgson Russ' fees?

17 A Other than the \$20,000 retainer that was mentioned
18 in here, I don't believe he paid any additional fees, but I
19 don't recall.

20 MS. PILATOWICZ: Now on page 40 line 23.

21 BY MS. PILATOWICZ:

22 "Q Other than Gary Graber, Dennis Vacco, Paul Morabito,
23 potentially Stan Bernstein, was there anyone else who was
24 involved in discussions in September of 2010 regarding asset

1 protection strategies?

2 A I don't recall."

3 MS. PILATOWICZ: We are now on page 43 line 6.

4 BY MS. PILATOWICZ:

5 "Q Let's go to Exhibit 5 which is identified as
6 HER0000311 on the bottom right-hand corner."

7 MS. PILATOWICZ: And I believe this was the same one
8 that was identified in Mr. Graber's. It is Exhibit 42 in the
9 binders.

10 BY MS. PILATOWICZ:

11 "Q Let's go to Exhibit 5 which is identified as
12 HR0000311 on the bottom right-hand corner.

13 A Yup.

14 Q Appears to be an e-mail from you to Gary Graber
15 dated September 20, 2010?

16 A Yes.

17 Q Do you recall sending this e-mail?

18 A No.

19 Q Do you have any reason to dispute that you sent the
20 e-mail?

21 A No.

22 Q Do you know what this e-mail is referring to?

23 A It refers to Paul's assets.

24 Q Where did you obtain your information regarding

1 these assets?

2 A Probably a combination of personal knowledge and
3 information that Mr. Morabito provided to me.

4 Q Are the assets listed in this e-mail all of the
5 assets of which you were aware at the time?

6 A I don't know, but I assume so, because it seems to--
7 I said to Gary these were my big picture knowledge.

8 Q Did you ever gain an understanding whether any other
9 assets were owned by Paul Morabito as of September 2010?

10 A Not that I recall.

11 Q Okay. There a reference in Subsection A to
12 Superpumper and Consolidated Western Corporation" --

13 THE COURT: Slow it down, okay?

14 BY MS. PILATOWICZ:

15 "Q There's a note that says, 'at one point Paul owned
16 \$100 of this stock. Not sure if that is still the case.' Where
17 did you obtain your understanding about Paul's ownership of
18 this stock?

19 A Combination of my involvement in transactions and
20 then information that was given to me by Paul.

21 Q Was there anybody else who provided information?

22 A Not that I recall, specifically.

23 Q There's also a reference to CoWest Co. Co-owned a
24 hundred percent of the stock in Superpumper, Inc. Where did

1 you obtain that information?

2 A Must have been from minute books or other
3 corporation records.

4 Q Did you ever obtain an understanding that the
5 ownership was different than what's represented in this
6 e-mail?

7 A Not that I recall.

8 Q Do you know what the ultimate transfer of
9 Superpumper looked like?

10 A Not that I recall, no.

11 Q Okay. You indicated in that e-mail, the second to
12 the last or the last sentence of Subsection A, 'I would like
13 to preserve this business to protect it from the Herbsts. It
14 pays salaries to Edward, Sam and Paul and is a strong going
15 business.' What did you mean there?

16 A Well, as I said earlier this-- there were other
17 shareholders involved and employees, and so we wanted to
18 convert this to a note so that the underlying asset could
19 remain with the other shareholders.

20 Q Do you know if Paul continued to be involved with
21 Superpumper after transfer?

22 A I don't know."

23 MS. PILATOWICZ: Moving to page 47 line 14.

24 BY MS. PILATOWICZ:

1 "Q Equity interest. Do you know how it was determined
2 that Paul would receive a note for Superpumper and the stock
3 would go to the other shareholders?

4 A Well, I know what the discussions were. I don't
5 know who decided what, but it was part of a strategy to
6 preserve that asset for the other shareholders and convert
7 Paul's interest into a Promissory Note.

8 Q Do you know if there was ever a discussion with Paul
9 providing the consideration received from the transfer to the
10 Herbsts to satisfy the judgment?"

11 MR. GILMORE: No objection.

12 "THE WITNESS: Yes, we did discuss, but that would be
13 an asset of Paul's that would be subject to the judgment.

14 Q What was Paul's response to that?

15 A I don't recall, specifically."

16 MS. PILATOWICZ: Moving to page 48 line 10.

17 BY MS. PILATOWICZ:

18 "Q Your have been handed what has been marked Exhibit
19 18"-- which is Exhibit 223 in the binder. It has been
20 admitted.

21 THE COURT: Thank you.

22 "--which is identified by Bate number HR0000358 on the
23 bottom right-hand corner. There's a-- I believe Mr. Kearney
24 pointed earlier, this is a-- the attachment to this e-mail is

1 contained in another exhibit, so if you turn to Exhibit 11, I
2 believe that's the attachment referenced in the bottom e-mail
3 on this chain, so you can look at the two together just for
4 clarification purposes.

5 THE COURT: Have you marked both sets as Exhibit
6 223?

7 MS. PILATOWICZ: I don't believe we have marked
8 Exhibit 11, but I will confirm that during break.

9 THE COURT: Okay.

10 MS. PILATOWICZ:

11 "Q I think the e-mail was forwarded to two separate
12 people, but the same thing applies, this has the attachment?"

13 There was a response from Ms. Yalamanchili's personal
14 counsel.

15 BY MS. PILATOWICZ:

16 "Q Okay. So Exhibit 18 -- exhibit 223 -- is an e-mail
17 from you or appears to be an e-mail from you to Paul Morabito
18 dated September 20, 2010 at 9:27 p.m. in which you indicate,
19 'Thanks. Sorry the call earlier got testy. Hopefully, Gary has
20 called you to clear the air.' Do you recall this e-mail?

21 A Yes.

22 Q What is your recollection of that e-mail?

23 A You are referring to my portion of the e-mail at the
24 top?

1 Q Yes?

2 A Well, as it suggests, that -- it was just a
3 follow-up with Paul regarding an earlier conversation in the
4 evening.

5 Q What do you recall about that conversation?

6 A That it got testy.

7 Q Well, tell me --

8 A There may have been some curse words.

9 Q Let's start with who was on the call?

10 A I recall Paul, Gary Graber, Dennis Vacco and myself.
11 There may have been others, but I don't remember.

12 Q What was the purpose of the call?

13 A It was part of overall discussions at this time
14 about asset protection, understanding what the laws provide,
15 that sort of thing.

16 Q Okay. And tell me everything that you can recollect
17 about the call?

18 A I don't remember the specific substance. I know it
19 did get testy, and Gary swore at Paul and was frustrated by
20 the tone of the conversation. I think he was traveling and
21 was very tired.

22 Q But was the tone, the conversation, the tone that
23 was coming from Paul Morabito?

24 A I don't recall Paul in particular being the driver

1 of the conversation.

2 Q What specifically caused Gary to react and curse
3 with Paul?

4 A I don't remember the specifics. It was something
5 where Gary was-- I think Paul, rather, was expecting Morabito
6 information from Gary, and Gary hadn't had time to look into
7 every aspect of bankruptcy law. He said something like, you
8 know, 'I can't deliver that,' but not in a nice way.

9 Q Do you recall specifically what information Paul was
10 looking for?

11 A I don't remember.

12 Q Do you recall anything else about that call?

13 A No.

14 MS. PILATOWICZ: Page 51 line 16.

15 BY MS. PILATOWICZ:

16 "Q Turn to Exhibit 7" --

17 MS. PILATOWICZ: Which is Exhibit 29 in Your Honor's
18 binder and which has now been admitted.

19 THE COURT: Okay.

20 BY MS. PILATOWICZ:

21 "--which is identified by Bates Labels HR0000376 through
22 377 on the bottom, and it appears to be an e-mail from you to
23 Gary Graber dated September 20, 2010 at 9:48 p.m. It looks
24 like you are forwarding an e-mail from Paul to you and Dennis

1 to Gary. You indicate at the top item, 'not sure if we should
2 respond to this. I will send you another e-mail chain FYI' do
3 you recall sending this e-mail?

4 A No.

5 Q Do you recall why you forwarded this e-mail or why
6 this e-mail would have been forwarded to Gary?

7 A I don't recall.

8 Q As we sit here, you don't have an understanding of
9 what kind of response may have been necessary that you were
10 referring to?

11 A I can speculate. I don't have a specific
12 recollection.

13 Q What is your -- what is your speculation based on
14 looking at it today?

15 A Well, in the earlier e-mail to Dennis and me, Paul
16 is commenting on different legal advice and legal strategy,
17 and so my comment to my partner was I'm not sure if we should
18 respond to the legal advice that Paul is stating in there.

19 Q Do you know if there was ever a response?

20 A I don't recall.

21 Q Were you concerned -- or based on looking at this
22 today, do you believe you would have had a concern about what
23 he was saying?

24 A Not about the specifics, but it seems to come on the

1 heals of the heated conversation, so I think I may have
2 suggested to Gary that everybody needed to cool down.

3 Q Do you recall having internal discussions with Gary
4 Graber regarding a phone call that got testy?

5 A I don't remember specific conversations, but I do
6 recall he and I spoke about it.

7 Q What do you recall about those discussions?

8 A Me telling him I wasn't happy with his behavior on
9 the call. You know, asking him why he behaved that way, that
10 sort of thing.

11 Q Did he give you a response?

12 A Yes. I think he said, 'I was tired. I was
13 traveling. I was in a hotel room, lost my temper.' That sort
14 of thing.

15 Q Do you recall anything else about those
16 conversations?

17 A Not specifically, no.

18 Q Turning to Exhibit 8 which is identified by Bate
19 Labels HR0000378 through 381 on the bottom right-hand corner,
20 it looks like a second e-mail from you to Gary on September
21 20, 2010 at 9:50 p.m. It appears to be, would you agree, the
22 second e-mail that was forwarded based on your Exhibit 7?

23 A It could be, yes."

24 MS. PILATOWICZ: Your Honor, did you have this

1 marked? I didn't see it in the exhibits. Is it in your
2 designation?

3 MR. GILMORE: Well, my records reflect there might
4 have been some confusion on the Bates ranges. You say HR378.
5 I have it identified as HR837 which would be Exhibit 33. But
6 I'm not sure, so I will have to --

7 MS. PILATOWICZ: Let me take a look at Exhibit 33.

8 THE COURT: Okay. We are going to be off-the-record.
9 Well be back on the record. The Exhibit 8 from his
10 deposition will be identified after the break.

11 MS. PILATOWICZ: Thank you, Your Honor. We are
12 starting with the answer on page 53 line 19.

13 "A It could be, yes.

14 Q Do you have any recollect of why this e-mail was
15 forwarded?

16 A Not specifically, no.

17 Q Okay. Looking down to paragraph-- or it looks like
18 the third e-mail in the chain, it appears to be an e-mail from
19 you to Paul Morabito. Do you recall sending that specific
20 e-mail?

21 A No.

22 Q Do you have any reason to believe that you didn't
23 send it?

24 A No.

1 Q You state in here, 'you need to be very clear on
2 what the law says, Paul. I don't think it simply says you can
3 transfer assets for value.' Do you know why you were saying
4 that to Paul?

5 A Well, I appear to be reiterating what Gary said on
6 our earlier phone call that evening.

7 Q Did you explain to Paul what other factors the court
8 may look at?

9 A I don't recall anything beyond what was in that
10 e-mail, no. But Gary, who is more of an expert in that area,
11 would have been discussing that on the call.

12 Q Okay. You reference specifically that conveyance
13 laws are complicated and they look at a lot of factors
14 including whether you have an intent to frustrate your
15 creditors. Were you concerned there was an intent to
16 frustrate creditors?

17 A Not specifically. That was part of our overall
18 advice on that area of law.

19 Q Do you recall any specific advice given in that
20 regard?

21 A I don't."

22 MS PILATOWICZ: We are are now moving to page 58
23 line 13. Exhibit 20, which is exhibit 32 in the exhibit
24 books.

1 BY MS. PILATOWICZ:

2 "Q Exhibit 20 is identified by Bates Labels HR0000837
3 through 839. In the bottom right-hand corner it appears to be
4 an e-mail chain between you and Gary Graber including an
5 e-mail forwarded from Gary that came from Paul dated September
6 23, 2010. Do you see that?

7 A Yes.

8 Q Do you recall this e-mail?

9 A No.

10 Q Do you have any reason to believe you didn't send or
11 receive these e-mails?

12 A No."

13 MR. PILATOWICZ: Your Honor, I would move admission
14 of Exhibit 32.

15 MR. GILMORE: No objection.

16 THE COURT: Exhibit 32 is admitted.

17 (Exhibit 32 admitted in evidence.)

18 BY MS. PILATOWICZ:

19 "Q There's-- in the last sentence or second to the last
20 sentence of the e-mail you indicate, 'when I spoke to him'--
21 it appears to be referring to Paul Morabito -- 'he was still
22 determined to sell Superpumper, and was still in a 'fighting
23 mode.' When you indicate he was determined, he was still
24 determined to sell Superpumper, was there ever a time when he

1 wasn't determined to sell Superpumper?

2 A I don't know. I don't know that you could say he was
3 determined not to sell it, but I think we had discussions
4 about whether selling it was a good idea or not, how that
5 played in the bankruptcy law. I am assuming he, after hearing
6 all that, was still determined to sell it.

7 Q What specifically were the discussions regarding
8 whether it was a good idea or bad idea to sell it?

9 A I don't recall, but it surrounded sort of what are
10 fraudulent conveyance laws, how does the law look at these
11 sorts of transfers.

12 Q At the time of this e-mail, were you of the mindset
13 that it should or shouldn't be sold?

14 A I don't recall.

15 Q Did you ever have an opinion whether it should or
16 shouldn't be sold?

17 A I don't recall.

18 Q Okay. You also state there that he was still in a
19 fighting mode. What did you mean by that?"

20 MR. GILMORE: I'm sorry, it is mood.

21 MS. PILATOWICZ: I'm sorry, mood.

22 MR. GILMORE: You said that twice.

23 MS. PILATOWICZ: I'm reading it incorrectly.

24 BY MS. PLATOWICZ:

1 --"mood what did you mean by that?

2 A That is Paul's demeanor. So I think he was, you
3 know, unhappy about the Herbst judgment, wanting to appeal,
4 not believing he had done anything wrong, a whole series of,
5 you know, being angry of the situation he was in."

6 MS. PILATOWICZ: Page 61 line 24.

7 BY MS. PILATOWICZ:

8 "Q I believe that is all the questions I have.
9 Actually, let me take that back. Let me ask a couple Morabito
10 questions."

11 MS. PILATOWICZ: And Your Honor, so the record is
12 clear, it looks like when the transcript was transcribed
13 "more" in multiple places were changed to Morabito. So if I
14 change "more" to "Morabito" I want to indicate that on the
15 record.

16 BY MS. PILATOWICZ:

17 "Q Since September of-- since your employment -- since
18 Hodgon Russ terminated its attorney-client relationship with
19 Paul Morabito which I understand to be sometime in late 2010,
20 have you had any conversations with Paul Morabito?

21 A Not that I recall.

22 Q Have you had any conversations since that time with
23 Salvator or Sam Morabito?

24 A Not until just a few minutes ago.

1 Q What about Edward Bayuk?

2 A No.

3 Q Anybody else relating to Paul Morabito since you
4 terminated -- or since Hodgson Russ and Paul Morabito's
5 relationship terminated?

6 A I mean I have relationships with other people who
7 used to work for Paul, but nobody that is part of Paul's
8 current organization."

9

10 CROSS-EXAMINATION

11 BY MR. GILMORE:

12 "Q Your testified that you believed you represented Sam
13 Morabito in some capacity?

14 A Yes.

15 Q Could you further elaborate on that for me?

16 A Sam was a shareholder of several entities that we
17 were involved in, so a lot of these were real estate holding
18 companies, may have only owned one asset. And so, you know,
19 it is possible that I was representing Sam and Edward in their
20 individual capacities as well as part of restructuring.

21 Q Do you know if you -- strike that. Did you believe
22 that you maintained an attorney-client relationship with Sam
23 Morabito with respect to this asset protection plan?

24 A I don't know.

1 Q None of the e-mails that were shown to you in the
2 exhibits today were -- was Sam Morabito copied, cc'd, the
3 author or the primary recipient. Do you agree with me?

4 A Yes.

5 Q So I will ask you the same question with respect to
6 Mr. Bayuk. Do you believe that you have maintained an
7 attorney-client relationship with Mr. Bayuk with respect to
8 the asset protection plan?

9 A Same answer. I can't say.

10 Q Okay. Did you understand that they-- if not you,
11 they might have been represented by somebody else?

12 A Yes.

13 Q What was your understanding in that regard?

14 A I had no knowledge of whether they had other counsel
15 or not, but certainly given the nature of the transaction it
16 is certainly possible they did.

17 Q Okay. In one of the initial questions that
18 Ms. Pilatowicz asked, you used the phrase 'asset protection'?

19 A Correct.

20 Q Do you consider that phrase to be a term of art in
21 your profession?

22 A I'm not sure what 'term of art' means. It is a term
23 that's used in legal circles.

24 Q Okay. When you use that phrase, what does in

1 entail?

2 A It entails looking at a whole series of strategies
3 provided under the law to protect assets. Everything from
4 estate planning to a whole range of things.

5 Q Okay. I would like to draw a distinction, if I can,
6 if it works for you. In your estimation, is there such a
7 concept of a permissible asset protection as opposed to
8 impermissible asset protection?

9 A Yes.

10 Q Could you help me? Explain the distinction in your
11 mind?

12 A Yes. The laws allow for any number of ways to
13 protect assets. You hold assets through an LLC to shield
14 liability type claims and there are impermissible ones. I'm
15 not an expert in this area, but you know, fraud or stealing,
16 things like that are certainly not permissible.

17 Q Okay. At any point in time in this sequence of
18 communications and events around September 2010, did Paul
19 Morabito ever say to you something to the effect that he was
20 asking your advice in undertaking an impermissible asset
21 exchange?

22 A No.

23 Q Okay. What did you understand Mr. Morabito to be
24 seeking from you?

1 A Advice on asset protection, a lawful permissible
2 kind.
3 Q You would not have given him instruction as to how
4 to conduct impermissible asset exchange, would you?
5 A Correct. I would not give him that advice.
6 Q Another way of saying that, you aren't in the
7 business of facilitating fraud are you?
8 A Correct.
9 Q Will you please turn to Exhibit 3.
10 MR. GILMORE: I have it as 25 I believe it is.
11 MS. PILATOWICZ: Yes.
12 THE COURT: This will be Exhibit 25?
13 MR. GILMORE: Yes it is, Your Honor. Is it in
14 already? Yes, I believe I already stipulated to that.
15 MS. TURNER: Yes, it is.
16 BY MR. GILMORE:
17 "Q Will you please turn to Exhibit 3" --
18 MR. GILMORE: Which for the record is Exhibit 25 in
19 the trial binders.
20 BY MR. GILMORE:
21 --"there might have been some confusion as to the
22 entities and structures and various things in the testimony,
23 so perhaps we can clarify some of that to make sure that we
24 understand exactly what you were talking about.

1 Are you familiar with an entity by the name of
2 Consolidated Nevada Corporation?

3 A Yes.

4 Q Okay. And do you have any specific recollection as
5 to where Consolidated Nevada fits in with Paul's holdings?

6 A Not at the moment, no.

7 Q If I told you that Consolidated Nevada was a
8 successor entity to PAMCO which at some point in time held
9 Berry-Hinckley assets, does that sound right to you?

10 A That's possible, yes.

11 Q And Consolidated Nevada as distinct from
12 Consolidated Western. You follow me?

13 A Yes.

14 Q And there was an e-mail that you were asked
15 questions about by Ms. Pilatowicz regarding CoWest Co.,
16 holding the shares of Superpumper, correct?

17 A Yes.

18 Q So has any of this helped refresh your recollection
19 as to Consolidated Nevada's role in Paul Morabito's asset
20 holdings in CoWest Co.?

21 A Some of the e-mail exhibits have refreshed my memory
22 that CoWest Co., was involved in the ownership of Superpumper.
23 I had not recalled that.

24 Q At some point in time, did you become aware after

1 that Consolidated Western was owned by more than one
2 individual?

3 A Do you mean today or --

4 Q At any point in time?

5 A Yes, I think I knew that.

6 Q At some point in time prior today you came to the
7 understanding Superpumper was held by more than one
8 individual, controlling individual?

9 A Yes.

10 Q Okay. Who did you understand were the controlling
11 individuals of Superpumper either individually or through
12 CoWest Co.?

13 A Well I understood the equity owners to be Sam
14 Morabito, Paul Morabito and Edward Bayuk. I don't recall who
15 was the controlling owner.

16 Q Now do you have a recollection of how you became
17 aware of that?

18 A No.

19 MR. GILMORE: Commencing at page 70 line 22.

20 BY MR. GILMORE:

21 "Q Okay. Would you please turn to Exhibit 3 which for
22 the record today is Exhibit 25. Do you have it in front of
23 you?

24 A Yes.

1 Q In the e-mail from Mr. Vacco to you at 10:03 p.m. on
2 the 15th, he infers that the concept of Paul Morabito selling
3 his interest in CoWest Co., to Ed Bayuk and Sam Morabito was a
4 proposal of yours. Do you agree with that?

5 A I don't recall specifically, but that's possible.

6 Q I don't recall an e-mail -- this e-mail chain or in
7 the subsequent e-mail change where you corrected Mr. Vacco and
8 said 'You're attributing to me something that I don't
9 deserve.' Correct?

10 A Correct.

11 Q All right. When -- at this time, September 15th,
12 this proposal that is attributed to you, did you believe at
13 the time that there was a permissive way in which this
14 transaction could be done vis-a-vis Mr. Morabito's creditors?

15 A Yes. I wouldn't have suggested it if I didn't think
16 that.

17 Q But would you agree with me that's not the same
18 thing as saying there aren't potential risks, right?

19 A Correct.

20 Q So in some of the e-mails between you and
21 Mr. Graber, I think, forgive my characterization, but you were
22 explaining to Mr. Morabito your impression of what Mr. Graber
23 was trying to tell Paul, true?

24 A Correct.

1 Q Okay. And was it -- we can look at the e-mail if
2 you want to -- but was it your intent to simply tell Paul that
3 this proposal can be done, but Mr. Graber wants you to be
4 aware that any of these potential transactions could have
5 risks?

6 A Are you talking about this Exhibit 3 e-mail or
7 another e-mail?

8 Q Exhibit 8--"

9 MR. GILMORE: Which I believe is Exhibit 32. Is that
10 accurate? Do you have that?

11 MS. TURNER: That is in.

12 " -- f you would so we can be on the same page?

13 A Exhibit 8?

14 Q Yes?"

15 THE COURT: So what is Exhibit 8?

16 MR. GILMORE: I'm not 100 percent certain. My notes
17 suggest it is Exhibit 32, but I think --

18 THE COURT: Ms. Pilatowicz.

19 MR. GILMORE: It is not 32.

20 MS. TURNER: No.

21 THE COURT: Are you finding it?

22 MR. GILMORE: This is the testy call we talked about.

23 MS. TURNER: The 9:50 a.m. e-mail.

24 MR. GILMORE: I will figure that out on the break. I

1 apologize for that. So I am reading now from page 72 line 10.

2 BY MR. GILMORE:

3 "Q Yes. So to refresh where we are, this is the e-mail
4 chain where there is a reference to a testy call. Do you
5 remember that?

6 A Yes.

7 Q Okay. And then there's an e-mail subsequent to the
8 testy call where Mr. Morabito e-mails you and says,
9 essentially, Mr. Graber called but he didn't take it. That's
10 at the bottom of page 379?

11 A Okay.

12 Q Paul says to you at 9:30, 'he called, but I didn't
13 take it. I thought all I was doing was what you advised,
14 follow the law and sell for value.' Do you see that?

15 A Yes.

16 Q Okay. And then your e-mail in response to that
17 which probably was eight minutes later based on the time
18 change, the second paragraph of your e-mail to Mr. Morabito
19 says, 'I don't think Gary was implying you were doing anything
20 wrong, but he wants you to know what kind of questions and
21 scrutiny you can expect.' Do you see that?

22 A Yes.

23 Q So what were you -- What message were you trying to
24 relay to Mr. Morabito about what your impressions of Gary

1 Graber's insight were?

2 A Well, as the e-mail states, I was trying to convey
3 to him that there's no -- that there is a complexity around
4 these sorts of asset protection laws, and there is not one
5 formula to follow. There are other factors a court might look
6 at in challenging these.

7 Q When you wrote that e-mail that you didn't believe
8 Gary was implying that Mr. Morabito was doing anything wrong,
9 did you believe it?

10 A Did I believe that Paul wasn't doing anything wrong?

11 Q Did you believe that Mr. Graber didn't believe
12 Mr. Morabito was doing something wrong?"

13 THE COURT: Are you adopting that objection?

14 MS. PILATOWICZ: No objection.

15 THE COURT: Thank you.

16 "THE WITNESS: Yes I believe that Gary didn't
17 believe that Paul was doing anything wrong.

18 Q It gets complicated, but what I am essentially
19 trying to get at, you weren't just telling the client
20 something that you thought he wanted to hear. You were
21 telling him what you genuinely believed?

22 A Correct.

23 Q Okay. At this point in time, September 2010, did you
24 believe that Paul was doing anything wrong?

1 A No.

2 Q If you could please go to Exhibit 15, please. Do
3 you have that in front of you?

4 A Yes."

5 THE COURT: Which one is that?

6 MR. GILMORE: I don't have that either. I don't
7 know. I'm not sure if that one has been offered or not. But,
8 again I have got some work to do.

9 BY MR. GILMORE:

10 "Q Here's another reference similar to the reference we
11 saw in Exhibit 3, that not only was the genesis of the
12 proposed Superpumper sale something Mr. Vacco believed came
13 from you, but now he's affirming it's your strong
14 recommendation that Mr. Morabito sell CWC, true?

15 A Yes, that is what the e-mail says.

16 Q Did you believe at any point in time that the
17 rationale of Mr. Morabito to sell Consolidated Western
18 Corporation to Sam and Edward Bayuk was based on an intent to
19 delay, hinder or defraud the judgment creditors?

20 A No."

21 THE COURT: Counsel.

22 MS. PILATOWICZ: I have no objection.

23 THE COURT: Thank you.

24 BY MR. GILMORE:

1 "Q why is it that you say that?"

2 MS. PILATOWICZ: No objection?

3 THE WITNESS: Because the nature of our discussions
4 with him were how to properly protect assets. I don't recall
5 him ever saying, 'I want to improperly protect assets.'"

6 MR. GILMORE: Continuing page 75 line 21.

7 BY MR. GILMORE:

8 "Q Okay. Were you involved in any conversations where
9 Mr. Graber asked Mr. Morabito what his rationale was for
10 undertaking any of these strategies?

11 A I don't recall.

12 Q Okay. And then in the very next line Mr. Morabito
13 says, 'Judge Adams specifically and 'specifically' is
14 underline, exonerated Edward and Sam.' Did you have an
15 understanding at the time you first read this e-mail what
16 Mr. Morabito was intending to mean?

17 A Yes.

18 Q What was your understanding?

19 A That in the Herbst judgment, I believe there was a
20 specific reference to other shareholders not being involved in
21 the actions that led to the judgment.

22 Q Okay. If I represented to you"--

23 MS. PILATOWICZ: Your Honor, this is discussing
24 Exhibit 7 which I don't think we have determined what exhibit

1 that is. If it is going to be discussed, the e-mail, I have
2 no problem admitted the e-mail. But I think we have to be
3 clear it is admitted so the entire e-mail also is on the
4 record? I know that we had marked it.

5 MR. GILMORE: This is 29 which you just got admitted
6 against my objection.

7 THE COURT: Even though we have it read into the
8 record, we are looking at Exhibit 7, that part wasn't part of
9 what you were reading, this is all about the exhibit in the
10 deposition which is Exhibit 29?

11 MR. GILMORE: That's correct.

12 THE COURT: The record will so reflect.

13 MR. GILMORE: Let me continue on page 76 line 7.

14 BY MR. GILMORE:

15 "A That in the Herbst judgment, I believe there was a
16 specific reference to other shareholders not being involved in
17 the actions that led to the judgment.

18 Q Okay. If I represented to you that the judgment
19 which Judge Adams entered against Paul Morabito and
20 Consolidated Nevada specifically dismissed all claims against
21 Mr. Bayuk and Mr. Morabito, Sam Morabito, would that be
22 consistent with your understanding?

23 A Yes.

24 Q Okay. So did you ever have a conversation with

1 Mr. Morabito where he explained this rationale to you?

2 A I don't recall.

3 Q Okay. So then in the third paragraph Mr. Morabito's
4 e-mail to you, he said 'we agreed amongst ourselves that I was
5 best standing alone with my assets, and on the advice of
6 counsel we sought independent third party appraisers to do
7 just that.' Did you ever advise Mr. Morabito to obtain third
8 party appraisers as part of the asset protection plan?

9 A Yes.

10 Q Why did you believe that was important?

11 A Well, I think at the time I first gave him that
12 advice, I had not yet brought Gary Graber into the discussion,
13 but I said any transfer of assets would have to be done at
14 fair value. That was my general understanding of asset
15 protection laws.

16 Q Okay. Did Mr. Morabito ever discuss with you this
17 idea that, as he says in the e-mail, 'I was best standing
18 alone with my assets'?

19 A I don't remember that phrase specifically but, yes,
20 a lot of our discusses were around, you know, isolating the
21 assets or separating him from other people that he may have
22 been involved with other businesses.

23 Q Did you ever have any conversations with
24 Mr. Morabito to the extent that he was aware that the asset

1 strategies he was intending to undertake might have had the
2 result of protecting Sam and Edward by exposing himself?

3 A I don't specifically remember that."

4 Continue on page 80 line 6.

5 BY MR. GILMORE:

6 "Q Will you please turn to Exhibit 14?"

7 MR. GILMORE: I believe that is 28. Yes.

8 MS. TURNER: It is stipulated.

9 MR. GILMORE: Yeah, it is in.

10 THE COURT: Exhibit 14 in the deposition is noted as
11 Exhibit 28.

12 BY MR. GILMORE:

13 "Q Will you please turn to Exhibit 14. You have it in
14 front of you?

15 A Yes.

16 Q Thank you. In the second paragraph of your e-mail to
17 Eileen Crotty, you give her some good news and then you give
18 her some bad news. I want to make sure I understand the
19 context of the bad news. It says that 'the bad news is he may
20 be motivated to move assets around to keep them away from the
21 creditor.' Why would Eileen Crotty be in any way concerned
22 what Mr. Morabito's motivations were with respect to his
23 assets?

24 A Well, our discussion was around payment of our legal

1 fees. Past legal fees, not current legal fees.

2 Q So did this bad news have -- is it referring to it's
3 bad news for you as Mr. Morabito's counsel that he may be
4 fraudulently transferring assets in violation of the
5 fraudulent transfer statute?

6 A No. It was bad news his assets may no longer be
7 available to us to pay our legal fees.

8 Q Okay. So this bad news sentence, did it have any
9 reference whatsoever to Paul's asset protection strategies as
10 it related to the creditors?

11 A No.

12 Q And then I heard you testify to Ms. Pilatowicz the
13 last sentence of that same paragraph, 'I discussed with Paul
14 and he hasn't committed either way what he intends to do.' Did
15 that sentence that you're relaying to Ms. Crotty have anything
16 to do with Mr. Morabito's intention vis-à-vis the Herbsts?

17 A No. That was only related to payment of the legal
18 fees.

19 MR. GILMORE: Continuing on page 84, line 5. It makes
20 reference to Exhibit 8 which I believe is Exhibit 32. Do you
21 concur?

22 THE COURT: I am sorry, was that a question?

23 MR. GILMORE: She's searching.

24 MS. PILATOWICZ: I am looking up the exhibit to

1 confirm it.

2 THE COURT: Previously, Mr. Gilmore, I show Exhibit 8
3 you didn't know what it was.

4 MR. GILMORE: That is probably still the case.

5 THE COURT: Okay. I will wait for you to identify
6 it.

7 MR. GILMORE: Yeah. I have a set of binders with
8 complete transcripts and exhibits in my office. Let me
9 continue then page 84 line 5 with the corrections that will
10 need to be made as reference to Exhibit 8.

11 BY MR. GILMORE:

12 "Q That is all I needed from you on that score. Would
13 you look at Exhibit 8, please?

14 A Sure.

15 Q We've already looked at it, but I'm going in the
16 order in which they were examined. When Ms. Pilatowicz was
17 asking about Exhibit 8, the second time she asked you a
18 question, you said you were not concerned with Mr. Morabito's
19 intent but were concerned with giving advice. Do you remember
20 generally that testimony?

21 A Yes.

22 Q What did you mean by that, you were not concerned
23 with Mr. Morabito's intent?

24 A I didn't have any reason to feel he had bad intent.

1 We were just trying to make sure he understood what the law
2 allowed and didn't allow."

3 MS. PILATOWICZ: Your Honor, same issue, we are
4 reading into the record Exhibit 8, an exhibit we are not sure
5 whether it has been admitted. We need to clarify what Exhibit
6 8 is before allowing it to be read into the record.

7 THE COURT: Okay. Off the record.

8 (Discussion off the record.)

9 THE COURT: We are back on the record.

10 MR. GILMORE: Yes.

11 THE COURT: We are on the record.

12 MR. GILMORE: Your Honor, there has been a
13 stipulation that Exhibit 8, which was Exhibit 8 both in
14 Mr. Graber's and Ms. Yalamancili's depositions had not been
15 previously marked in the trial binders, and it was
16 inadvertent. The Defendants have offered that exhibit which
17 has the Bate range of HR378 through HR318. My expectation is
18 it would be marked as Exhibit 300.

19 THE CLERK: Exhibit 300 will be marked as that
20 document when I have a copy of it.

21 (Exhibit 300 marked for identification.)

22 THE COURT: Although it was marked during
23 Mr. Graber's deposition, was it not discussed today?

24 MS. PILATOWICZ: It had been discussed in previous

1 questions by Mr. Gilmore, but the e-mail at that point hadn't
2 been quoted which was what raised the objection from me.

3 MR. GILMORE: I believe what is probably accurate is
4 that it was raised for the first time in my reading.

5 THE COURT: So it is Exhibit 300.

6 THE CLERK: It will be 300.

7 THE COURT: The record will reflect when Exhibit 8
8 was discussed in the Graber deposition, second deposition, it
9 was referring to Exhibit 300 which has now been admitted.

10 (Exhibit 300 admitted in evidence.)

11 MR. GILMORE: Thank you. And I apologize for that.

12 THE COURT: That's fine.

13 THE COURT: Okay, counsel, you may proceed.

14 MR. GILMORE: Thank you, Your Honor.

15 I will continue on page 84 line 5.

16 BY MR. GILMORE:

17 "Q That's all I needed from you on that score. Would
18 you look at Exhibit 8 -- which for purposes of today's record
19 is Exhibit 300 in the trial binders -- please?

20 A Sure.

21 Q We've already looked at it, but I am going in the
22 order in which they were examined. When Ms. Pilatowicz was
23 asking you about Exhibit 8 the second time, you said that you
24 were not concerned with Mr. Morabito's intent, but you were

1 concerned with giving advice. Do you remember generally that
2 testimony?

3 A Yes.

4 Q What did you mean by that, you were not concerned
5 with Mr. Morabito's intent?

6 A I didn't have any reason to feel he had bad intent.
7 We were just trying to make sure he understood what the law
8 allowed and didn't allow.

9 Q Okay. At the bottom of the second page of Exhibit 8
10 which is 379, I want to read a statement that Mr. Morabito
11 made to you in an e-mail in which the subject, ironically, is
12 attorney-client privilege communication. Mr. Morabito says to
13 you, the third sentence, please, 'I end up with clearly
14 defined assets that are just mine that they can attach and
15 take worth the same amount had they tried to take assets
16 jointly owned by Edward and myself.' Do you see that?

17 A Yes.

18 Q Do you believe that this was his intent when he sent
19 you this e-mail on September 20th?

20 A I don't recall that date, but reading it now, that's
21 the--, yeah, that's what I would infer.

22 Q Did you ever have any communication with
23 Mr. Morabito in this time frame where you reached the
24 conclusion that he was telling you one thing and intending

1 something different?

2 A No.

3 Q Did you believe at the time you received this e-mail
4 that this e-mail from Mr. Morabito to you would ever be
5 produced, Bate stamped, put up on a big screen projector and
6 used at trial?

7 A No.

8 Q Okay. The next sentence Mr. Morabito says, 'I
9 wasn't trying to avoid anything, just separate the assets so
10 that they are easily identified.' Did you, when you read this
11 for the first time, believe that Mr. Morabito genuinely
12 believed that?

13 A I don't recall, but that is consistent with my
14 general impression of Paul at the time.

15 Q Same question I asked you before, was there anything
16 that Mr. Morabito said or did at this time period which led
17 you to believe he was telling you one thing and believed or
18 thought another thing?

19 A No.

20 Q And then last sentence Mr. Morabito says, 'He made
21 it sound as if I was trying to defraud someone.' Did you ever
22 believe that Mr. Morabito was intending to defraud someone in
23 the course of the transactions?"

24 MS. PILATOWICZ: No objection?

1 "THE WITNESS: No?

2 MR. GILMORE: Last exhibit from me, Exhibit 30 I am
3 sorry, 20 which is Exhibit 32 previously identified and
4 marked.

5 THE COURT: Counsel, do you agree?

6 MS. PILATOWICZ: I agree Your Honor.

7 BY MR. GILMORE:

8 "Q When Ms. Pilatowicz asked you about this fighting
9 mood reference, did you intend that to mean, when you said
10 this to Mr. Graber, that it was -- strike that. Did you
11 intend to relay to Mr. Graber that Morabito's mood was to do
12 something which you and/or Mr. Graber perceived as
13 impermissive?

14 A No.

15 Q Or something that was fraudulent?

16 A No.

17 Q The reference to fighting is a reference to what?

18 A It was a reference to the Herbst transaction and the
19 outcome of that case. He was still very angry and
20 disappointed with the verdict, so it was really a reference to
21 that.

22 Q When you initially heard of the verdict, what was
23 your response?

24 A Mixed emotion. I had been involved in the

1 transaction, so it was disappointing they reached the verdict
2 they did. And just, you know, disappointment for Paul and
3 what that was going to mean for him.

4 Q Your entire involvement -- Let me lay some
5 foundation. You were involved as one of Paul's primary
6 transactional counsel in the Herbst sale, correct?

7 A Correct.

8 Q In other words, Mr. Morabito selling the stock of
9 Berry-HInckley to the Herbst' companies, yes?

10 A Yes.

11 Q At any time in your representation of Mr. Paul
12 Morabito in that transaction, did you ever witness something
13 that lead you to believe Mr. Morabito intended to default" --
14 It says 'default.' I'm sure it means defraud.

15 -- the Herbsts?

16 A No.

17 Q It was intended to defraud the Herbsts.

18 A No.

19 Q In your entire scope of your representation of
20 Mr. Morabito, did you ever witness something that he did or
21 said which led you to believe that that's his modus operandi
22 is defrauding people?

23 A No."

24 MR. GILMORE: Continuing page 93 line 12.

1 BY MR. GILMORE:

2 "Q At any point in time when you were discussing with
3 Mr. Morabito the Superpumper transaction, did you ever get the
4 impression that he was -- the best I can give you is the
5 phrase leaping before he looked? Do you understand this
6 phrase?

7 A Yeah.

8 Q I mean, did you ever get the impression that he was
9 just -- didn't know what he was getting himself into?

10 A Well those may be two different questions. I think a
11 lot of clients, business people, jump before they know the
12 full lay of the land. That is a common thing, and, certainly,
13 Paul would have done that. But I don't -- I mean he was
14 getting good advice. I don't think he would have -- he wasn't
15 careless. Let's put it that way.

16 Q I think that answers my question."

17 THE COURT: We have a little housekeeping to do
18 before we move on to another deposition. So, Mr. Gilmore, you
19 still need to find out what Exhibit 15 of the deposition
20 refers to.

21 MR. GILMORE: Yup.

22 THE COURT: Otherwise, the others are all 300.

23 MR. GILMORE: That is my notes as well. Thank
24 you.

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THE COURT: Counsel who are going to call?

MS. PILATOWICZ: We are going to move on to live testimony and call James McGovern.

THE COURT: Sir, you may step down. Thank you.

(Reader excused.)

THE COURT: You may proceed.

JAMES L. MCGOVERN

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

DIRECT EXAMINATION

BY MS. PILATOWICZ:

Q Good morning. Can you please state your name and spell it for the record?

A Sure. James L. McGovern. McGovern.

Q What is your profession?

A I am a CPA and a forensic accountant.

Q How long have you been engaged in that occupation?

A Since 1980 I want to say.

Q Can you give us a general description what your job entails?

A Sure. I am a partner at the firm of McGovern and Greene, so my job entails working on engagements for clients,

1 all sorts of forensic accounting engagements, investigating
2 financial improprieties, calculating damages, valuing
3 businesses, that sort of thing.

4 Q What is your educational background?

5 A I have a degree from Marquette University. I
6 majored in accounting, and I am a Certified Public Accountant.
7 And I, since graduating and since becoming a CPA, I take an
8 average of 40 hours of continuing professional education.

9 Q Are there any special certifications available in
10 your profession?

11 A There are.

12 Q Do you have any of them?

13 A I do.

14 Q Tell me which ones?

15 A Sure. In addition to being a Certified Public
16 Accountant, I am certified in financial forensics and I am
17 also certified in -- a certified valuation analyst.

18 Q Who is the certification for valuation analysts?

19 A Certification is through the National Association of
20 Certified Valuation Analysts.

21 Q What licenses do you hold?

22 A I hold a public accounting license in both the State
23 of Nevada and the State of Illinois.

24 Q When did you first become licensed in those states?

1 A In Illinois I believe I became licensed in late 80s,
2 '87, '88 my recollection. Nevada was more recently, probably
3 five or six years ago.

4 Q And the certification in business valuations, when
5 did you obtain that certification?

6 A I am pretty sure that was in 2008.

7 Q How long have you been valuing businesses?

8 A Well, I have actually done business valuations for
9 longer than since 2008, probably 20 years, but I didn't become
10 certified until 2008.

11 Q How many businesses would you say you have valued?

12 A Oh, that's hard to say. Dozens.

13 Q Have you ever been offered as an expert in business
14 valuations in any court?

15 A I have certainly been presented as an expert on
16 valuation in other cases. I don't know if any of those cases
17 actually went to trial, though, as I am sitting here. So I
18 can't say with certainty that any of those made it to trial.

19 Q Have you been offered as an expert in court before?

20 A Many times.

21 Q Have you been accepted as an expert in court before?

22 A Yes.

23 Q What about the Second Judicial District?

24 A Yes, on one other occasion.

1 Q What were you retained to do in this case?

2 A In this case, I was retained to value a 100 percent
3 ownership stake in Superpumper.

4 Q Did you ultimately offer an opinion?

5 A I did.

6 MS. PILATOWICZ: I would offer Mr. McGovern in the
7 field of business valuations.

8 MR. GILMORE: No objection.

9 THE COURT: The new case, I am not supposed to
10 accept him or not. I can refuse to allow his testimony to go
11 forward if he is not qualified to make an opinion, but I am
12 not supposed to give an opinion as to whether or not he's
13 qualified, in the old term accept him, like we learned in law
14 school. So I do deem him qualified to give an opinion in this
15 case.

16 MS. PILATOWICZ: Thank you, Your Honor.

17 BY MS. PILATOWICZ:

18 Q What was your assignment in this case?

19 A My assignment was to value one hundred percent
20 ownership stake in Superpumper as of September 3, 2010.

21 Q Tell me what you did to complete your valuation?

22 A Okay. Well, so as I would with any other business
23 valuation, I start with identifying the appropriate standard
24 of value and premise of value. And so in this case I

1 determined that fair market value was the proper standard, and
2 the proper premise of value was that of a going concern,
3 meaning that I expected the business would continue to
4 operate. We weren't valuing the business for liquidation
5 purposes.

6 Q What business were you valuing?

7 A I was valuing Superpumper.

8 Q What kind of business is Superpumper?

9 A Superpumper is a company that owns and operated, I
10 believe it was eleven convenience stores and gas stations.

11 Q Do you need to have any special expertise in
12 convenience stores to be able to compute a valuation of
13 convenience stores?

14 A No.

15 Q Why is that?

16 A Well, as a certified valuation analyst, I am asked
17 to value all sorts of different types of businesses. And the
18 standards simply require that we gather enough information
19 about the particular type of business in order to render an
20 opinion.

21 Q Tell me about the approaches you used in this case
22 to value Superpumper?

23 A I considered all three standard approaches to
24 valuation that are required by the professional standards.

1 Those include a market approach, an asset approach and an
2 income approach.

3 Q I will refer you to Exhibit 91 which in the binder
4 behind you. It should be in book III.

5 A Here we go. Okay.

6 Q Do you recognize what is Exhibit 91?

7 A Yes. This is my report in this matter.

8 Q And Exhibit 91 which has been admitted into evidence
9 in this case, if at any point during the discussion you want
10 to refer to it, feel free to direct the Court to what you are
11 referring to?

12 A Okay.

13 Q We were discussing you mentioned you used the three
14 standard approaches. What are those three?

15 A Again, there is the asset approach, the market
16 approach and the income approach.

17 Q Tell me about the asset approach?

18 A So the asset approach is essentially where we look
19 at the individual assets and liabilities of the business and
20 by valuing those individual assets and liabilities we arrive
21 at a value for the company. That is typically not a reliable
22 approach for valuing an ongoing business.

23 Q Did you ultimately then use that approach in this
24 assignment?

1 A Well, again, I used it, I considered it, but I
2 didn't rely upon it in the end in forming my opinion. I did
3 not select that approach as the appropriate methodology.

4 Q Tell me next about the market approach?

5 A So the market approach is essentially where the
6 valuation analyst looks at sales of comparable businesses or
7 interests in comparable businesses to arrive at an indication
8 of value for the subject business. It is -- The principle of
9 substitution is at play in the market approach.

10 Q Did you use the market approach with respect to this
11 assignment?

12 A Well, again, I used it in the sense I went through
13 the approach. I did look at comparable companies, both public
14 traded companies and some sale of private companies. I took
15 that into consideration. But, again, ultimately I did not
16 rely upon that approach for my final conclusion.

17 Q Tell me about the income approach?

18 A So the income approach is where the valuation
19 analyst looks at the benefit stream that the company that is
20 being valued is generating, and, more importantly, is expected
21 to generate out into the future. And by looking at that
22 benefit stream, we use that benefit stream to then translate
23 that into value for the business.

24 Q Did you ultimately use the income approach with

1 respect to this assignment?

2 A I did.

3 Q And tell me how you did that?

4 A So under the income approach, I looked at two
5 methods within that general approach. One approach is referred
6 to as the capitalization of earnings method. More
7 specifically the capitalization of a single period of earnings
8 method. And the other specific method is the discounted cash
9 flow method.

10 Q Between those two methods, was there one you chose
11 over the other?

12 A Yes. I ultimately selected the discounted cash flow
13 method.

14 Q And explain what the discounted cash flow method is?

15 A Sure. With the discounted cash flow method, we look
16 at the future expected benefits. First, let me explain, we
17 select a benefit stream. By that I mean what is the benefit to
18 the owners of the company. And there are different measures
19 of benefit streams, but I selected the cash flow to the
20 investors or cash flow to the owners as the appropriate
21 benefit stream.

22 So with the discounted cash flow method, we look at,
23 as of the date of valuation, what are the future expected
24 benefits going to be. So we look at a projection out into the

1 future, and then we discount that back to present value by
2 applying a discount rate.

3 Q And what did you look at in this case to determine
4 what the projected outlook in the future would be?

5 A I looked at a report that was provided by
6 Superpumper's management that showed the budgets for five
7 years out into the future. So it is looking out into the
8 future. It went through 2015.

9 Q Do you recall how the gas sales were reported in
10 that document you looked at to project the sales?

11 A Did you say the gas sales?

12 Q Yes?

13 A Yes. There was a projection of the revenue from gas
14 sales shown in dollars.

15 Q Did it matter if it was in dollars or gallons, in
16 your analysis?

17 A No.

18 Q Why did it not matter?

19 A Again, applying a discounted cash flow approach, we
20 need the dollars to arrive at what is the bottom line of cash
21 flow going to be to the owners.

22 Q After you looked at the future projections, what did
23 you do next?

24 A Well, I looked at those projections. In the

1 discounted cash flow approach you lay out what the future
2 forecast is, and you have a forecasting out through a certain
3 period of time, and then you have to have a terminal year,
4 essentially. You say okay, I have got the forecast out
5 through 2015. Then I have to decide from that point what a
6 reasonable degree of growth would be. In this case I assumed
7 the growth going forward at that point would be one percent a
8 year. Very low, low growth. I then applied the discount rate
9 we had developed to those future expected cash flows and did
10 the math and brought the value of those future benefit streams
11 back to present value.

12 Q Let's talk about the discount rate. What is the
13 discount rate you used to accomplish that?

14 A You have to think of it in terms of the fact that
15 first of all a dollar today is worth more than a dollar in the
16 future. So there is a time element to the analysis. But,
17 essentially, what discount rate takes into account is the risk
18 associated with an investment. So different investments have
19 different risks. And what you can see, if you have a very
20 safe investment, say a U.S. treasury bond, you would have a
21 rate associated with that type of investment. And that is
22 often called the risk free rate, because it is the lowest most
23 safest type of investment. So you would start with that risk
24 free rate, then you would look at, okay, are there risks

1 associated with investing in equity? Are there certain risks
2 associated with the size of the company? Are there certain
3 risks associated with the industry that the company is in?
4 Are there certain risks associated with the specific, you
5 know, company? And we try to take all that into account, add
6 them all up and you come up with the discount rate to apply to
7 those expected future benefits.

8 Q Are there any tools you utilize in determining how
9 to get to the appropriate discount rate?

10 A Yes.

11 Q What are those tools?

12 A There are a number of tools available. The tool
13 that I use is called the Duff & Phelps cost of capital
14 calculator. It essentially mechanizes the process I just
15 described.

16 Q So what is Duff & Phelps. Can you explain to the
17 Court what you did have?

18 A Sure. Duff & Phelps is a very well-known company
19 that provides advice on investment banking. And one of the
20 things it does, it publishes the cost of capital calculator.

21 Q Did you ultimately determine a discount rate with
22 respect to this assignment?

23 A Yes.

24 Q What was that discount rate?

1 A I will turn to that. I don't remember the exact
2 number. So ultimately I arrived at a 14.2 percent discount
3 rate.

4 Q What page are you looking at?

5 A I am on page 17 of my report.

6 Q How did you determine that was the appropriate
7 discount rate in this assignment? What sort of things did you
8 look at?

9 A Well, I looked at, like I described earlier, I
10 looked at what was the appropriate risk free rate at the time.
11 What was the, what we call equity risk premium at the time.
12 There is also what we call the small company size premium. We
13 were dealing with a relatively small company, so there was a
14 premium associated with the size. And then we looked at the
15 industry that Super Pumper operated in to see if there was an
16 adjustment to the discount rate appropriate for that industry.

17 And so when I say the Duff & Phelps cost of equity
18 calculator, it actually gives a number of models you can
19 choose from. Looking at those models, I found there was a
20 range of discount rates that range from about 13.3 up to 16.7
21 percent. I ultimately selected the what they call model two in
22 the Duff & Phelps calculator and selected 14.2 as the
23 appropriate rate.

24 Q And using the discounted cash flow method, what was

1 your conclusion as to value?

2 A My ultimate conclusion of value was that Superpumper
3 was worth \$13,050,000.

4 Q Explain to me how you got to that number?

5 A Sure. So, again, taking the projected future cash
6 flow to the owners as the benefit stream, applying the 14.2
7 percent discount rate and also applying what we call
8 capitalization rate to the terminal year, that gives you --

9 THE COURT: I'm sorry to the what?

10 THE WITNESS: Terminal year. So what I was trying to
11 explain, in the discounted cash flow method you have a
12 projection that goes out for a certain number of years. And
13 then you have what we call the terminal year which at that
14 point everything is going to stabilize. You will have the
15 same amount of growth going forward. So in this case, I
16 attributed one percent growth going forward.

17 THE COURT: What was your terminal year?

18 THE WITNESS: One second. I will take a look at
19 that.

20 It would be 2015.

21 THE COURT: Go ahead.

22 THE WITNESS: What you do with the terminal year is
23 you take the discount rate and you subtract the assumption for
24 future growth to get the capitalization rate. Again, I had a

1 14.2 percent discount rate. One percent growth as to the
2 capitalization rate was 13.2 percent.

3 ///

4 BY MS. PILATOWICZ:

5 Q What type of assets did you consider in ultimately
6 getting to that value?

7 A So I assumed one hundred percent of the company's
8 assets. That included both the operating assets and the
9 non-operating assets.

10 Q Explain to me what you mean by operating versus
11 non-operating assets?

12 A Sure. Sometimes you will have a business that all
13 of the assets that it owns are actually used in the day-to-day
14 operation of a business. But often you will find that
15 companies will own other assets that aren't being used in the
16 day-to-day operation of the business. So you could have all
17 your operating assets, then you can have non-operating assets.

18 Q Were there non-operating assets in this case?

19 A Yes.

20 Q What were those?

21 A Well, specifically I identified loans and notes
22 payable to the corporation from the owners that were, in my
23 opinion, excess -- represented excess asset to the company.
24 And that a portion of those loans would be considered

1 non-operating.

2 Q Of the 13 million dollar valuation, how much was
3 contributed to non-operating assets?

4 A Six and a half million.

5 Q How did you determine the value of the six and a
6 half million dollars of non-operating assets?

7 A So I looked at the balance sheet and saw that there
8 were about 9.1 million dollars, if I recall, in amounts listed
9 as due from the owners of the company. And so I looked at the
10 balance sheet as of September 30th. I had looked at the
11 audited financial statement including the audited balance
12 sheet from the prior year that was available and would have
13 been available as of September 30th.

14 Q Why was it important for you to look at the 2009
15 audit statement?

16 A Because I was trying to determine whether or not the
17 auditors had found those notes payable, amounts payable to be
18 collectible.

19 Q And do you recall if there was a conclusion in the
20 2009 financial statement?

21 A Yes.

22 Q What was that conclusion?

23 A The auditors found that those notes were
24 collectible.

1 Q Did you review the 2010 audited financial statements
2 with respect to Superpumper?

3 A I did.

4 Q Were they relevant to your valuation?

5 A Well, they were -- I wouldn't say they were totally
6 irrelevant, but the 2010 audited financial statements weren't
7 issued until several months after the date of the valuation.
8 The date of the valuation was September 30, 2010. The 2010
9 audit wouldn't have been conducted until after year end. My
10 recollection is it was several months after year end.

11 When we value a business, we are only supposed to
12 take into account information that is known or knowable as of
13 the date of the valuation.

14 Q Based on the 2009 audited financial statements, what
15 did you do know about the non-operating assets at the time you
16 completed your valuation?

17 A Based on the 2009 audit, it led me to conclude that
18 the notes were collectible.

19 Q Did you make a determination in your report as to
20 whether the notes were current assets? Can you explain what a
21 current asset is?

22 A Sure. The simplest way to think of a current asset
23 is any asset that is expected or can be collected and used in
24 the next 12 months. So cash, accounts receivable, notes

1 receivable that are due on demand are all considered to be
2 current assets.

3 Q And did you make a determination in this case as to
4 if the receivables were current assets?

5 A I did.

6 Q Explain to me what determination you made?

7 A Well, I determined that specifically the notes
8 receivable from the owners and affiliates, they should be
9 classified as current assets because they were indicated to be
10 due on demand.

11 Q You discuss in your report marketability discount.
12 Can you explain to me what that is?

13 A Sure. There are times when, in doing the valuation
14 work, we have to consider whether or not the interest that is
15 being valued is readily marketable. Because an interest that
16 is not readily marketable is not worth as much as an interest
17 that is readily marketable. So where you have a non-readily
18 marketable interest, you typically apply a discount.

19 Q Did you ultimately apply a marketability discount in
20 this case?

21 A No, I did.

22 Q Why not?

23 A Because I was valuing a one hundred percent
24 ownership stake in the company, and I find no reason to think

1 that the one hundred percent stake in this company was not
2 marketable.

3 Q Would your opinion change if you were valuing an 80
4 percent interest in this company?

5 A No.

6 Q Why not?

7 A Because 80 percent is still a controlling interest.
8 Typically, where you see the discount for lack of
9 marketability comes in is when you're dealing with a minority
10 position.

11 Q And in your report, you also make mention of a three
12 million dollars term loan you had I believe heard about but
13 didn't show up on the books. Do you recall that?

14 A I do.

15 Q What do you know about that loan?

16 A I understand at some point the Defendants in this
17 case say they took out a three million dollar loan. It was not
18 recorded on the balance sheet as of September 30th, however.

19 Q If it existed as of September 30th, how should it
20 have been treated on the books?

21 A Well, so if there had been a loan taken out for
22 three million dollars before or as of September 30, 2010, I
23 would expect it to have been shown on the balance sheet as a
24 liability. I also expect the other side of the entry to be

1 reflected somehow on the financial statement.

2 Q What do you mean by that?

3 A Well, with accounting there is always two sides to
4 the entry. For instance, if you take out a loan for three
5 million dollars, you have a liability that would be shown on
6 the balance sheet. But then the question is what happened to
7 the three million dollars. Was it just taken out in cash and
8 put into the checking account? Then you would have an asset
9 for three million dollars. Was it loaned to somebody? In
10 that case, there would be an asset on the balance sheet
11 reflecting the loan amount coming due. If it was just
12 distributed, then I would expect to see a distribution of
13 capital reflected in the financial statement.

14 Q If that three million dollar loan was taken out was
15 to be repaid back to the company, how would that show up on
16 your business valuation?

17 A If it was expected to be repaid, then I would expect
18 it be shown as a loan or a note receivable due back to the
19 company. So it would be an asset. It would be an offsetting
20 asset to the loan liability.

21 Q How would that ultimately affect the valuation?

22 A Assuming it was collectible, I don't think it would
23 have any impact certainly from a balance sheet perspective.
24 They would wipe each other out.

1 Q You have seen, in preparing your report, you have
2 seen a valuation, Matrix valuation. Do you know what I am
3 talking about?

4 A Yes.

5 Q How does your report, your valuation finding compare
6 to the Matrix valuation finding?

7 MR. GILMORE: I object to this being beyond the
8 scope of this witness' disclosed opinions. He was not
9 disclose he had to provide any review opinion of Mr. Cavalier
10 or his report. In fact, the report here doesn't mention the
11 Matrix report at all.

12 THE COURT: Counsel.

13 MR. GILMORE: This is not a rebuttal witness.

14 MS. PILATOWICZ: Your Honor, I didn't ask him for
15 analysis for rebuttal. I just asked him if he was aware,
16 based on his review of the Matrix valuation, how his valuation
17 compared to the Matrix valuation.

18 MR. GILMORE: That is beyond the scope of
19 designation, and beyond the scope of his report. We are
20 entitled to rely on his report to tell me what opinions he
21 intends to offer at trial. There is no commentary on the
22 Matrix report.

23 THE COURT: Is there any commentary?

24 MS. PILATOWICZ: Your Honor, there was commentary.

1 It is reflected that he viewed the Matrix valuation in his
2 report. There was extensive discussion in his deposition
3 about the Matrix report.

4 THE COURT: So this line of inquiry was gone into in
5 the deposition?

6 MS. PILATOWICZ: It was.

7 THE COURT: Was it objected to at that time?

8 MS. PILATOWICZ: No, it wasn't. Questions were asked
9 by Mr. Gilmore.

10 MR. GILMORE: My point is this: A deposition of an
11 expert does not expand the scope of his opinions as set forth
12 in the report. Expert disclosure requirement requires that he
13 identify all of his opinions and the basis therefrom from his
14 report.

15 THE COURT: Yes, I agree with you. However, if you
16 expand on that in your questioning of an expert, you cannot
17 exclude that testimony later at trial on the basis that the
18 expert, when he was retained by the other side, didn't put it
19 in their report. So if you inquired into the subject matter
20 and he answered, you cannot preclude his answers from being
21 presented in court.

22 MR. GILMORE: I agree with that. I don't think
23 there has been any foundation suggesting my level of inquiry
24 was to that extent. My personal recollection is my inquiry

1 was: Are you here to talk about the Cavalier report? So I
2 don't know there has been any foundation laid I actually
3 examined him with any of his opinions with respect--
4 THE COURT: Do you have his deposition?
5 MS. PILATOWICZ: Your Honor, I have a copy of his
6 deposition.
7 THE COURT: Why don't you --
8 MR. GILMORE: I have it right here, Your Honor,
9 there is one reference to Cavalier in the deposition.
10 MS. PILATOWICZ: It is as to, Matrix.
11 THE COURT: Since this issue is being raised based
12 on the deposition I'd ask his deposition be opened and
13 published. Then you all can point to the section.
14 MR. GILMORE: May I approach, Your Honor?
15 THE COURT: Certainly.
16 MR. GILMORE: There is a copy of the original and an
17 errata sheet.
18 THE CLERK: Deposition of James McGovern March 28,
19 21016 opened and published.
20 MS. PILATOWICZ: Your Honor, in the interest of time
21 to find the reference, I will move on from that question.
22 THE COURT: Then go back afterwards?
23 MS. PILATOWICZ: Yes, if necessary I will go back.
24 BY MS. PILATOWICZ:

1 Q You also mention in your report a marketing or
2 multi-year agreement with Shell. Do you recall that?

3 A Yes.

4 Q How did that multi-year contract with Shell impact
5 your valuation?

6 A It really didn't. I believe, if I recall correctly,
7 my reference to that I noted it existed, and I assumed that
8 agreement was ongoing, and I saw no reason to think that it
9 would not be renewed and go on.

10 Q Were you aware that if was cancelled, if somebody
11 terminated the contract, there was a large penalty potentially
12 associated with it?

13 A No.

14 Q Would that impact your valuation?

15 A It would only impact my valuation if there was
16 reason to think that it was going to be cancelled and the
17 penalty was going to be applied. I saw no indication of that.

18 Q Is the valuation that you placed or the valuation,
19 your conclusion, your opinion in your report the thirteen
20 million dollars, is that what you believe that the shares of
21 the company would sell for?

22 A Yes, the one hundred percent of the shares. The one
23 hundred percent ownership.

24 MS. PILATOWICZ: Your honor, I have no further

1 questions at this time.

2 THE COURT: Do you want to reserve the issue --

3 MS. PILATOWICZ: Yes, Your Honor, I will reserve the
4 issue on the comparison of the Matrix valuation.

5 THE COURT: So we can begin some cross-examination
6 and then we'll recess.

7 MR. GILMORE: Right.

8

9 CROSS-EXAMINATION

10 BY MR. GILLMORE:

11 A Good morning, Mr. McGovern.

12 A Good morning.

13 Q This is our second time we have met. We met the
14 first time in Las Vegas a couple years ago, didn't we?

15 A Yes. It was three years ago.

16 Q Was it now?

17 MR. GILMORE: Now, Ms. Pilatowicz, I will withdraw my
18 objection to the line of questioning related to the Matrix
19 report.

20 THE COURT: Okay. Why don't we have her finish that
21 up?

22 DIRECT EXAMINATION CONTINUED

23 BY MS. PILATOWICZ:

24 Q Thank you, Your Honor. Mr. McGovern, you were

1 familiar with the valuation generally referred to as the
2 Matrix valuation; is that correct?

3 A Yes.

4 Q What was Your understanding of the Matrix valuation?

5 A My understanding of the Matrix valuation was that
6 the gentleman, I want to say his name was Stewart Cavalier, I
7 know his last name was Cavalier, had valued the company as of
8 August 30th or 31, 2010, roughly a month prior to September
9 30th of 2010, and that he had concluded that the business was
10 worth six and a half million dollars. But he did not include
11 anything for the notes due from the affiliates

12 Q We'll get to that point in a second. Moving back,
13 what were the differences? You said he determined a 6.5
14 million dollar determination. You were around 13 million.
15 Explain to me what difference existed between your two
16 reports, I am sorry, the Matrix report and your report?

17 A Okay. So ultimately the big difference was I
18 included six and a half million dollars of value for the
19 non-operating assets, and he did not, and so if you hold that
20 aside, our conclusion of value was almost identical.

21 Q What were the similarities in your reports?

22 A Well, the similarities would be we arrived at the
23 same value for the operating portion of the company. He also
24 utilized several of the same approaches that I used, including

1 the income and market approach. I don't recall specifically if
2 he used the asset approach. I think he at least considered
3 it. He ended up taking, you know, the multiple approaches and
4 doing like a weighed average in arriving at the six and a half
5 million dollars. Although I considered the difference
6 approaches, I don't do the weighted average thing. I end up
7 picking the approach I think is most appropriate. So there is
8 a similarity in we both considered the multiple approaches.

9 Q Moving on to the difference of the notes receivable
10 or the receivables being included in the valuation, do you
11 know why they were included in yours and not in
12 Mr. Cavalier's?

13 A I don't recall specifically whether his report spoke
14 to those notes or not. I just don't recall that.

15 Q Is that generally something that would be included
16 in a report if a non-operating asset of that large is going to
17 be considered or not considered?

18 A I would expect it to be, sure. You know, it is a
19 major issue.

20 MS. PILATOWICZ: I have no further questions, Your
21 Honor.

22 THE COURT: I have a question. When you were being
23 questioned, what did you value the non-operating assets, what
24 were the amount of loans that you utilized?

1 THE WITNESS: Give me one second, Your Honor. I can
2 address that specifically.

3 It is approximately 9.1 million. To be clear, Your
4 Honor, the amount of loans, 9.1 million, I concluded of that
5 9.1 million, six and a half million would be considered
6 non-operating.

7 THE COURT: Okay. That is where I was trying to
8 figure out what you were saying. So the remainder you did not
9 consider non-operating assets?

10 THE WITNESS: Correct.

11 THE COURT: And why is that?

12 THE WITNESS: Because part of what we look at when
13 we are doing valuation, we look at the company's working
14 capital needs. So working capital is essential-- I don't know
15 your level of business acumen. I hope I'm not --

16 THE COURT: I have been a judge for 26 years in
17 general jurisdiction.

18 THE WITNESS: Very good. So I mean the simple
19 explanation, working capital is current assets less current
20 liabilities. The money the company would need to operate on a
21 regular base.

22 THE COURT: You would not anticipate that to be
23 repaid?

24 THE WITNESS: No. No. I didn't anticipate it to be

1 repaid.

2 THE COURT: But it couldn't have been repaid at that
3 moment and still operate?

4 THE WITNESS: Right.

5 THE COURT: All right. Do you have any questions
6 based on my questions?

7 MS. PILATOWICZ: I do. I have one followup.

8 BY MS. PILATOWICZ:

9 Q We talked about the value of the non-operating
10 assets. Could you clarify what the value of the operating
11 assets is that you determined for the valuation of the
12 company?

13 A Well, so it gets -- I guess I would answer that if I
14 exclude the non-operating assets, the value of the company
15 only including the operating assets would be \$6,550,000

16 Q Thank you.

17 THE COURT: Okay.

18 MR. GILMORE: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. GILMORE: May I proceed, Your Honor?

21 THE COURT: You may.

22

23 CROSS-EXAMINATION CONTINUED

24 BY MR. GILMORE:

1 Q Now, Mr. McGovern, this assignment that you were
2 given is known in your industry as a retroactive appraisal,
3 right.

4 A I am certainly valuing a business retroactively. I
5 am not sure I have heard that term before.

6 Q Your assignment is not to get a contemporaneous
7 value of a going concern, true?

8 A True.

9 Q You were hired in 2016, right? Never mind. I am
10 not concerned when you were hired. That is not relevant.
11 Your report was issued January 25, 2016?

12 A Yes.

13 Q In 2016 you were asked to go back and provide
14 valuation of the Superpumper business as of the last day of
15 September 2010, right?

16 A Yes.

17 Q You have to do a six year look-back period to
18 determine the appraisal date, right?

19 A Yes.

20 Q Or the valuation date?

21 A Correct.

22 Q Okay. So you testified in the direct examination
23 something to the effect that when you are doing a retroactive
24 appraisal, my word but not yours, you don't consider events

1 that occurred after the valuation date for purposes of
2 determining your valuation, because a contemporaneous
3 appraiser would not have that information available to them.

4 Do you recollect testifying to something to effect?

5 A Yes. I said we only consider information that's
6 known or knowable as of the date of valuation.

7 Q And so if you were already, it would be 2016, you
8 were considering events that actually occurred in 2013, that
9 would improperly impair the valuation that you were giving as
10 of the valuation date in 2010, right?

11 A That would depend on what information you were
12 speaking of.

13 Q But it could, right?

14 A It could, sure.

15 Q And you agree with me that isn't something that you
16 think generally would be a common practice in doing a
17 retroactive appraisal of this type, right?

18 A It would not be.

19 Q Now were you tasked -- strike that. If I use the
20 word review, to perform a review of someone else's work
21 product, would that term mean anything to you?

22 A Yes. Although I have to caution the term "review"
23 for an accountant can mean different things.

24 Q Understood. If I characterize it in this valuation

1 context that your job was not to review Mr. Cavalier's work in
2 the Matrix report, was it and to comment and opine on it?

3 A I was not asked to opine upon Mr. Cavalier's work,
4 although I did review his report in the context of performing
5 my valuation.

6 Q Understood. But your task was to do a separate
7 valuation based on all of the information you believed were
8 necessary and relevant to reach the conclusions you were
9 satisfied with, true?

10 A Yes.

11 Q Okay. So you testified that you applied the standard
12 of value, you addressed the standard of value and addressed
13 the premise of value. You applied the fair market value,
14 right?

15 A Yes.

16 Q Fair market value is a pretty well understood term
17 in your business; isn't it?

18 A Absolutely.

19 Q The idea of a fair market value can be found in the
20 tax code, right?

21 A Yes.

22 Q It can be found in the business valuation
23 literature, right?

24 A Yup.

1 Q And would you agree with me the definition of fair
2 market value is pretty consistent amongst all of those
3 authorities?

4 A Yes.

5 Q Would you agree with me fair market value in essence
6 is the idea there is a hypothetical buyer in the market place
7 and hypothetical seller in the market place who, if they were
8 motivated by their own self-interest would do a business deal,
9 right?

10 A Sure.

11 Q No compulsion to buy or sell on either party?

12 A Yes.

13 Q Right. And they're going to do a deal based on their
14 reasonable understanding of all the material factors involved
15 in the transaction, right?

16 A Yes.

17 Q Okay. Have I stated the general gist of fair market
18 value fairly in your opinion?

19 A I think so, yeah.

20 Q What we are really talking about is a hypothetical
21 buyer and hypothetical seller doing an arms-length
22 transaction. Do you agree with that?

23 A Yes.

24 Q Now let's talk about the premise of value. So in

1 this case, you testified it would be a going concern, right?

2 A Yes.

3 Q That is because you knew that the assignment was not

4 something like this business winds up and we need to figure

5 out what the liquidation value would be, right?

6 A Yes.

7 Q Another example might be, well, this business was a

8 storage unit. It burned to the ground. Now we're trying to

9 find out what the insurance value might be to rebuild it.

10 Those are the kinds of factors built into premise value,

11 right?

12 A Sure.

13 Q We all agree going concern was the proper premise,

14 right?

15 A Well, I believe it was.

16 Q I agree with you?

17 A Okay.

18 Q In performing your work and arriving at your

19 opinions, did you have the opportunity to look at some of the

20 contracts that were in place at Superpumper at the time of the

21 valuation?

22 A If I could look at my list of data and information.

23 THE COURT: You may.

24 BY MR. GILMORE:

1 Q Please do.

2 THE COURT: Mr. Gilmore, if it helps you, we'll go
3 about five more minutes before we take our lunch recess.

4 MR. GILMORE: Perfect. Thank you. I will probably
5 have twenty minutes or so, half hour or so.

6 THE COURT: That is fine.

7 BY MR. GILMORE:

8 Q Sorry to make you go through the lunch hour?

9 A No problem. Looking at my Appendix B sources of
10 information, I don't see contracts specifically referenced,
11 although I do have a reference to some corporate documents
12 with a Bate range. So with that caveat, unless they are
13 included within that Bates range, I'm not seeing contracts
14 specifically.

15 Q Okay. What you're looking at it Appendix B. It has
16 a Bate stamp in my version called McGovern 42. Do you agree
17 with me?

18 A Yes.

19 Q You endeavored to put all the sources of your
20 opinions into this appendix, right?

21 A Yes.

22 Q Now you mentioned there are some Bate stamp
23 documents referred to like the audited financial statements
24 and those kinds of things, right?

1 A Yes.

2 Q Okay. Now do you remember when Ms. Pilatowicz asked
3 you about what, I am trying to remember precisely the word she
4 used, but whether or not there was some liability associated
5 with a Shell contract that Superpumper perfected?

6 A I remember the line of questioning.

7 Q Okay. So that information would have only come from
8 an agreement between Shell and Superpumper, right?

9 A Unless somebody described it to me.

10 Q And did you endeavor to interview any of the
11 principals of Superpumper?

12 A No.

13 Q You didn't do any of your own independent research
14 that wouldn't be found on Appendix B, right?

15 A Not unless it is mentioned in the report or it was
16 discussed at my deposition.

17 Q Right. So if Superpumper were a public company and
18 had publically available financial statements for example
19 which identified contracts of material importance, those types
20 of things, you would have included it in Appendix B, right?

21 A If I considered it, sure.

22 Q Is it your testimony you did or did not consider any
23 of the contracts that were in place with Superpumper and
24 Shell?

1 A Well, I believe in my report I mentioned that I
2 understood there was a contract with Shell, and that I assumed
3 that contract would be renewed and ongoing.

4 Q How do you know that if you never identified that
5 contract as a source upon which you relied?

6 A Bear with me. Let me see if I can find the section
7 in the report.

8 THE COURT: What we'll do, we'll take our noon
9 recess now. You can look at your report, kind of go through
10 this area and be ready to have more inquiry after lunch.
11 We'll be in recess until 1:00 o'clock. So I will see you back
12 then. Court's in recess.

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

14 THE COURT: Sir, you are still under oath. You may
15 continue your inquiry

16 MR. GILMORE: Thank you, Your Honor. Before we get
17 into the questioning of this witness for purposes of
18 housekeeping, identified in what was referred to in the
19 Yalamanchili deposition as Exhibit 15 the Bate number. It's a
20 single page document, Bate number LMWF Supp. 102793 and I
21 intend to offer that as Exhibit 301 to be supplemented into
22 the trial binders. Copies have been provided to counsel.

23 THE COURT: Any objection?

24 MS. PILATOWICZ: No objection.

1 THE COURT: The clerk has marked it?
2 THE CLERK: I have not yet.
3 MR. GILMORE: I have three sets for you.
4 THE CLERK: I only need two.
5 MR. GILMORE: May I approach the clerk, Your Honor?
6 THE COURT: You may.
7 THE CLERK: Thank you.
8 MR. GILMORE: Thanks everybody for your --
9 THE CLERK: Exhibit 301 marked.
10 (Exhibit 301 marked for identification.)
11 MR. GILMORE: -- patience.
12 THE COURT: And admitted by stipulation.
13 (Exhibit 301 admitted in evidence.)
14 MR. GILMORE: May I continue inquiry, Your Honor?
15 THE COURT: You may.
16 BY MR. GILMORE:
17 Q Mr. McGovern, sorry for that. That had nothing to
18 do with you?
19 A It is quite all right.
20 Q Something to do with what we were dealing with
21 before you took the stand. So when we left for lunch, I had
22 inquired about the testimony you had given in response to
23 Ms. Pilatowicz' question with respect to what Superpumper
24 folks referred to as an incentive agreement, gas incentive

1 rebate that carries a contingent liability. You remember that
2 line of questioning?

3 A Yes.

4 Q You gave some opinions in the direct examination to
5 the effect that you had not considered that to be a material
6 element of the valuation process that you conducted, true?

7 A I'm not sure I used that terminology.

8 Q Okay. How did you describe it?

9 A I'd have to have the court reporter read it back to
10 tell you exactly how I described it.

11 Q Have you had a chance to review your written report
12 to identify in what context you made reference to these
13 agreements between Superpumper and Shell?

14 A Yes.

15 Q Where can you find that in your written report?

16 A So in the Statement of Assumption and Limiting
17 Conditions, I referenced that at number 11, so it is Bate
18 McGovern 39. Item 11 speaks to the vendor rebate program with
19 Shell. That is for purposes of my valuation. I assumed that
20 the company would renew the agreement with Shell and/or enter
21 into a comparable agreement with another gasoline supplier.

22 Q And so the limiting conditions and assumptions are
23 intended to notify the reader that there are some things that
24 you simply assumed for purposes of your work, right?

1 A Yes.

2 Q That you did not necessarily intend to or were asked
3 to personally verify, true?

4 A Yes.

5 Q Okay. So you put this in your limiting conditions
6 but you did not include this document as one of your sources
7 that you considered in rendering your opinion, true?

8 A Which document are you speaking of now?

9 Q This vendor rebate program with Shell Oil Products?

10 A No, not the specific contract agreement. It was
11 noted in the audit report or the financial statements speaking
12 about it. That is how I learned of it.

13 Q My next question was: If it wasn't a source
14 document what was the basis of your opinion, where did you
15 become aware of it?

16 A In the audited financial statements.

17 Q Before the break I asked if you spoke to any of the
18 Superpumper folks and you said no. I think we have that
19 sorted out?

20 A Okay.

21 Q Did you ever read any agreements between Superpumper
22 and Shell?

23 A No.

24 Q So you wouldn't be able to testify how a rebate for

1 incentive associated with Shell's gasoline that is being
2 purchased by Superpumper would affect their business model,
3 true?

4 A That's true.

5 Q Likewise, you wouldn't be able to testify how those
6 agreements might impact the company's income?

7 A Other than those agreements are reflected in the
8 historical financial results.

9 Q Isn't it true in the limiting conditions and
10 assumptions, isn't it true that you acknowledge that, if these
11 assumptions turn out to be faulty, that it would change --
12 could change some of the conclusions in your report, right?

13 A It could, depending on what that change was.

14 Q Right. Now in your deposition, you conceded that,
15 prior to doing the Superpumper valuation, you didn't have any
16 experience in valuing gas stations, right?

17 A That's correct.

18 Q Same with respect to convenience stores, right?

19 A I believe that's correct as well.

20 Q We might call them C-stores. If I say that, I am
21 referring to, of course, a convenience store?

22 A Okay.

23 Q So you did not identify any liabilities associated
24 with any of the contracts in place between Superpumper and any

1 of its vendors, true?

2 A Only those that were reflected on the financial
3 statement.

4 Q Thank you. Now your final opinion of the fair
5 market value of the equity in Superpumper as of September 30th
6 was thirty million fifty thousand right?

7 A Yes.

8 Q You testified that you valued the equity of
9 Superpumper in essentially two components, the operating
10 assets and the non-operating assets; is that true?

11 A Yes.

12 Q We'll get to that in a minute. Do you know how far
13 apart your valuation of the operating assets to the Matrix
14 report's ultimate conclusion of value was?

15 A Well, again, if I take out the six and a half
16 million for the non-operating assets, my conclusion of value
17 was nearly identical to what Matrix arrived at.

18 Q Something like less than fifty thousand dollars was
19 the difference, right?

20 A I don't recall the specific number, but it was very
21 close.

22 Q I mean fractions of percentages, right?

23 A Yes.

24 Q Do you have a standard in your industry when two

1 professionals attempt to value a business enterprise and they
2 come within \$50,000 for an enterprise that might have a six
3 million dollar valuation, would you consider your conclusion
4 to be reasonably equivalent to the other reviewer's
5 conclusion? That is too much.

6 A Okay.

7 Q Do you consider your conclusion of value as to the
8 operating assets to be reasonably equivalent to the Matrix
9 calculation of total value?

10 A Not if you put it that way. Because I don't know how
11 Matrix handled the shareholder loss. All I could say is my
12 conclusion of value excluding the non-operating assets is
13 nearly identical to the total value that Matrix arrived at.

14 Q Fair enough. Will you turn to -- Do you have your
15 report in front of you?

16 A I do.

17 Q At the top of page 7 you have a written opinion
18 which is McGovern LL8?

19 A Okay.

20 Q The top of that page is what we'll discuss. You are
21 identifying in this portion of the report some implications to
22 the valuation as it concerns Superpumper's enterprise, right?

23 A Are you speaking of the very last or very first line
24 on the top of that page?

1 Q I am talking about in general. 2.4 of your report
2 which starts on page 6 and ends on page 7?

3 A Labelled implication for valuation, yes.

4 Q These are some specific factors you identified with
5 respect to Superpumper and its industry, right?

6 A Yes.

7 Q Okay. So I would like to focus on the last sentence
8 of that paragraph which you find on page 7. You said expect
9 the level of growth long term not to exceed one percent
10 annually. Do you see that?

11 A Yes.

12 Q Okay. Now you arrived at that conclusion by
13 reviewing materials and other industry information related to
14 gas stations and C-stores, right?

15 A Yes.

16 Q Now is it a fair characterization that this analysis
17 is important when you are doing a discounted cash flow
18 methodology?

19 A Sure.

20 Q In a discounted cash flow methodology, it is based
21 in large part on future projections of income, right?

22 A Yes.

23 Q That is generally the emphasis of a DCF evaluation
24 right?

1 A Yes. You're looking out into the expectation for
2 the future.

3 Q So now you testified that you had received and
4 reviewed Superpumper's budgets in preparation of your, if I
5 say DCF, I say that in all caps, and I intend it to mean
6 discounted cash flow, okay?

7 A Sure.

8 Q That is not an unusual acronym in your business?

9 A It is not.

10 Q So I would like you, you can turn to this in the
11 binder if you have it available or we can look at it on the
12 monitor if that works for you, sufficient for you to identify
13 this document, do you recognize the document?

14 A I am sorry, there is a glare.

15 Q Why don't you grab your binder. This will be
16 probably in Volume III behind you?

17 A I have Volume III. Is there an exhibit number?

18 Q 119. Let's start from the beginning. Exhibit 119
19 is a document that you recognize, right?

20 A These appear to be documents that I had available to
21 me.

22 Q Right. You testified in the direct examination that
23 at the time of the valuation date there were no audited
24 financial statements of Superpumper available to you as of

1 2010, right?

2 A Correct.

3 Q You had to rely on the unaudited financials for the

4 partial year 2010?

5 A Yes.

6 Q These financial statements we are looking at in

7 Exhibit 119 were documents you reviewed that informed your

8 opinion, true?

9 A I believe that's correct. I would just like to

10 double check --

11 Q Take your time?

12 A -- the Bate numbers here.

13 Q I can help you. If we go back to your appendixing

14 source of information?

15 A Right. That's where I am looking here.

16 Q Do you see the third bullet point, Superpumper

17 budget 2010. Bate numbers 105, 106.

18 A Yes.

19 Q And then the last two pages of Exhibit 119 are Bates

20 numbers 1005 and 1006, see that?

21 A Yes. That's right.

22 Q Now these are the budgets you relied on to create

23 your discounted cash flow methodology, right?

24 A Yes.

1 Q So when you were evaluating this document, did it
2 strike you as unusual that the years 2010 to 2015 with respect
3 to these entries were to the dollar? Do you understand what I
4 mean by that?

5 A I believe I do.

6 Q They aren't rounded numbers to the 10th or 100th.
7 Do you follow me?

8 A Yes.

9 Q Did you find that to be unusual at all?

10 A Not that I recall.

11 Q And did you find it unusual that there was such wide
12 fluctuation in things like gasoline sales?

13 A I wouldn't say I found it unusual, No.

14 Q Okay. Do you have an understanding as to how gas
15 stations generate net income?

16 A I believe so, yes.

17 Q Give me the 101 of your understanding of that?

18 A They sell gas. They purchase the gas. They sell it
19 for more than the buyer purchases it for.

20 Q The margin between what they bought it from the
21 distributor for and sold it to the customer, net whatever fees
22 are associated is their net income?

23 A Well, you have to consider all the other expenses of
24 operating the business, but sure.

1 Q Generally, you agree that is how net margin is
2 determined in selling gas, right?

3 A Sure.

4 Q In some respects, it doesn't really matter in order
5 to impact your net income, when we are speaking about just
6 gasoline sales, it doesn't necessarily matter how many gallons
7 you sold that year, your net income could be the same? Let me
8 have you follow me here: In 2010, if you sold 100 million
9 gallons of gasoline but your margin was one cent a gallon, you
10 with me? It is very easy to determine what your net income
11 would be based on just that hypothetical, right?

12 A Well, again, you are not considering all the other
13 expenses of operating the business.

14 Q I agree. I want to strictly, let's say pure
15 gasoline, not even considering the other issues that might be
16 associated with it, not considering expenses related to the
17 terminal upkeep, all that, not asking you to consider that?

18 A Okay.

19 Q Just this hypothetical: If in 2010 you sell 100
20 million gallons of gasoline and you made one cent a gallon in
21 margin, meaning you sell your gallon of gas for one cent more
22 than you paid for it?

23 A Okay.

24 Q Easy to understand what your net income would be

1 from that calculation?

2 A We call that the gross margin.

3 Q Perfect. Thank you. What happens in 2011 if you
4 sell fifty million gallons but your margin was two cents?

5 A Well, you would still have the same gross margin.

6 Q Your gross margin is identical irrespective of how
7 many gallons you sold between those two years, true?

8 A Sure.

9 Q Would you agree with me, at least based on that
10 hypothetical, a gas station's gross margin is more a factor of
11 the margin, the difference between the price purchased for the
12 gas and the price sold to the customer, that is the total
13 amount of gallons sold in an annual year?

14 A Not necessarily, no. I think both are a factor.

15 Q So you don't agree that they are directly correlated
16 in that way, do you?

17 A Directly correlated in what way?

18 Q In the way that -- I am not trying to fence with
19 you. I want to understand what your opinion is on this. That
20 simply looking at the total gallons sold in a gas station
21 operation does not tell you what the gross margin is?

22 A I agree with that.

23 Q So let's look at this budget 2010. There is
24 gasoline in terms of volume of gallons sold, is that how you

1 interpret this?

2 A The million dollars of the paying there is gasoline
3 in gallons, sure, and diesel in gallons.

4 Q Do you have any understanding as to how Superpumper
5 could have possibly predicted the number of gallons they might
6 have sold in 2011, 2012, 2014 and 2015?

7 A I would expect, like every other business estimates,
8 how much they are going to sell.

9 Q But you don't know how they did that, do you?

10 A No, I don't know specifically know how Superpumper
11 did their forecasting.

12 Q Okay. Now going back to your testimony that you
13 anticipated you had a one percent growth. Can you tell me
14 whether or not this budget that we are looking at here is
15 consistent or inconsistent with your assumption of one percent
16 growth?

17 A Well to be clear, I considered a one percent growth
18 after looking at the forecast.

19 Q Okay. There was testimony yesterday that this
20 document that you relied on, Exhibit 119, these budgets were
21 not projected budgets but were actual historical numbers, did
22 you know that?

23 A No.

24 Q It wouldn't make sense to do a discounted cash flow

1 methodology appraisal with numbers that were actual instead of
2 historical, right?

3 A I am not sure you said that the right way. Actual
4 and historical are the same.

5 Q I said actual and historical instead of projected.
6 You're right, I was wrong. Again, you talked about -- Earlier
7 we looked at what is known or knowable at the date of the
8 valuation. If you already knew the historical numbers of the
9 company, that would be a different methodology, sorry,
10 different approach under the income methodology wouldn't it?

11 A Well, it would be different, sure, because, again,
12 when we are doing a discounted cash flow analysis, we are
13 looking at projections.

14 Q So it is a different methodology when looking at the
15 projections going forward. We are looking at the projection
16 of historical data already received, right?

17 A I mean historical data is not a projection. They
18 are historical data.

19 Q Let me read from your report. Ms. Pilatowicz asked
20 you did you consider all kinds of valuation approaches and
21 your testimony was yes. You considered applying the asset
22 approach. Right?

23 A Right.

24 Q You considered the income approach, right?

1 A Yes.

2 Q Now within the income approach, there are varying
3 methodologies that can be used and applied inside the income
4 approach, true?

5 A Yes.

6 Q One is the discounted cash flow method, right?

7 A Yes.

8 Q Okay. There is another one that was, I am probably
9 going to butcher the full name, essentially, capitalization if
10 over a certain time period, right?

11 A Yes.

12 Q What do you call that?

13 A Capitalization of a single period earnings.

14 Q I was close. You did not use that approach. You
15 instead used the discounted cash flow approach?

16 A Just to be clear, I did -- I did the work and
17 applied the single period approach and came up with a result
18 that was actually, actually higher than the discounted cash
19 flow approach, but I ultimately selected the discounted cash
20 flow approach.

21 Q That is what I meant. I meant to ask it that way.
22 It was a bit of a clumsy question. You considered all of
23 these methodologies within the income approach, right?

24 A Yes.

1 Q Ultimately, based on your judgment, you determined
2 that the discounted cash flow methodology was going to give a
3 more reliable indication of value, true?

4 A Yes.

5 Q Okay. Now let's address this idea of the operating
6 assets versus non-operating assets. Let's digest where these
7 numbers come from. Can you turn to page 8 of your report
8 which is McGovern 009?

9 A Okay.

10 Q Okay. Now in performing valuation, it sort of goes
11 without saying that you have to understand the nature of the
12 company's assets and liabilities, right?

13 A Yes.

14 Q So on page McGovern 009, you were giving treatment
15 to the company's assets, do you agree?

16 A Yes.

17 Q Okay. So for example on that page you're talking
18 about things like cash and cash equivalence, right?

19 A Right.

20 Q Property and equipment, right?

21 A Yes.

22 Q Now there is this due from affiliates. There is
23 some treatment to the due from affiliates on the asset side of
24 the balance sheet. Can I say it that way?

1 A Sure.

2 Q So you acknowledge that the Superpumper balance
3 sheet carries on it a receivable that is booked as a due from
4 affiliates, true?

5 A Yes.

6 Q And you suggest here the aggregate balance of these
7 due from affiliates increased from four million dollars in
8 2007 to seven million in 2007?

9 A 7.7 million.

10 Q And you saw that from the audited financial
11 statements, right?

12 A Yes.

13 Q And so you acknowledge as of the date -- I said that
14 backwards -- the date of the valuation, the balance of due
15 from affiliates, the receivables on Superpumper's books is
16 roughly nine million?

17 A Correct.

18 Q That number comes straight from the balance sheet?

19 A Correct.

20 Q Now you testified in direct examination that you
21 simply assumed that those due from affiliates were
22 collectible?

23 A I did assume they were collectible.

24 Q Now if the due from affiliates are not collectible,

1 you would agree with me it would not be appropriate to include
2 them in the non-operating assets that went toward your
3 ultimate conclusion of value, right?

4 A Yes, that's correct.

5 Q So what effort, if any, did you make to earnings and
6 whether or not as of September 30th any of these due from
7 affiliates were collectible?

8 A Well, couple of things. First I asked for copies of
9 the actual notes that were in place. The second thing was I
10 considered that the previous audit report had determined that
11 the due from affiliates amounts were in fact collectible.

12 Q You asked for the note. You did that through
13 counsel, right?

14 A Yes.

15 Q And no notes were produced, right?

16 A That's correct.

17 Q And are you aware, as you sit there today, that
18 Mr. William Leonard in the blue blazer here is the Plaintiff
19 in this case?

20 A I understand he's the Trustee.

21 Q Okay. Do you understand that Mr. Leonard purports
22 to own all of the files that were kept by Superpumper's
23 lawyers?

24 A I'm not aware of that.

1 Q You don't know that?

2 A I don't know.

3 Q So you don't know to what extent Mr. Leonard or his
4 lawyers went to try to obtain copies of these notes if they
5 existed?

6 A I do not.

7 Q And same question, did you ever inquire of the
8 auditors as to whether or not they possessed copies of these
9 notes?

10 A No.

11 Q You just -- You did not do any investigation through
12 the auditors, did you?

13 A No, other than as I explained, I did review the 2009
14 and I believe 2008 audit reports.

15 Q Right. And so in the 2009 audit report, there is
16 nothing explicitly written in the audit report that says the
17 auditors believe these notes to be collectible? You believe
18 it doesn't explicitly say that?

19 A It doesn't explicitly say that, but they would not
20 have listed them as assets if they didn't believe they were
21 collectible.

22 Q That is your understanding of the requirements doing
23 an audit under AICPA or GAAP, true?

24 A It is -- It is my understanding that is the

1 auditors' testimony.

2 Q And you recognize in 2009 the auditors classified
3 all the due from affiliates on the Superpumper's balance sheet
4 as noncurrent, right?

5 A I do.

6 Q Noncurrent meaning they did not have reasonable
7 expectation these receivables could be liquidated for value or
8 for cash within a 12-month period, right?

9 A Well, I don't know why they considered them to be
10 not current.

11 Q I am not asking if you understand why. I am simply
12 getting you to acknowledge that you understood they had
13 identified them as noncurrent in the audit report?

14 A Well, just not to get too technical, it is
15 management's responsibility to prepare the financial
16 statements. It is the auditor's duty to issue an audit
17 opinion on the fairness of those statements. They were listed
18 on the financial statements as noncurrent assets and the
19 auditors accepted that classification.

20 Q And you recognize it would be the auditors'
21 responsibility as part of the audit process to test management
22 assumptions with respect to those, the collectability of those
23 notes, right?

24 A Yes.

1 Q You agree with me that in the notes to the
2 Superpumper financial statements -- I have got the wrong year.
3 The auditors give commentary confirming that these are
4 noncurrent assets, right?

5 A Could you point me to the section of audit report
6 you are referring to?

7 Q I am looking at Exhibit 114?

8 A Okay.

9 Q And it is Superpumper 331 in the bottom right-hand
10 corner. Are you with me?

11 A I am.

12 Q You testified just a few moments ago that you had
13 reviewed these audited financials in order to obtain these
14 numbers which is the sum total of the related party
15 transactions or "due from affiliates," carried on the
16 Superpumper balance sheet, right?

17 A Right as of the end of 2009.

18 Q You synthesized this number in your report along
19 with 2008, 2009, true?

20 A Yes.

21 Q The very next identifies these numbers, these
22 amounts have been classified as noncurrent in the accompanying
23 balance sheet because repayment is not anticipated during the
24 next year, right?

1 A You read that correctly, yes.

2 Q Thank you. This audit report is as of year end 2009
3 right?

4 A Yes.

5 Q Fast forward to September 30, 2010. We are still
6 inside the same one year period from the date of the these
7 audited financials, aren't we?

8 A Yes.

9 Q Yet in your opinion, I should say in your report,
10 you simply made the decision to convert all of the due from
11 affiliates from noncurrent to current, didn't you?

12 A Because that is the proper classification.

13 Q According to whom?

14 A According to the accounting standards.

15 Q Let me -- Help me understand that. The auditors
16 determined on December 31, 2009 that these due from affiliates
17 are noncurrent?

18 A And I believe they were wrong.

19 Q That is where we are at. Okay. What information did
20 you have available to you to reach the conclusion that the
21 auditors were wrong?

22 A The accounting standards.

23 Q So you take issue with the fact that the Gurse
24 Schneider auditors classified these as noncurrent? You

1 disagree with their classification?

2 A I do. The accounting standards are due on demand
3 notes should be treated as current.

4 Q So how are these due from affiliates broken down in
5 the auditors work papers, do you know?

6 A I don't.

7 Q You have never seen them have you?

8 A No.

9 Q So you relied exclusively-- Let me back up. In
10 making your conclusion that the auditors got it wrong in
11 classifying these as noncurrent, you relied exclusively on the
12 words of this particular line that says due on demand, true?

13 A Yes, and the accounting standards.

14 Q Fair enough. Will you turn to Exhibit 105?

15 A Okay.

16 Q This is a document that came from the auditors work
17 papers, okay?

18 A Okay.

19 Q You see in the top Superpumper Inc., note receivable
20 interest calculation year end 2009. Do you see that?

21 A I do.

22 Q Do you recognize this number 9.354 million.

23 A It doesn't really tie to the total at '08.

24 Q It is not identical is it?

1 A No.

2 Q It is within a couple hundred thousand, do you
3 agree? Yes?

4 A Yes.

5 Q Let's look at these descriptions of these
6 receivables. Your testimony is and your opinion is that, in
7 order for these due from affiliates to be operating assets,
8 they need to be collectible, right?

9 A No, that is not what I said.

10 Q Okay. Let's un-package that. When a note receivable
11 is on the balance sheet of a company, it is an asset, true?

12 A Yes.

13 Q Now an asset could be an operating asset or a
14 non-operating asset, true?

15 A Yes.

16 Q An operating asset is classified as an asset which a
17 company utilizes in its daily operation, true?

18 A Or relies upon.

19 Q Or relies upon. An income stream or a tangible
20 asset, something like that, right?

21 A Sure.

22 Q A non-operating asset would be something that the
23 company owns, the business, not dependent on that asset to
24 operate its business concern, right?

1 A Fair enough.

2 Q So let me give an example. Superpumper might have a
3 million shares of Google stock that do nothing but generate
4 dividends and sit in a brokerage account that they never
5 touch. They never take. They don't use it at all in order to
6 operate their business. Operating asset or non-operating?

7 A I'd say non-operating.

8 Q Okay. Right. But in order for it to be a
9 non-operating asset, it has to be a viable asset susceptible
10 to liquidation, right?

11 A Well, not necessarily. It has to be a legitimate
12 asset.

13 Q Let's use your word, legitimate. It has to be a
14 legitimate asset that the company could realize some value
15 from, true?

16 A Sure.

17 Q Can we agree that is what you mean by legitimate?

18 A Yes.

19 Q Actually. It has some value to the enterprise?

20 A Right.

21 Q If it doesn't have any value, it is not going to
22 belong on the asset side of the balance sheet?

23 A That's correct. If it doesn't have value, it
24 shouldn't be on the balance sheet.

1 Q Got it. Now these are some of the notes receivable
2 that were carried on the Superpumper balance sheet as of
3 12-31-09 okay?

4 THE COURT: What are you pointing to?

5 MR. GILMORE: I am pointing to these.

6 THE COURT: I see what you are pointing at. What
7 exhibit?

8 MR. GILMORE: I am sorry. This is 115. I am still
9 on 115.

10 BY MR. GILMORE:

11 Q Do you understand what an interest income
12 calculation is?

13 A Sure.

14 Q The auditors have to test management's
15 representations as to the amount of interest that they should
16 be -- that should be booked to the company based on its
17 outstanding notes receivable, true?

18 A Yes.

19 Q Okay. In order to do that, management would have to
20 know what the outstanding balance is of those receivables are,
21 right?

22 A Yes.

23 Q You would expect the auditors, in testing those
24 management assertions, that these notes receivable are

1 actually as you called it, legitimate?

2 A I would expect that, yes.

3 Q That is something you would anticipate the auditors
4 would do?

5 A Yes.

6 Q As part of their function?

7 A Yes.

8 Q So do you know what CWC is?

9 A Where are you pointing to?

10 Q I am looking at the first GL account 12-10-00 CWC-
11 interest?

12 A I believe CWC stands for Consolidated Western
13 Corporation or something to that effect.

14 Q What is Consolidated Western Corporation's
15 affiliation to Superpumper?

16 A I'm not sure exactly.

17 Q I am not trying to trick you. I will tell you
18 Consolidated Western Corporation was the parent corporation
19 which owned 100 percent of the common equity of Superpumper?

20 A Okay.

21 Q Let's just call that parent and subsidiary. Would
22 you agree that is a fair characterization?

23 A Sure.

24 Q CWC is the parent company. Superpumper the

1 qualified subsidiary?

2 A I will take your representation for that.

3 Q Do you know what PAMAZ is?

4 A No.

5 Q If I represented to you the testimony in this trial
6 so far is PAMAZ was the name -- was a predecessor in name only
7 of Consolidated Western Corporation, would you know anything
8 about that?

9 A No.

10 Q Do you recognize this name, Paul Morabito?

11 A I do.

12 Q What did you understand his relation to Superpumper
13 to valuation date -- strike that.

14 What did you understand Paul Morabito's relationship
15 to Superpumper was as to year end 2009?

16 A I believe he was one of the owners.

17 Q And next is Due FR. Would you agree that appears to
18 be due from? BWH, do you know what BWH is?

19 A I don't.

20 Q Last entry is CWC, do agree with me?

21 A I do.

22 Q If we add all the balances, we get a number around
23 7.3 million and change, do you agree?

24 A Yes.

1 Q Then if you go down to this handwriting?

2 A Okay.

3 Q We take 7.354, we add \$329,000, we get a number

4 recognized in a previous exhibit?

5 A Yes.

6 Q 7.6833 and change?

7 A Correct.

8 Q This number is reflected in the due from affiliates

9 on the audited financial statement of 2009 year end, right?

10 A Yes.

11 Q So now we have tied those two numbers together

12 haven't we?

13 A Yes.

14 Q Now your valuation date is September 30, 2010,

15 right?

16 A Yes.

17 Q Did you know that there was, I don't want to use the

18 term that would confuse, an equity event with Superpumper as

19 it related to its parent corporation September 28, 2010?

20 A I am aware there was some equity transaction at that

21 time.

22 Q Okay. Have you been made aware that September 28,

23 2010 there was a parent subsidiary merger?

24 A I don't recall the details of what the transaction

1 was.

2 Q Now if I asked you to assume that there was a
3 parent-subsiary merger let's say January 1st of 2010 so the
4 day after these audited financial statements where the report
5 on these audited financial statements was delivered, let's
6 just say that, can you tell me, based on your training and
7 education and experience what would happen if there was a
8 merger between a parent and a subsidiary where the parent
9 corporation owed the subsidiary money? Can you tell how that
10 would be treated in a merger?

11 A No.

12 Q Will you turn to Exhibit 116?

13 A Okay.

14 MR. GILMORE: I don't know if this is admitted

15 MS. PILATOWICZ: It has been.

16 MR. GILMORE: 116.

17 THE COURT: It is admitted.

18 BY MR. GILMORE:

19 Q Now I imagine this is a document you have never seen
20 before?

21 A I do not recall seeing this document.

22 Q So I will just represent to you this is the
23 Superpumper Inc., Audit Conclusions Memo as of year end 2010,
24 okay?

1 A Okay.

2 Q There is a statement in here I would like to read to
3 you and like you to tell me if you think you would agree with
4 this statement, yes or no?

5 I want you to assume that CWC was merged into
6 Superpumper at September 28th. You see where I am placing my
7 finger?

8 A Yes.

9 Q 2010, and the amounts payable and receivable from
10 CWC to SPI at the merger date were netted against each other
11 with the difference representing accrued interest written off
12 against the equity of the post merger entity. Do you have an
13 opinion as to whether or not that would be appropriate GAAP or
14 AICPA treatment if a parent and subsidiary merged?

15 A I have no opinion on that.

16 Q Okay. Fair enough. Go to 115 for me?

17 A Okay.

18 Q Now if I gave the hypothetical BWH was an enterprise
19 by the name Big Wheel Hospitality, okay?

20 A Okay.

21 Q If I told you that in September of 2010 all of the
22 assets of Big Wheel Hospitality were foreclosed on by the
23 secured lender and it lost all of its assets. I just want you
24 to imagine that as a hypothetical. Would you anticipate, as

1 of your valuation date, that this due from Big Wheel
2 Hospitality \$443,000 would be as you put it, a legitimate
3 note?

4 A It would depend on whether Big Wheel had any means
5 to satisfy the note.

6 Q And maybe my hypothetical isn't entirely complete.
7 But the suggestion is, if Big Wheel Hospitality had all its
8 assets foreclosed and was out of business in September 2010,
9 would you anticipate, based on your opinion of how those notes
10 should be treated, that would be a legitimate note carried on
11 the notes of Superpumper?

12 A It would certainly create a significant question as
13 far as collectible if they go into bankruptcy later going to
14 be distributed. It certainly would raise a question.

15 Q Right. You would have to know, wouldn't you, in
16 order to be sure that this was a legitimate receivable on the
17 books of Superpumper?

18 A Sure. You need -- If the assets are listed as
19 assets, you want to know whether or not they are collectible.

20 Q Isn't it true your assumptions contained in your
21 report as to the legitimacy of the due from affiliates depends
22 entirely on whether or not all of these obligors are viable?

23 A It depends on whether or not the loans are
24 collectible. I was very clear about that in my report. I am

1 trying to be very clear about it here.

2 Q I think you are being clear, and I appreciate your
3 answer. You did not do any independent investigation as to
4 whether or not the due from affiliates that were carried on
5 Superpumper's balance sheets were legitimate?

6 A No, other than reviewing the prior audit reports.

7 Q So now the Court asked you how did you get to six
8 and a half million in excess working capital, if we started
9 with 9 million dollars and change of shareholder notes, do you
10 remember that?

11 A Yes.

12 Q Let's go to your schedule on page 11 of your report.

13 A Which number was my report?

14 Q Yours was 91. Then I am looking at McGovern 12.

15 A Okay.

16 Q This is the table that breaks down how you came up
17 with excess working capital that you added to the valuation
18 you arrived at from the DCF, right?

19 A Yes.

20 Q So let's unbox this. You understood that there were
21 current assets which adjusted to make them current because you
22 disagreed with the auditors' assessment they were noncurrent,
23 true?

24 A Not to quibble, but I adjusted them because I

1 thought that was the proper classification based on accounting
2 standards.

3 Q Different way of saying the same thing, right?

4 A I think both statements are true.

5 Q And for 2010 this current asset-adjusted is a
6 combination of at least two different entries on the balance
7 sheet of Superpumper right? One is the 9 million dollars due
8 from affiliates, right?

9 A Right.

10 Q And the remainder 2 million and the total value here
11 are other current assets carried on the balance sheet of
12 Superpumper, right?

13 A I'm not sure I am following.

14 Q This 11 million dollars is made up primarily of 9
15 million due from affiliates, right?

16 A Yes.

17 Q So there is 9 million dollars due from affiliates,
18 and approximately two and a half million dollars of other
19 current assets, true?

20 A Roughly.

21 Q In order to determine your working capital, you take
22 the current assets, and these are, of course, all
23 non-operating assets, right?

24 A No. Some of -- You don't get to the non-operating

1 assets at this point.

2 Q Fair enough. We'll get there in a second. So you
3 have got eleven million dollars minus four million dollars
4 initially which gives you seven million dollars in working
5 capital, right?

6 A 7.1.

7 Q The idea being in 2010 Superpumper had roughly seven
8 million dollars it could do with whatever it wanted, right?

9 A They could use it for working capital or they could
10 use it to distribute to themselves.

11 Q Right. This number means this was liquid assets
12 available to Superpumper or it could be liquidated within one
13 year, right?

14 A Yes.

15 Q Then what you did is you applied an industry
16 component to what you believed gas stations, by industry
17 standards, maintain in terms of working capital to fund their
18 operations, right?

19 A Yes.

20 Q So then you made a deduction to the seven million
21 and you rounded it down actually to 6.5 million, right?

22 A Yes.

23 Q Okay. So what you essentially did is you took the
24 discounted cash flow valuation of six and a half million and

1 added to it the excess working capital to six and a half
2 million. That is where we got the thirteen million dollar
3 total valuation, right?

4 A Yes.

5 Q Okay. Now this report was intended to reflect the
6 value -- strike that -- intended to reflect the price that an
7 arms-length informed buyer would pay for 100 percent of the
8 common equity of Superpumper, right?

9 A Yes. The fair market value definition we talked
10 about earlier.

11 Q So let's talk about that. You're suggesting that a
12 fair market value buyer who is self-interested and intending
13 to make a market transaction under fair market value standards
14 would buy for real money Superpumper's six and a half million
15 dollars in excess working capital, right?

16 Let's break that down. If a hypothetical buyer
17 would come to the hypothetical seller, Superpumper, on the
18 date of your valuation and say we want to buy your business,
19 you would assume that the buyer would know it is a gas station
20 operation, right?

21 A Sure.

22 Q Because the fair market value standard requires they
23 be apprised of all of the relevant and material facts, right?

24 A Sure.

1 Q They would know it is eleven gas stations, right?

2 A Yes.

3 Q They would know there is no real property owned by

4 the gas stations, right?

5 A Yes.

6 Q They would know the situation with the leases and

7 how the leases figure into EBITA and all the other things?

8 A Sure.

9 Q The buyer would come to Superpumper and say I want

10 to buy your gas station. Your opinion is that buyer would buy

11 not only the stuff that is necessary to run the gas station,

12 in other words the operating assets, but they would also buy

13 at face value these notes that are carried on the Superpumper

14 balance sheet, right?

15 A Yes, because my assignment was to value 100 percent

16 of the equity of the company not just to value the operating

17 assets.

18 Q But you cannot deny that, because the standard of

19 value here is fair market value, you have to consider what a

20 willing buyer would actually pay for the equity of

21 Superpumper, right?

22 A Yes.

23 Q So let me ask you again: Your conclusion is that a

24 willing, rational, fully informed buyer would go to

1 Superpumper and would say I want to buy all your gas stations,
2 and I also want to buy these notes?

3 A Yes.

4 Q From Superpumper at face value?

5 A Yes, if they concluded that they were collectible.

6 Q You already concluded that in your valuation, didn't
7 you?

8 A Yes.

9 Q You are telling this Court that a rational buyer
10 would walk into Superpumper and say I want to buy all of these
11 notes because I want these notes as income to my operation,
12 right?

13 A Again, my assignment was to value 100 percent equity
14 of the Corporation. That 100 percent includes the operating
15 and non-operating assets. My assumption of the transaction is
16 they are going to buy everything.

17 Q Do you believe, in your opinion, is it your opinion
18 based on the fair market value standard of value that a gas
19 station buyer would be interested in buying at face value a
20 note from Paul Morabito as of September 28, 2010 in the face
21 value of \$623,000?

22 A Well, I think it is likely if somebody wanted to
23 just buy the gas station, they would just buy the gas station.
24 But that doesn't mean that the notes are not a valuable asset.

1 Q If somebody is in the business of buying gas
2 stations, why are they buying six and a half million worth of
3 Promissory Notes for six and a half million dollars?

4 A Perhaps they thought it was a good investment.
5 Perhaps they said, you know, the collectible notes here that
6 are four or five, six percent interest, maybe that is more
7 than I could get at the time.

8 Q Let's talk about this idea that you suggested they
9 may think it is a good investment. Is it your experience that
10 fair market value transactions like that are done one of two
11 ways. They are done with cash. They want to buy your
12 business, pay cash on the spot, we'll close and we are done.
13 That is one way of doing it?

14 A Sure.

15 Q Another way is financing?

16 A Sure.

17 Q It is not unusual in your experience for someone to
18 say I want to buy your six million dollar business. I will
19 give you a million up front and I will finance five million,
20 right?

21 A It happens. Sure.

22 Q For transactions of the size that you are talking
23 about, thirteen million dollars, you would anticipate it would
24 be more likely than not they would acquire their financing and

1 not through a cash transaction, right?

2 A I can't say that.

3 Q Okay. Maybe you can't. Would you explain to me why
4 a rational buyer would approach Superpumper and say I want to
5 buy your operation for thirteen million dollars. I am going
6 to finance half of it, and I am going to get cash for the
7 other half. You with me?

8 A No, I am not.

9 Q Back up. Rational buyer comes to Superpumper on
10 September 30, 2010 and says I want to by your gas station?

11 A Do they only want the gas station?

12 Q They want to buy the equity of Superpumper.

13 A Including the note?

14 Q Superpumper says the price tag is thirteen million.
15 The buyer comes in and says I am going to give you six million
16 up front, and I going to give you seven through a note. You
17 follow me?

18 A That's possible sure.

19 Q In that hypothetical, if the buyer is financing the
20 acquisition of notes they are purchasing at face value, do you
21 follow me?

22 A I think so.

23 Q So they are buying Paul Morabito's note in the
24 amount of \$623,000, right, because that comes with, according

1 to your opinion, that comes with the 100 percent equity of
2 Superpumper?

3 A Okay.

4 Q And they had to go to the bank to borrow money so
5 they could buy Paul Morabito's note at face value?

6 A But they could turn around and call them, then they
7 would get all the cash and pay back the financing.

8 Q What rational buyer would buy a note at value so
9 they could simply call the note and pay back the bank they
10 just borrowed the money from?

11 A I don't know.

12 Q Do you know if any of those notes were secured?

13 A I don't.

14 Q So hypothetically, if a willing buyer comes to
15 Superpumper and says I want the whole thirteen million dollars
16 in value, Superpumper sells it for thirteen million dollars in
17 value, the buyer now carries, according to this number anyway,
18 7.6 million dollars worth of notes receivable, right?

19 A Okay.

20 Q That they purchased from Superpumper.

21 A Okay.

22 Q If they're not secured, and all of these obligors
23 run off to Venezuela, the buyer is out 7.6 million dollars
24 they just paid for those notes, right.

1 A Sure, if that happened, sure.

2 Q You don't know whether any of notes were secured by
3 anything other than a signature due on demand?

4 A I don't.

5 Q You don't even know if there was a signature for any
6 of these notes, because you never actually saw any of the
7 physical notes by any of these obligors, right?

8 A I did not see the notes. I relied upon the audit.

9 Q A couple more and I will be done. You did not apply
10 a discount to your total valuation of -- Back up. You did not
11 apply a discount to the valuation you gave for the 100 hundred
12 percent equity in Superpumper, right?

13 A That's correct.

14 Q You did that based on your professional experience
15 and judgment, true?

16 A Yes.

17 Q Okay. So you weren't asked to consider any of the
18 realtime, if I can use that word, realtime market forces that
19 were pressing upon Superpumper's operation in September 2010,
20 true?

21 A I don't know what you mean by that.

22 Q Well, okay. Let me say this: Had you been -- had
23 you been -- Let me ask this example: Were you even asked to
24 consider the application of a discount?

1 A I wasn't asked to consider it or not to consider it.
2 I was asked to come up with my professional opinion of the
3 fair market value, and I did consider whether there should be
4 a specific company risk discount applied, and concluded that
5 it wasn't appropriate.

6 Q Were you aware, when you made your report, of any
7 defaults of Superpumper's lines of credit?

8 A No.

9 Q In your professional experience, if you were made
10 aware the enterprise you were valuing was in default of the
11 primary source of financing, would that be a consideration in
12 determining whether or not to apply a discount?

13 A It could be, yes.

14 Q That would be one of the factors to consider?

15 A Could, sure.

16 Q In fact, there could be several depending how
17 appropriate the application, right? Give me some of them
18 aside from, you know, maybe they are already in default. What
19 are the others you have run into in your professional
20 experience, real world factors associated with the enterprise
21 that would bear into a discount?

22 A You know, if the business itself was risky. You
23 know, if the business say hadn't been operating for very long,
24 I might consider a company a specific risk. If it was, you

1 know, when I compared the subject business to the industry
2 average, I saw that business didn't fair well against the
3 industry average, then I would probably consider a company
4 specific discount, sure.

5 Q Competition? It's not very competitive. You can see
6 that in the way that the performance compares to a like-kind
7 business?

8 A Sure, that might be another consideration.

9 Q Any others that you can think of in your
10 professional experience you might consider and determine
11 whether a discount applies?

12 A Not beyond what I think we already mentioned.

13 Q I appreciate your time. Thank you for being here.

14 MR. GILMORE: I will pass the witness.

15 THE COURT: Okay. Redirect. You may examine.

16 MS. PILATOWICZ: Thank you, Your Honor.

17

18 REDIRECT EXAMINATION

19 BY MS. PILATOWICZ:

20 Q There was some discussion about documents that have
21 been provided to you, Exhibit 119. And I want to start with
22 the document entitled Superpumper Budget. Do you remember
23 looking at that?

24 A Yes.

1 Q When someone provides you, as a business valuator,
2 documents to complete your valuation, and they indicate a
3 budget, what does that mean to you?

4 A That means it is an amount they have projected for
5 the coming year.

6 Q If somebody were to want to give you information as
7 to what the profits and losses were, what would that be
8 called?

9 A I am sorry, could you ask that again?

10 Q Sure. If somebody was to provide you a document
11 that would convey profits and losses, would that be called
12 something different than a budget?

13 A Some people would call it a forecast. Again, you're
14 just saying, it could be a historical profit and loss
15 statement, could be a budget, could be a forecast.

16 Q So when Superpumper provides a document called
17 Superpumper Budget, what does that mean to you?

18 A That these were amounts that they were projecting to
19 occur.

20 Q Now let's go back to Exhibit 115 which we have been
21 discussing. Mr. Gilmore made a comment that you hadn't
22 determined either viability or collectability of those notes.
23 Do you remember that?

24 A Yes.

1 Q These are the notes dated as of 12-31-2009. Did you
2 determine the collectability of these notes that were listed
3 as of 12-31-2009?

4 A Well, the notes as of 12-31-2009 I included were
5 collectible, because they were on the balance sheet and the
6 auditors had audited that balance sheet and did not indicate
7 they weren't collectible. If the auditors had determined they
8 were not collectible or only partially collectible, I would
9 expect there to be a reserve for bad debt on the balance
10 sheet.

11 Q If we look at Exhibit 114 which is the 2009
12 financial statements that 7.6 million dollar number, is that
13 the same note we were looking at in the 1239 list of notes?

14 A It is.

15 Q How did you determine what notes existed as of
16 September 30, 2010?

17 A Well, I had the -- I had the interim balance sheet.
18 The September 30, 2010 balance sheet. But that balance sheet
19 didn't include notes and didn't have detail as to what the
20 specific notes were.

21 Q Fair enough. So they listed the amounts due from
22 affiliates?

23 A Yes.

24 Q Let's take a look at Exhibit 119. Are these the

1 balance sheets you were referring to that you reviewed?

2 A Yes.

3 Q If we look at the first page, August 2010, what is
4 the balance of the notes receivable at the beginning of August
5 of 2010?

6 A It is \$7,683,918.

7 Q Where are -- Where have we seen that number before?

8 A I believe that is the same number we just saw on the
9 2009 audited balance sheet.

10 Q What do we see was the amount of ending balance of
11 the August 2010 notes receivable?

12 A \$8,925,708.

13 Q Turn to the next page. What is the beginning
14 balance of the September 2010 notes receivable?

15 A \$7,683,910.

16 Q What was it at the time or as of the end of September
17 2010?

18 A \$9,154,633.

19 Q How does that number relate to your report?

20 A That is the -- that's the number I included in my
21 analysis.

22 Q And what was -- What did that tell you about the
23 connection between the September 2003 notes and the notes that
24 were listed on the 2009 audited financial statement?

1 A Well, the inference I took was that, since the
2 beginning balance on the September 2015 balance sheet for the
3 notes receivable is the exact same amount as was on the
4 audited year end 2009 statement, that they were the same notes
5 and that they had just added to those notes to get to the
6 \$9,154,000.

7 Q I want to go back to Exhibit 115 Mr. Gilmore
8 discussed with you. Do you see a note on the bottom of Exhibit
9 115?

10 A Yes.

11 Q It says: "We obtained a personal financial
12 statement from Paul Morabito to test the valuation of the
13 receivables? "

14 A Yes.

15 Q What does that mean to you?

16 A Well, it is a indication that they sought a
17 documentation or evidence, if you will, of the viability of
18 the notes receivable.

19 Q How would that relate to how the notes receivable
20 were reported on the 2009 audited financials?

21 A Well, again, you know, the fact the notes are on the
22 2009 audited balance sheet tells me the auditors were
23 satisfied that those were in fact viable and collectible notes

24 MS. PILATOWICZ: Your Honor, if I may have just a

1 moment?

2 THE COURT: Yes.

3 MS. PILATOWICZ: I have no further questions.

4 THE COURT: Anything further?.

5 MR. GILMORE: Just one, Your Honor.

6

7 RECROSS-EXAMINATION

8 BY MR. GILMORE:

9 Q Will you turn to Exhibit 120?

10 A Okay.

11 Q Did you have available to you when you prepared your
12 report the 2010 year end audited financial statement?

13 A I believe I did.

14 Q Would, in a retroactive appraisal, based on the way
15 you and I described it when I first started asking questions
16 of you, that was valuation date of the September 30, 2010,
17 would events that occurred at year end or that I should say
18 were reported at year end have any relevance or bearing on
19 your conclusions of value?

20 A Only if they were known or noticeable at the time of
21 valuation.

22 Q Now would you agree with me the audited financial
23 statements year end -- Let me ask you: Is the audited
24 financial statements of year end intended to be a snapshot

1 view of the company's financials?

2 A As of that date, sure.

3 Q The idea would be, this Superpumper balance sheet
4 would be a snapshot of the financial condition of the company
5 as of the last date of the year before New Years strikes at
6 midnight, right?

7 A Yeah. The balance sheet in particular, yeah, this
8 would be the balance sheet as of that date.

9 Q The point I am trying to make, it is a snapshot as
10 to a point in time.

11 A Yes.

12 Q That is what a balance sheet is intended to reflect?

13 A Absolutely.

14 Q So this is only what, three months after the
15 valuation date?

16 A Well, December 31st is definitely three months after
17 September 30th.

18 Q With that context, did anything that the auditors
19 say in the year end 2010 have any bearing on your opinions?

20 A I can't say that none -- nothing in the 2010 audit
21 would be pertinent. I'm not sure I am following your question.

22 Q Right. The reason I am asking is when -- when --
23 when I review your report, I can't tell if you gave any
24 consideration to anything that the auditors had reported in

1 the 2010 audited financial report?

2 A Well, you know I meant the first nine months of the
3 year would be subsumed within the full year, you know, audit
4 report.

5 Q So we are talking about an audit that is done in the
6 fourth quarter of the year, and the audit report includes all
7 four quarters, doesn't it?

8 A No. No. That is not accurate.

9 Q I said that wrong. I said that wrong. What I meant
10 is the valuation date is done essentially on the last day of
11 the third quarter, true?

12 A True. But the audit, itself, wouldn't have been
13 done until probably the second or third month of the following
14 year.

15 Q I agree with you, in terms of when it was actually
16 prepared and all that, right?

17 A Right.

18 Q But it is intended to reflect December 31, right?

19 A Yes.

20 Q And also your valuation takes into account the first
21 three quarters of 2010, doesn't it?

22 A Sure.

23 Q So I am still trying to understand. If you could
24 for me explain what treatment you gave in your opinion to

1 the -- let's back up. What treatment you gave in your opinion
2 to anything that the auditors included in the 2010 financial
3 statement?

4 A Well, to the extent the September 30th financial
5 statements I know were generally in line with what we saw at
6 year end, I would give some credence to that.

7 Q Got it. I follow you. Can you think of anything
8 else you might have done in giving treatment in your opinions
9 to something that was included in the 2010 year end financial
10 statements?

11 A I can't sit here and think of anything. It is
12 certainly possible that, if there were notes to the 2010 year
13 end statement that indicated something that was known or
14 noticeable as of September 30th I would consider that. But
15 nothing is jumping to my mind.

16 Q Got it. Last question: In the auditors' report for
17 the 2010 financial statements, they acknowledge that the notes
18 receivable -- I am sorry. I will wait for you to get there
19 Superpumper 334?

20 A Okay, I am there.

21 Q They acknowledge the notes receivable from related
22 parties comprise fifty-seven percent of total assets and 129
23 percent of stockholder equity. See that?

24 A Yes.

1 Q So at least year end these due from affiliates
2 comprised the bulk of the total value of the assets of this
3 entire enterprise, right?

4 A Well as it says, fifty-seven percent.

5 MR. GILMORE: No more questions.

6 THE COURT: Did you have something else?

7 MS. PILATOWICZ: Yes. We discussed a different
8 exhibit in the recross. If I may?

9 THE COURT: Okay.

10

11 DIRECT EXAMINATION

12 BY MS. PILATOWICZ:

13 Q When you completed your report, you looked at the
14 notes receivable as they existed on September 30, 2010?

15 A Yes.

16 Q If there were different notes that existed as of
17 year end of December 2010, how would that impact your
18 valuation?

19 A It wouldn't.

20 Q So let's take a look at Exhibit 120 which was or is
21 the audited financial statement for 2010 that Mr. Gilmore just
22 showed you. Turn to note 9, related party transactions?

23 A Okay.

24 Q I want to focus primarily on two of the notes. There

1 is a note there listed as borrower, Ed Bayuk. Do you see that?

2 A Yes.

3 Q Do you recall seeing that note in the valuation you
4 completed?

5 A No.

6 Q If I told you there is evidence in this Court that
7 note was signed on December 31, 2009 --

8 A No, '10.

9 Q 2010 -- would that impact your valuation completed
10 December 30, 2010?

11 A No. If the note was entered three months later,
12 then no.

13 Q Same with this note, borrower Sam Morabito, did you
14 see that note on the 2009 audited financial statement?

15 A No.

16 Q Did you see it anywhere in your valuation as of
17 September 2009?

18 A No.

19 Q Same thing, if I told there is evidence in this case
20 that note wasn't executed until 12-31-2010, how would that
21 impact your valuation for September of 2010?

22 A It wouldn't.

23 MS. PILATOWICZ: I have nothing further, Your Honor.

24 MR. GILMORE: Nothing from me, Your Honor.

1 THE COURT: Okay. Thank you. May this witness be
2 excused?

3 MS. PILATOWICZ: He may.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 MS. PILATOWICZ: We are going to move on to Paul
8 Morabito who will be testifying by video deposition.

9 THE COURT: You all were going to get some
10 transcript.

11 THE CLERK: Deposition of Paul Morabito taken March
12 21, 2016 opened and published.

13 THE COURT: We also are going to mark as an exhibit
14 that portion of the transcript that reflects what you are
15 going to play, correct?

16 MS. PILATOWICZ: Correct.

17 THE COURT: Now you handed me something. Is that my
18 copy or the one you want to mark as an exhibit?

19 THE CLERK: I can mark it.

20 MS. PILATOWICZ: I will defer to the Court. We have
21 other copies.

22 THE CLERK: Oh, you do. Perfect. Great. This will
23 be marked as Exhibit 302.

24 (Exhibit 302 marked for identification and admitted

1 in evidence.)

2 THE COURT: Although the video is going to be played
3 for the Court, counsel has stipulated the transcript will come
4 in of what was played.

5 MR. GILMORE: Will this be reported?

6 THE COURT: No. That is what would we were saying
7 yesterday.

8 THE CLERK: That is Exhibit 302 marked showed
9 designated what is being played up there.

10 MR. GILMORE: To the extent there are any objections
11 sustained with respect to that testimony, how will that be
12 handled?

13 THE COURT: I don't know. I thought you all had
14 done that when you redacted the video.

15 MR. GILMORE: No. What we did was we made our
16 designations and counter designations. Those were done in
17 exchange pursuant to the Court's order. But I don't know what
18 has been done, or how it would be done if there was a question
19 and objection sustained. We haven't had an objection sustained
20 on any of the deposition transcripts so far. I am not
21 anticipating that is going to be an issue. I would like to
22 address it before we get there. I don't know that has been
23 considered.

24 MS. PILATOWICZ: We anticipated it would be handled

1 as the other depositions have been handled. If there was an
2 objection, we would read it and we could pause the video.

3 MR. GILMORE: If it is not being -- The entire
4 marked exhibit is already in the record. You might have to do
5 some chop and change, right?

6 MS. PILATOWICZ: If we need to amend what has been
7 provided to the Court and strike the testimony that is not
8 allowed, if the Court would accept that following the
9 testimony so that we can make sure anything that wasn't let in
10 was taken off the version that is provided as an exhibit, we
11 can certainly do.

12 MR. GILMORE: That would be acceptable to us. I
13 can't think of another way to do it quite honestly.

14 THE COURT: I can think of lots of different ways to
15 do it. First of all, I just have a question. You had all
16 provided me with a deposition that you thought you were going
17 to read into the record. Included in that was one of Paul
18 Morabito.

19 MS. PILATOWICZ: That's correct, Your Honor.

20 THE COURT: Part of those depositions that you
21 provided to me indicated which portions of the deposition was
22 designated by which party.

23 MS. PILATOWICZ: Correct.

24 THE COURT: And you did that by color.

1 MS. PILATOWICZ: That is correct.

2 THE COURT: I think yellow was Plaintiff, orange was
3 defendant and green both sides wanted it.

4 MS. PILATOWICZ: That's correct.

5 THE COURT: So now the new exhibit marked as 302, it
6 has highlighting, but obviously all black and white, no color,
7 does it match exactly what you have given me before or have
8 you modified it again?

9 MS. PILATOWICZ: It has not been modified.

10 THE COURT: So it is an exact match, the colored
11 one?

12 MS. PILATOWICZ: That's correct.

13 THE COURT: So it seems to me the color one really
14 would be better to have as the original record, because it is
15 easier to read. So we are going to have the color version
16 will be the exhibit, and I will follow along with the
17 original.

18 THE CLERK: Then give it back to me.

19 MS. PILATOWICZ: There is another copy as well that
20 is in the binder that is up at the exhibit stand if we need to
21 copy one more.

22 THE COURT: Is it in color?

23 MS. PILATOWICZ: It is.

24 THE COURT: Why don't you just retrieve that.

1 Then the next question is, Mr. Gilmore, you know
2 what has been designated. Is there anything that you are
3 going to object to.

4 MR. GILMORE: I don't have any anticipated
5 objections at this time.

6 THE COURT: So if you do want to object, we will
7 stop the video, we will hear argument and, depending on what
8 happens, if I do strike it, we will strike it from the
9 transcript that has been marked.

10 MR. GILMORE: Understood bearing in mind, of course
11 these estimation were made some three weeks ago or so and you
12 know lots of things can change in the way the trial has gone.
13 I don't have any anticipated objections, but I can't say that
14 I won't.

15 THE COURT: Okay. So since it is going to go two
16 hours, it makes sense for us to take a short recess and then
17 we'll be back on the record. Now we had talked about going
18 until 6:00 o'clock today, so what else do you want to have?
19 Who is going to be after Mr. Morabito.

20 MS. PILATOWICZ: In Plaintiff's case we have the
21 depositions of Stanton Bernstein which should be less than
22 have an hour. The deposition of Gary Krauze which I expect
23 will be about half an hour. The deposition of Dennis Vacco
24 which probably will run closer to an hour, maybe forty-five

1 minutes. And then the live testimony of Bill Kimmel and
2 William Leonard who will be live we anticipate tomorrow. That
3 will conclude the case-in-chief for the Plaintiff.

4 THE COURT: You thought Gary Krauze would be reduced
5 to how long?

6 MS. PILATOWICZ: Half an hour I expect.

7 THE COURT: And Stanton Bernstein you thought that
8 is down to half an hour?

9 MS. PILATOWICZ: I believe he'll be less than half a
10 hour.

11 THE COURT: Mr. Vacco?

12 MS. PILATOWICZ: One hour.

13 THE COURT: Then who is calling Christian Lovelace?

14 MS. PILATOWICZ: The Plaintiff will not be calling
15 Mr. Lovelace in its case-in- chief.

16 THE COURT: Now you have Mr. Kimmel live, and not
17 that the other people aren't alive, but we are going to hear
18 his testimony in the courtroom, and we have William Leonard
19 right?

20 MS. PILATOWICZ: Correct.

21 THE COURT: Now we had talked about William Leonard
22 going tomorrow and Mr. Kimmel going on Monday. Is that still
23 what you have got?

24 MS. PILATOWICZ: Your Honor, we are going to try to

1 push forward and present Mr. Kimmel tomorrow, so the case in
2 chief for the Plaintiff is finished tomorrow so the defendants
3 can commence their case in chief starting Monday morning.

4 That is the goal.

5 THE COURT: You did remember that I had a murder
6 sentencing tomorrow?

7 MS. PILATOWICZ: Yes. We don't anticipate between
8 Mr. Kimmel and Mr. Leonard we would use that fully from 2:00
9 to 6:00. We think we can get them both done in that time
10 frame.

11 THE COURT: Let's take a short recess.

12 MS. PILATOWICZ: If I may before we break, get a
13 clarification on presenting exhibits that will be referred to.
14 It is one thing in the video, something else in the courtroom.
15 I propose we just stop the video, announce what exhibit in the
16 book it is.

17 THE COURT: That will be fine. We'll try to have a
18 short recess.

19 (Short recess taken.)

20 THE COURT: Thank you. Please be seated. Okay. We
21 are ready to go. We are going to dim the lights a little bit.
22 It will be easier for me.

23 (Whereupon the video taped deposition of Paul
24 Morabito was played.)

1 MS. PILATOWICZ: Exhibit three in the deposition in
2 the depo is Exhibit 39 in the Court's exhibit which has been
3 admitted.
4 THE COURT: The transcript will be so noted.
5 MS. PILATOWICZ: Exhibit 4 is Exhibit 43 in the
6 Court's exhibit book.
7 MS. PILATOWICZ: Exhibit five is Exhibit 118 in the
8 Court's exhibit book.
9 MS. PILATOWICZ: Exhibit 7 is Exhibit 45 in the
10 Court's exhibit binder.
11 MS. PILATOWICZ: Exhibit 8 is Exhibit 46 in the
12 Court's exhibit binder.
13 MS. PILATOWICZ: Exhibit 13 is Exhibit 61 in the
14 Court's binder which has been admitted.
15 MS. PILATOWICZ: Exhibit 18 is Exhibit 81 in the
16 Court's exhibit book admitted.
17 THE COURT: Is 81 admitted?
18 MS. TURNER: Yes.
19 THE COURT: Can we stop there? What exhibit are you
20 talking about there?
21 MS. PILATOWICZ: I am sorry, Your Honor, I believe
22 were on 17.
23 THE COURT: You were referring to Exhibit 16 in the
24 deposition.

1 MR. GILMORE: Exhibit 80 in the trial binder is the
2 document he's referring to right now.

3 MS. PILATOWICZ: Yes, Your Honor, Exhibit 80.

4 THE COURT: 16 is 80.

5 MS. PILATOWICZ: Exhibit 17 is Exhibit 236 in the
6 Court's binder. Plaintiff will stipulate to its admission.

7 THE COURT: Exhibit 236 is admitted.

8 (Exhibit 236 admitted in evidence.)

9 MS. PILATOWICZ: Exhibit 18 is Exhibit 110 in the
10 exhibit binder, Your Honor. It has been admitted.

11 THE COURT: Is it admitted, Marci?

12 THE CLERK: 110 has been admitted.

13 MS. PILATOWICZ: Your Honor, Exhibit 124 is Exhibit
14 107 in the Court's exhibit binder which has been admitted.

15 THE COURT: Thank you. That will be admitted.

16 MS. PILATOWICZ: Exhibit 25 is Exhibit 125 in the
17 Court's exhibit binder. It has been admitted.

18 THE COURT: Thank you.

19 Several exhibits that I have missed the relationship
20 to. Exhibit 3 in the deposition.

21 THE CLERK: 39.

22 THE COURT: You all agree?

23 MS. PILATOWICZ: Yes, Your Honor.

24 THE CLERK: It is admitted already.

1 THE COURT: Exhibit 4 in the deposition.
2 THE CLERK: 43.
3 MS. PILATOWICZ: Correct, Your Honor.
4 THE CLERK: It is admitted.
5 THE COURT: And Exhibit 6.
6 MS. PILATOWIC: Exhibit 6 was, we have the full
7 Michelle Salazar report which has been admitted as an exhibit.
8 I don't remember the number.
9 MS. TURNER: That is one we stipulated to.
10 MS. PILATOWICZ: The Salazar net worth deposition or
11 report.
12 MR. GILMORE: I think yours is just the balance
13 sheet, right?
14 MS. PILATOWICZ: What we used in the deposition was
15 just the balance sheet.
16 THE CLERK: You are saying Salazar?
17 MS. PILATOWICZ: Yes.
18 MS. TURNER: I will find it real quick.
19 THE CLERK: Salazar net worth report dated March
20 15th is 44.
21 MS. PILATOWICZ: Exhibit 44.
22 THE COURT: So Exhibit 6 is part of Exhibit 44,
23 right?
24 MS. PILATOWICZ: That's correct.

1 THE COURT: It is the balance sheet that is
2 attached?
3 MS. PILATOWICZ: That's correct.
4 THE COURT: Any other issues with the deposition?
5 MR. GILMORE: No, Your Honor.
6 MS. PILATOWICZ: No, Your Honor.
7 THE COURT: You can turn the lights back on. Okay if
8 we proceed with more reading, does anyone need a break?
9 MS. PILATOWICZ: No, Your Honor.
10 THE COURT: We can take five minutes.
11 MR. GILMORE: Yeah.
12 THE COURT: We'll try to do a five minute break.
13 (Short recess taken.).
14 THE COURT: Thank you. Please be seated. Okay. So
15 I see we have Mr. Loretz back on the stand. Sir, you are still
16 under oath. Which deposition are you going to use?
17 MS. PILATOWICZ: Your Honor, we will be reading the
18 deposition of Gary Karusz.
19 THE CLERK: Deposition of Gary Krausz taken March 16,
20 2016 opened and published.
21 MS. PILATOWICZ: Starting at page 5 line 8.
22 BY MR. PILATOWICZ:
23 "Q Good morning. Can you please state and spell your
24 name for the record.

1 A Gary Krausz. G-A-R-Y. K-R-A-U-S, as in Sam, Z as in
2 zebra.

3 Q Where do you currently live Mr. Krausz?

4 A Where I currently live?

5 Q Yes?

6 A Los Angeles.

7 MS. PILATOWICZ: Moving to page 6 line 9.

8 BY MS. PILATOWICZ:

9 "Q Mr. Krausz, I have handed you what has been marked as
10 Exhibit 2"--

11 MS. PILATOWICZ: Which, Your Honor, is Exhibit 179 in
12 the exhibit book and it has been admitted.

13 THE COURT: Okay. I am catching up with you. I
14 apologize. I am trying to find the tab for Mr. Krausz.

15 MS. PILATOWICZ: It should be tab number 5.

16 THE COURT: Somehow I thought it was 13.

17 Cheesy binders somebody bought.

18 Okay. Thank you, counsel. You may proceed.

19 THE COURT: I think you were about to tell me what
20 something meant.

21 MS. PILATOWICZ: Yes, Your Honor. The question was:

22 "Q Mr. Krausz, I have handed you what has been marked as
23 Exhibit 2. Exhibit 2 is Exhibit 179 in the Court's exhibit
24 binder. It has been admitted.

1 THE COURT: Thank you.

2 BY MS. PILATOWICZ:

3 "Q Do you recognize Exhibit 2?

4 A Yes.

5 Q What is it?

6 A This is the notice for appearance and Subpoena for
7 documents that I received."

8 MS. PILATOWICZ: Turning to page 9 line 16.

9 BY MS. PILATOWICZ:

10 "Q pursuant to the subpoena, were you also requested to
11 produce documents?

12 A I did. I was.

13 Q Are those documents requested on pages seven and
14 eight of the subpoena?

15 A Yes.

16 Q And did you produce all documents in Gurse
17 Schneider's possession regarding these topics?

18 A Yes."

19 MS. PILATOWITCZ: Turning to page 17 line 25.

20 BY MS. PILATOWICZ:

21 "Q How are you currently employed?

22 A I am currently employed as a partner in a CPA firm.

23 A At Gursey Schneider?

24 A Gursey Schneider.

1 Q How long have you been a partner with Gurse
2 Schneider?

3 A Since January 1st of 2012.

4 Q Were you employed by Gursey Schneider prior to
5 January 1, 2012?

6 A Yes.

7 Q In what capacity?

8 A Senior manager.

9 Q What years were you a senior manager?

10 A I started employment February 4, 2004, so since
11 February 4, 2004.

12 Q So you've worked at Gursey Schneider since February
13 4, 2004?

14 A Correct.

15 Q What did you do prior to becoming a senior manager
16 at Gursey Schneider?

17 A I was a senior manager at another CPA firm.

18 Q What CPA firm is that?

19 A KPMG.

20 Q Why did you leave KPMG?

21 A Work-life balance.

22 Q What were your responsibilities as a Senior Manager
23 at Gursey Schneider?

24 A I supervised all of the audit and accounting

1 services that we provided to our clients.

2 Q What were your duties in supervising all of the
3 audits?

4 A Getting us engaged, determining the scope of work,
5 planning the nature, timing and extent of our audit
6 procedures; supervising the staff, evaluating the performance
7 of staff, billing the clients, responding to client issues;
8 executing a planned audit approach; assisting the clients to
9 prepare financial statements; reviewing work papers provided
10 by staff; issuing financial statement; and, responding to any
11 other questions that came up.

12 Q Have those duties changed since you became a
13 partner?

14 A No.

15 Q So you're still responsible for overseeing the
16 audits?

17 A Yes.

18 Q Where did you go to college?

19 A I went to the University of California at San Diego,
20 and then I got a Master's degree from the University of
21 Southern California.

22 Q What was your degree in at UC San Diego?

23 A Economics.

24 Q And what was your Master's in at USC?

1 A Accounting.

2 Q Do you currently hold any licenses?

3 A I do.

4 Q What are those licenses?

5 A Driver's license and a CPA license.

6 Q When did you first obtain your CPA license?

7 A I believe it was January of 1998, plus or minus a

8 month or two.

9 Q Is it currently in good standing?

10 A Yes.

11 Q Has it always been in good standing?

12 A Yes.

13 Q At some point you started representing Superpumper,

14 Inc., is that correct?

15 A Yes.

16 Q When was that?

17 A The first year we were engaged to do the audit was

18 for the year ended December 31, 2007. So I would estimate we

19 started working with them in the Fall or Winter of 2007.

20 Q Do you still currently represent Superpumper?

21 A No.

22 Q When did you stop representing Superpumper?

23 A We don't represent Superpumper. They were a client

24 of ours.

1 Q Okay. I'm sorry?

2 A Yeah.

3 Q That's an important distinction?

4 A It is a very important distinction.

5 Q Is Superpumper still a client of yours?

6 A No.

7 Q When did they cease being a client of yours?

8 A The last year we issued financial statements was for

9 the year ended December 31, 2001, so probably--

10 Q You said 2001?

11 A 2011.

12 Q Okay.

13 A 2011. Shortly after August 2012.

14 Q And were they a client of yours from 2007 until

15 2012?

16 A Yes.

17 Q Why did they stop being a client in 2012?

18 A We were informed that our services to provide

19 financial statements were no longer needed, or they no longer

20 needed financial statements.

21 Q So, it was Superpumper that terminated the

22 relationship?

23 A Yes.

24 Q Were there any complaints from Superpumper to you?

1 A Nope.

2 Q Do you know who they hired in 2012?

3 A Yes, Mr. Stan Bernstein.

4 Q How were you first retained by Superpumper in 2007?

5 And let me clarify, I can see in your face. Did Superpumper

6 come to you in 2007?

7 A Yes. Yes.

8 Q Who was it that came to you?

9 A My understanding was Paul Morabito knew Tracy Katz.

10 Tracy Katz is a partner in our firm. Tracy introduced Paul to

11 Marie Ambrosino. Marie Ambrosino informed us Superpumper may

12 need an audit. As result of the relationship from Tracy to

13 Marie and Marie to me, that's how we were engaged to do the

14 audit.

15 Q Were you just hired to do a year-end audit?

16 A Yes.

17 Q Who were your primary contacts at Superpumper?

18 A Paul Morabito; Edward Bayuk; Don Whitehead; Gabby,

19 who used to work for Don. Then there were two gentlemen that

20 we worked with, Nick and Kevin. Nick Kapanicas, and Kevin --

21 I don't remember his last name. Those were all contacts of

22 ours and then later on Mr. Sam Morabito.

23 Q Did Gurseay Schneider do any work for Sam Morabito

24 individually?

1 A No.

2 Q Did Gursej Schneider do any work for Edward Bayuk,
3 individually?

4 A No.

5 Q You have been handed what has been marked as Exhibit
6 3."

7 MS. PILATOWICZ: Your Honor, Exhibit 3 is Exhibit 114
8 in the Court's binder which I believe has been admitted. Yes?

9 THE CLERK: It has.

10 THE COURT: Thank you.

11 BY MS PILATOWICZ:

12 "Q Do you recognize Exhibit 3?

13 A Yes.

14 Q What is it?

15 A These are the audited financial statements of
16 Suuperpumper, Inc., for the year ended December 31, 2009.

17 Q Did you oversee the completion of these financial
18 statements?

19 A Yes.

20 Q Now if you look at Exhibit 3."

21 MS. PILATOWICZ: I'm sorry, I moved on to page 28
22 line 15.

23 BY MS. PILATOWICZ:

24 "Q Now if you look at Exhibit 3, there is numbers on the

1 bottom right-hand corner that start with Superpumper and then
2 a number. I'll refer to those numbers so that we can make
3 sure that we're on the same page. Can you turn to page 321?
4 If you look at the last paragraph of the letter, the
5 Independent Auditor's Report, it starts with, 'In our opinion,
6 the financial statements referred to above present fairly in
7 all material respects the financial position of Superpumper,
8 Inc., as of December 31st, 2009.' Do you see that?

9 A Yes.

10 Q What do you base that on?

11 A The completion of our audit.

12 Q What did you do to -- well, let's start with what
13 you did to complete your audit. Who did you get information
14 from?

15 A Management of Superpumper, Inc.

16 Q Were there any particular people?

17 A Paul Morabito, Don Whitehead, Gabby-- I don't know
18 if Nick and Kevin were there, but the management team of
19 Superpumper.

20 Q And what kind of information did they provide to
21 you?

22 A Accounting records.

23 Q Can you explain in general terms how an audit is
24 done?

1 A Sure. Short answer or long answer? It's my career.

2 Q Lets start with the short answer, and if I have any
3 follow-up, we'll go from there?

4 A Normally you're engaged by a client to perform an
5 audit so there has to be a reason why they're hiring you to do
6 it. It is usually a contractual requirement, a regulatory
7 requirement or a government requirement. So, some clients
8 we're engaged because it's a government requirement. Some
9 we're because it's a regulatory requirement. And some we're
10 engaged because of a contractual requirement.

11 The client will hire us to audit the financial
12 statements of a company. We initially -- We have to plan to
13 do an audit before you can do an audit. Part of the planning
14 involves getting an understanding of the business, getting an
15 understanding of the management, formulating your planned
16 audit approach, developing your planned audit procedures,
17 considering the risks, and kind of the art to the audit is
18 determining what the appropriate audit procedures to assess
19 your understanding where the risks on your financial
20 statements are and your understanding of the client. And so
21 you'll have lots of planning meetings. There is a lot of
22 collaboration, planning what specific audit steps you're going
23 to perform. Then you go out and do the audit steps. You
24 evaluate the results of the audit steps that you've performed.

1 And you go back and think about your plan and if the audit
2 steps match to what your planned risk assessment was and what
3 your planned audit procedures were and the results are
4 consistent with what your expectations are, and then you can
5 say you completed an audit.

6 When you complete an audit, you basically issue an
7 opinion on the financial statements. The financial
8 statements, themselves are the representation of management.
9 So we assist in the drafting of financial statements, but
10 management is ultimately responsible for the presentation of
11 the financial statements. We are responsible to give an
12 opinion on the overall presentation of it.

13 Q So is it fair to say you test the financial
14 statements?

15 A We test the assertions in the financial statements,
16 yes.

17 Q If you could turn to page 322 of Exhibit 3?

18 A Yes.

19 Q Is this the balance sheet that you got from
20 management?

21 A This is a balance sheet that will represent the
22 balance sheet that management provided us, yes.

23 Q Okay. And if you look down at the second sort of
24 grouping, there's Other Assets, and there's Due from

1 Affiliates; do you see that?

2 A Yes.

3 Q What does that mean?

4 A These are loans and amounts that are due from people
5 who are related to the organization by way of affiliation.

6 Q The amount listed is \$7,683,918. Do you see that?

7 A Yes.

8 Q That is a number that would have been provided to
9 you by management?

10 A Yes.

11 Q Please turn to page 331 of Exhibit 3. There's a
12 Note 8 Related Party Transactions?

13 A Yes.

14 Q Do you see that?

15 A Yes.

16 Q Does that represent a breakdown of the numbers we
17 just referred to due from affiliates?

18 A Yes.

19 Q The first number or the first line listed is note
20 receivable, shareholder, five percent due December 31, 2009 in
21 the amount \$623,021?

22 A Yes.

23 Q Do you know what that note was?

24 A Other than a note, no. It was a note for \$623,000

1 Q How did you determine it was a note?

2 A I believe we have a note agreement, or either we
3 have it or we saw a note agreement.

4 Q Would you have to see a note agreement in order to
5 list it as a due from on your audit statements?

6 A Generally, yes.

7 Q What are the circumstances where you wouldn't?

8 A I don't know.

9 Q So is it fair to say, as we sit here today, if
10 there's a note receivable listed on these related party
11 transactions, you saw the note?

12 A Yes.

13 Q Okay. Do you know who it's referring to when it
14 says shareholder?

15 A I don't have our file open. But there was one
16 shareholder Superpumper, and that was CWC, PAMAZ or CWC. I
17 don't remember what name they were at that time.

18 Q Is it your understanding that PAMAZ became CWC at
19 some point?

20 A Yes.

21 Q The next line listed is Advances to Shareholder 5.4
22 percent due on demand, and it's an amount of \$6,617,790.
23 Do you see that?

24 A Yes.

1 Q What is that?

2 A It's borrowings-- the company lent money to the
3 shareholder, and so it is the receivable for the money that
4 was lent to the shareholder.

5 Q Do you recall if there was a note for this?

6 A I do not recall. But I don't have it referenced as a
7 note, so I don't recall if there was one or not.

8 Q Would the presence of a note make any difference as
9 to whether it could be classified as a collectible amount?

10 A No.

11 Q On the next line it says advances to affiliates,
12 unsecured, due on demand, \$443,107. Do you see that?

13 A Yes.

14 Q Do you know what that is?

15 A It's money lent to an affiliate. I don't recall the
16 affiliate, but it was someone other than the shareholder,
17 because otherwise, it would have been included in the line
18 above.

19 Q Do you recall if there is a note documenting that
20 money?

21 A I don't recall.

22 Q Okay. Under these amounts, the audit says "these
23 accounts have been classified as noncurrent in the
24 accompanying balance sheet because repayment is not

1 anticipated during the next year." Can you explain to me what
2 that means?

3 A You have a requirement under GAAP to classify your
4 assets and liabilities based upon when they're going to be
5 liquidated or turned into cash. The requirements tell you
6 that you have to consider the contractual provisions of the
7 item and whether you believe that they're going to be
8 converted into cash or not. In this instance, these were all
9 demand notes or they were due imminently or past due which
10 ordinarily leads one to believe they should be classified as
11 current. However, with that said, when you asked management
12 about their plans to liquidate -- not liquidate -- collect on
13 the notes, it became clear that they were going to be long
14 term, and so we didn't want to misstate what the financial
15 statements represented, and so we classified them as
16 noncurrent so that any reader who picks up the balance sheet
17 won't be misled by 7.7 million dollars as a current asset.

18 Q What did management tell you that led you to believe
19 that there would be long-term notes?

20 A I don't know. I don't remember. But they had --
21 they probably had it classified as noncurrent in their
22 internal record as well. And when you look at the practice of
23 liquidating the notes or collecting on the notes, they weren't
24 collecting on them, so we moved them to noncurrent."

1 MS. PILATOWICZ: Turning to page 38 starting at line
2 14.
3 ///
4 BY MS PILATOWICZ:
5 "Q Okay. Did you do any analysis for these 2009
6 financial statements as to the collectability of the related
7 party transactions.
8 A Yes.
9 Q What did you do?
10 A I don't have our work papers in front of me, but
11 we -- what the standards tell you is to look beyond the amount
12 and consider where the source of the payment would be coming
13 from and evaluate the ability for them to borrow or repay the
14 terms. So we would have looked beyond the agreement to what
15 the financial statements of the borrower were to access the
16 collectability of the debt.
17 Q Okay. When you say the standards, what are you
18 referring to?
19 A The accounting standards. I don't have the
20 reference to it, but the auditing standards will tell you look
21 to the ultimate payor of the amounts to assess whether you
22 think the receivables are collectible.
23 Q Did you do that in this case?
24 A Yes.

1 Q Is it your understanding that Paul Morabito was the
2 ultimate person responsible for payment?

3 A Yes.

4 Q Let's mark this as Exhibit 5."

5 MS. PILATOWICZ: And Exhibit 5 is Exhibit 42 in the
6 Court's exhibit binder. It has been admitted.

7 THE COURT: Thank you.

8 BY MS. PILATOWICZ:

9 "Q You have been handed what has been marked Exhibit 5.
10 Do you recognize Exhibit 5?

11 A Yes.

12 Q What is Exhibit 5?

13 A Exhibit 5 is the statement of assets and liabilities
14 Paul Morabito prepared as of May 5, 2009.

15 Q Do you know who prepared these?

16 A No.

17 Q Were they provided to you?

18 A Yes.

19 Q Who provided them to you?

20 A Paul Morabito or Paul Morabito through management,
21 so somebody else.

22 Q Okay.

23 A The initials PBC means prepared by client.

24 Q That's helpful. I saw that a lot in your documents

1 and didn't know what it meant. Do you recall how these came
2 to you?

3 A No.

4 Q Did you do anything to verify the amounts in the
5 statement of assets and liabilities?

6 A My recollection is we met with Paul and he shared
7 with us his bank statements, at least for his liquid assets,
8 and we examined his liquid assets, financial statements. We
9 obviously didn't pull title reports to his properties. We
10 looked to his statements in support of the liquid assets.

11 Q Do you see under Investments and Miscellaneous,
12 there's a valuation for 100 percent common shares in
13 Consolidated Western Corporation and that's valued at
14 \$20,000,000?

15 A Yes.

16 Q Do you recall any conversation with Paul Morabito
17 about that amount?

18 A No.

19 Q In order to accept these financial statements, would
20 he have to verify that the amounts in here are correct as he
21 believes them?

22 A Correct.

23 Q And there's a reference to Note 10 under the line I
24 just read, and Note 10 says: 'Nevada corporation that owns

1 Superpumper, Inc., which operates 11 Shell franchised gas
2 service stations and five car washes; gas stations under a
3 jobber agreement with Shell Oil Products U.S.' is it your
4 understanding that that is the company we're talking about in
5 these financial statements?

6 A Yes.

7 Q Now there's a note at the top of Exhibit 5 and it
8 says: 'May 5, 2009 is the most recent date at which
9 Mr. Morabito had a personal financial statement prepared. As
10 such, we will include a statement in the management rep letter
11 that nothing has materially changed in his net worth between
12 May 5, 2009 and the date of the audited SPI financial
13 statement.' Do you see that?

14 A Yes.

15 Q Do you recall about when the financial statement
16 would have been completed or the audited financial statement
17 that you are referencing in that note?

18 A The 2009 financial statements were completed in
19 March 2010.

20 Q So as of March 2010 you verified that the amounts in
21 this financial statement were correct, with Mr. Morabito?

22 A The liquid amounts. We verified his statement for
23 his liquid assets and obtained his management representation
24 in our management representation letter.

1 Q Can you explain to me what a management
2 representation letter is?

3 A Yes.

4 Q What is it?

5 A Financial statements that we issue an audit opinion
6 on are really the representation of management, so they're not
7 our financial statements. It's management that's representing
8 the assertions in the financial statements, themselves, that
9 all of the assets are there, all the liabilities are there,
10 the disclosures are full and complete. We issue an opinion on
11 the assertions that management makes, and so the
12 representation is basically management taking responsibility
13 for the statements from which we can then put our opinion on
14 top of.

15 Q Okay. So is it fair to say a management
16 representation agreement is from management verifying all the
17 information they provided to you?

18 A Correct, asserting that they are responsible for the
19 information in the financial statements.

20 Q Okay. There's a note on the bottom of Exhibit 5 and
21 it says: 'As 7.2 million of the 7.7 million in notes
22 receivable is due from Paul Morabito and his affiliate company
23 CWC/PMZ-- that is suppose to be PAMAZ-- we obtained his
24 personal financial statement to verify Mr. Morabito has

1 sufficient net worth to substantiate the value of the
2 receivable on SPI's balance sheet. As his net worth at 5/5/09
3 is in excess of \$64 million, there is no impairment issue of
4 the receivable on SPI's books.' Do you see that?

5 A Yes.

6 Q What do you mean by that?

7 A We believe that the receivable on SPI's books was
8 collectible.

9 Q Why is that important?

10 A Because if the receivable is not collectible, then
11 we would be misreporting the balance sheet of Superpumper,
12 Inc., by listing it as a receivable that wasn't collectible.

13 Q Do the note receivables impact the value of the
14 company?

15 A That's an indirect question. If you could rephrase
16 the question.

17 Q Does the presence of a note receivable on a balance
18 sheet increase the value of a company?

19 A It increases the equity of the company.

20 Q Can you explain to me the difference between the
21 equity and the value of the company?

22 A Well, value is a measure of what people are willing
23 to pay for a company. Our financial statements don't purport
24 to represent anything about value of the company.

1 Q Okay.

2 A Our financial statements purport to represent the
3 equity as presented under generally-accepted accounting
4 principals.

5 MS. PILATOWICZ: Turning to page 47 line 13.

6 BY MS. PILATOWICZ:

7 "Q You have been handed what has been marked as Exhibit
8 6"--

9 MS. PILATOWICZ: Your Honor, Exhibit 6 is Exhibit 115
10 in the Court's exhibit binder. It has been admitted.

11 THE COURT: Thank you.

12 BY MS. PILATOWICZ:

13 "--do you recognize Exhibit 6?

14 A I do.

15 Q What is Exhibit 6?

16 A Exhibit 6 is a calculation of interest income that
17 we would have accrued and recorded as an adjusting journal
18 entry into the 2009 financial statements.

19 Q And who prepared this document?

20 A We did.

21 Q Where did you obtain the information-- well, let me
22 back up. Under description there are one, two, three, four,
23 five, five different entries. What do those represent?

24 A Separate GL accounts. So Superpumper had a general

1 ledger. The general ledger had five different accounts that
2 had notes receivable in them. So 1210-00 represents to be a
3 note from CWC; 1210-03 represents to be a note from PAMAZ,
4 etcetera.

5 Q And did you obtain this information from management?

6 A Yes.

7 Q Did they provide the interest rate as to those
8 accounts?

9 A '5.4 percent intrinsic interest rate provided by
10 Gurseay Schneider. I don't know where the interest rates came
11 from.

12 Q Do you know why Gurseay Schneider would have put an
13 interest rate of 5.4 percent?

14 A I don't want to speculate.

15 Q Under what circumstances would Gurseay Schneider put
16 in such an interest rate?

17 A When you have borrowings between related parties,
18 you're supposed to assume that there's an applicable interest
19 rate. Otherwise, for tax purposes the taxing authority can
20 look and say, hey, the loan is not a loan, it is really
21 income, or vice versa. And so the GAAP literature says assume
22 that there's an interest rate for any borrowing. The tax
23 rules say you better have a minimum interest rate; otherwise,
24 it can be challenged as being a loan or not or compensation.

1 So your question is why was there an interest rate. It's to
2 conform with the GAAP rules and probably to conform with tax
3 rules. Why 5.4 percent, I don't recall?

4 Q Okay. Do you know if these amounts reflect amounts
5 that were actually borrowed by either CWC, PAMAZ or Paul
6 Morabito?

7 A Absolutely.

8 Q Absolutely they were borrowed?

9 A They were borrowed, yes.

10 Q What makes you say they absolutely were borrowed?

11 A Well, the data comes right out of the general
12 ledger. The general ledger is the accumulation of accounting
13 transactions that occurred during the course of a year or
14 during the course of a long period of time. And so when the
15 general ledger has amounts that are due, lists the name of the
16 borrower, then we would assume the money was borrowed.

17 Q Down at the bottom there's a note that says 'We
18 obtained a personal financial statement from Paul Morabito to
19 test the valuation of the receivable. See C-4a.' Is it your
20 understanding C-4a reflected the personal financial statement
21 of Paul Morabito we discussed at Exhibit 5?

22 A Yes.

23 Q Okay. You've been handed what has been marked
24 Exhibit 7?"

1 MS. PILATOWICZ: Your Honor, Exhibit 7 is Exhibit
2 118 in the Court's exhibit binder and it has been admitted.

3 THE COURT: Thank you.

4 BY MS. PILATOWICZ:

5 "Q do you recognize Exhibit 7?

6 A Yes.

7 Q What is Exhibit 7?

8 A Exhibit 7 is the management representation letter
9 for the audit for the year ended December 31, 2009.

10 Q And is this the representation letter that we were
11 discussing earlier where management verifies that the
12 information they provided is true?

13 A Yes.

14 Q And who signed this management representation
15 letter?

16 A Paul Morabito and Don Whitehead.

17 Q And at 19 there includes a specific representation,
18 'There have not been any material changes in the net worth of
19 this of the company's President, Paul Morabito, since the date
20 of his last prepared personal financial statement dated May 5,
21 2009.' Do you see that?

22 A Yes.

23 Q Is that because of the collectability of notes?

24 A Yes.

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MS. PILATOWICZ: This will be 8."

Exhibit, 8, Your Honor is Exhibit 119 in the Court's exhibit binder and it has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q You have been handed what has been marked Exhibit 8. Do you recognize Exhibit 8?

A No.

Q It says that they are unaudited -- well, the first page says, 'Superpumper unaudited August 2012 balance sheet.' Do you see that?

A Yes."

THE COURT: I am going to stop you. I think you read it wrong. Would you reread line 19?

MS. PILATOWICZ: Yes, Your Honor.

BY MS. PILATOWICZ:

"Q It says that they are unaudited-- well first page says 'Superpumper Unaudited August 2010 balance sheet.' Do you see that?

A Yes.

Q Are these the types of balance sheets that you had received from Superpumper?

A Yes.

Q If I told you that these were balance sheets that

1 were provided by Superpumper, would that appear accurate to
2 you?

3 A Yes.

4 Q Turn to page-- again we are looking at the numbers
5 on the bottom right-hand corner -- 1003. And this is titled
6 "Superpumper unaudited September 2010 balance sheet.' Do you
7 see that?

8 A Yes.

9 Q Under other assets, about a little above halfway
10 between the page there's a note receivable in the amount of
11 \$7,683,918. Do you see that?

12 A Yes.

13 Q Does that match up with the 2009 audit numbers that
14 Gursey Schneider performed?

15 A Yes.

16 Q Would it be fair to say that that's likely the same
17 loans that are referred to in the 2009 audit statement?

18 A Yes.

19 Q Now after that it shows a net change of \$1,470,714.
20 Do you see that?

21 A Yes.

22 Q Do you know what that is?

23 A No.

24 Q Would it appear to be additional notes receivable?

1 A Yes.

2 Q And there's an ending balance of \$9,154,632. Do you
3 see that?

4 A Yes.

5 Q Would it be fair to say that that appears to
6 represent an ending balance of the notes receivable as of
7 September 2010 of \$9,154.632?

8 A Yes.

9 Q When you conducted an audit in 2010, are these the
10 statements that you would look at?

11 A They were available to us to look at.

12 Q Would you do any sort of analysis of notes that were
13 listed on the books mid-year but not at the end of the year?

14 A We would look at the year-end general ledger and
15 look to see the activity during the year.

16 Q Would you do any sort of analysis of the
17 collectability of the notes that existed in December 2010?

18 A No.

19 Q Just at year end?

20 A Yes.

21 Q Based on the personal financial statement of Paul
22 Morabito that you had that had been verified as of March 2010
23 as to his ability to pay the 7.6 million approximately due
24 under the notes receivable, would you expect that they could

1 still be paid in September of 2010?"

2 MS. PILATOWICZ: There is an objection.

3 " MR. GILMORE: Objection. Incomplete

4 hypothetical."

5 MS. PILATOWICZ: The witness requested you repeat

6 the question, so it was repeated. And then, Mr. Gilmore, you

7 have changed your objection to speculation.

8 MR. GILMORE: That's correct.

9 MS. PILATOWICZ: Your Honor, the question was asked

10 based on the auditors' review and the information the auditor

11 had, based on all the information that had been provided to

12 him by the company and whether he believed the statement to be

13 true.

14 THE COURT: Objection goes to the weight. I am

15 going to admit it. The objection is overruled.

16 THE READER: Is there an answer? I don't see one.

17 MS. PILATOWICZ: It is page 54 line 12.

18 "THE WITNESS: Very speculative, but yes."

19 MS. PILATOWICZ: Moving to page 56, line 6 it

20 references Exhibit 9 which is Exhibit 120 in the Court's

21 exhibit binder and that has been admitted.

22 THE COURT: Thank you.

23 BY MS. PILATOWICZ:

24 "Q What is Exhibit 9?

1 A Exhibit 9 are the financial statements of
2 Superpumper, Inc., as of and for the year ended December 31,
3 2010.

4 Q Did you oversee the preparation of these financial
5 statements?

6 A I oversaw the audited financial statements.

7 Q Can you turn to page 334 of the 2010 audit?

8 A Yeah.

9 Q Can you read the third paragraph of the independent
10 auditor's report letter?

11 A 'In accordance with your instructions, the scope of
12 our examination did not include any analysis of the valuation
13 of notes receivable from related parties. (See Note 9) and we
14 have not been able to otherwise satisfy ourselves as to their
15 valuation at that date. The notes receivable from related
16 parties comprise fifty-seven percent of the total assets and
17 129 percent of stockholders' equity at December 31, 2010.
18 Interest earned from these notes comprise 24 percent of net
19 income during the year end December 31, 2010.'

20 Can you explain what you mean by that.

21 A We are -- this is what is known as a qualified audit
22 opinion. A qualified audit opinion is one in which we can
23 issue an opinion on the financial statements, themselves, but
24 otherwise qualify it, or, the easiest way is to list it and

1 carve out an aspect of the financial statement for which we're
2 not giving opinion on.

3 Q Did you request information as to the collectability
4 as to the notes receivable?

5 A I don't remember.

6 Q Is there a reason you wouldn't request that
7 information?

8 A I don't remember the circumstances of why we issued
9 a qualified opinion."

10 MS. PILATOWICZ: Turning to page, I am sorry, page 58
11 line 15.

12 BY MS. PILATOWICZ:

13 'Q Turning to page 355 of Exhibit 9 under other assets,
14 it list notes receivable due from affiliates/related party.
15 And there is a number \$8,224,860. Do you see that?

16 A Yes.

17 Q Who provided that information to you?

18 A Management.

19 Q Do you know who was in management as of December 31,
20 2010?

21 A Don Whitehead, Gabby-- it was McClellan now that I
22 think about it. It was Don, Gabby, Mr. Morabito and I don't
23 know who else we worked with.

24 Q When you say Mr. Morabito, are you referring to Sam?

1 A Sam Morabito, yes.

2 Q If you can turn to page 345 of Exhibit 9?

3 A Uh-huh.

4 Q Under Note 9 there is Related Party Transactions.

5 They list different notes receivable or due from affiliates/
6 related parties. Do you see that?

7 A Yes.

8 Q Starting with the first one at P. Morabito, do you
9 understand that to be Paul Morabito?

10 A Yes.

11 Q Do you know what that note was?

12 A It was a note. It was a note.

13 Q Was that information on the note provided to you by
14 management?

15 A Yes.

16 Q The next one, 'Big Wheel Hospitality Operating
17 Company, LLC' do you see that?

18 A Yes.

19 Q Do you know who Big Wheel is?

20 A We were informed it was an entity related to Paul
21 Morabito.

22 Q Did management provide the information about that
23 note?

24 A Yes.

1 Q And the next one is 'Snowshoe Petroleum, Inc.'?
2 A Yes.
3 Q Do you know what Snowshoe Petroleum, Inc. Is?
4 A We were informed it is an entity affiliated with the
5 current owners.
6 Q Did management provide you information regarding
7 that note?
8 A Yes.
9 Q The next one is P. Morabito which you understand to
10 be Paul Morabito, correct?
11 A Yes.
12 Q Who provided you information about that note?
13 A Management.
14 Q The next note listed is E. Bayuk?
15 A Yes.
16 Q Who do you understand that to be?
17 A Mr. Bayuk.
18 Q Who provided you information regarding that note?
19 A Management.
20 Q The next note is listed as S. Morabito. Who do you
21 understand that to be?
22 A Sam Morabito.
23 Q Did management provide you information regarding
24 that note?

1 A Yes.

2 Q The last entry is Paul Morabito on demand?

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q What is that?

7 A Borrowings for which there is no note.

8 Q Do you know if any of these were carryovers from the

9 2009 financial statements?

10 A Yes, some were. I don't remember which ones.

11 Q If you look at the 2009 financial statements and

12 2010, can you determine which ones were carryovers?

13 A The one in the middle.

14 Q Is that the only one?

15 A I don't want to speculate, but the bottom one as

16 well, the \$443,107 is going to be the on demand or the

17 \$285,580.

18 MR. GILMORE: Mr. Krausz, when you say the one in the

19 middle, can you identify that one more specifically?

20 THE WITNESS: Oh.

21 BY MS. PILATOWICZ:

22 Q You're referring to the P. Morabito five percent

23 March 1, 2017 due date?

24 A Yeah, correct.

1 Q In the amount of 672,139?

2 A Correct.

3 Q Do you recall what happened with the balance of the
4 notes that were outstanding as of 2009?

5 A Do I recall what happened? I don't recall. No, I
6 don't recall.

7 Q Okay."

8 MS. PULATOWICZ: Turning to page 64 line 5 which
9 references Exhibit number 11 which is Exhibit 116 in the
10 Court's exhibit binder, and it has been admitted.

11 THE COURT: Thank you.

12 BY MS. PILATOWICZ:

13 "Q What is Exhibit 11?

14 A Exhibit 11 is what we call our Conclusions Memo
15 which basically summarizes the results of our audit as the
16 summary of what we identified as the risks, how we addressed
17 the risks of our audit, significant representations made by
18 management. It's the one memo that brings everything together
19 with respect to our audit.

20 Q Is that done at the end of the audit?

21 A Yes.

22 Q Now it says under, 'Significant Current Year
23 Activities, the following is a list of significant activities
24 and changes that occurred during the nine-month period ended

1 December 31, 2010.' Why a nine-month period?

2 A I don't remember. It could be a typo.

3 Q Would it have anything to do with when the 2009
4 audit was completed?

5 A No.

6 Q As we sit here today, you don't know why it says
7 nine months?

8 A Nope.

9 Q Under the first paragraph, 'Change in ownership,'
10 can you take a moment and read that to yourself?

11 A Yes.

12 Q You're done reading it?

13 A Yes.

14 Q About the middle of that it says, 'CWC's net
15 liability of \$5.9 million assumed by SPI as part of the merger
16 have been treated as distribution to its owners.' What does
17 that mean?

18 Q CWC had net debt, so CWC had net liabilities of 5.9
19 million. When you merge CWC into Superpumper and put them
20 together, you contribute debt to Superpumper's books. The
21 offsetting entry, we treated is as distribution to the owners
22 of Superpumper. The opposite would work if you put two
23 companies together, and asset or cash or AR or any other
24 assets went in, we would have treated it as a contribution

1 from the owners. So it is really a little counter intuitive to
2 contribute debt. But when you contribute debt, it says that
3 you made a distribution to the owners because you're saddling
4 the company with liabilities. I used the word saddle, but
5 you're merging liabilities of the company, so we treat it as a
6 distribution to the owners.

7 Q What's the importance of doing it as a distribution
8 to the owners?

9 A Well, you have to book it somehow. Every entry has
10 two -- every transaction has two sides to a journal entry, so
11 if you are going to put debt on the balance sheet of
12 Superpumper, you have to put the debit -- that's the credit
13 entry -- you have to put the debit entry somewhere. So you
14 could have recorded an expense for 5.9 million. There's
15 different ways to do it, but this was the correct way to do
16 it.

17 Q Does the 5.9 million net liability have any
18 correlation with the loans from Superpumper to CWC?

19 A No, I do not believe so.

20 Q So this wouldn't explain what happened to those
21 loans?

22 A Let me take a step back. There's a work paper we
23 have about this. And I don't have it in front of me. Part of
24 that 5.9 million of liability of CWC were obligations that

1 were owed to Superpumper, so Superpumper had a corresponding
2 receivable from CWC. So when you said did it relate to it,
3 yes it did.

4 Q Would it be treated as a payoff of the loan?

5 A It would be treated as the settlement of the
6 receivable, I believe. I can't visualize it in my head. I
7 would have to see the work paper.

8 Q Okay. On the next paragraph of the 'Significant
9 Current Year Activities Related Party Transactions,' it says
10 'SPI pays business expenses of and makes advances to its
11 shareholders and affiliated entities. Amounts paid on behalf
12 of the former parent company/owner are either reflected as a
13 receivable from from CWC or Paul Morabito or as a distribution
14 to shareholders.' What does that mean?

15 A It means exactly what it says.

16 Q Okay. Then does that statement relate to the 5.9
17 million discussed in the paragraph above?

18 A Yes.

19 Q How does it relate?

20 A It relates more to the receivables on Superpumper's,
21 books and the 5.9 on CWC's books. The amounts paid on behalf
22 of the former parent owner/company were reflected as a
23 receivable from CWC. So what that means is when Superpumper
24 paid an expense on behalf of CWC, it would send money out and

1 record a receivable back from CWC.

2 Q And is this information Superpumper management
3 provided to you?

4 A Yes.

5 Q So they verified that there was payment of business
6 expenses and advances, and that's what made up the receivable?

7 A Yes."

8 MS. PILATOWICZ: Moving to page 68 line 19.

9 BY MS. PILATOWICZ:

10 "Q We were talking about Exhibit 11 when we took the
11 break. I'd like to go back. We started with the Related
12 Party Transactions in the second paragraph on the Audit
13 Conclusion Memo that's Exhibit 11.

14 Approximately halfway down in that paragraph there's
15 a statement, 'At December 31, 2010, the amount due from Paul
16 Morabito is \$1,613,546."

17 THE COURT: Okay. I am going to stop you there.
18 You may have read it wrong.

19 MS. PILATOWICZ: I'm sorry. Let me start again from
20 the paragraph at page 68 line 24.

21 BY MS. PILATOWICZ:

22 "Q Approximately halfway down in that paragraph there's
23 a statement, 'At December 31, 2010, the amount due from Paul
24 Morabito is \$1,613,546 which consists of two notes receivable

1 of \$939,00 and \$672,139 for which we obtained signed note
2 agreements, plus total accrued interest of \$20,407.' Do you
3 see that?

4 A Yes.

5 Q Do you know what the two notes referenced were?

6 A They were the notes referenced in Exhibit 9 page
7 345.

8 Q Do you know when the money for those notes was
9 borrowed by Paul Morabito?

10 A I don't recall.

11 Q Would it be unusual to have a note that's dated
12 different than the date the funds are borrowed?"

13 MR. GILMORE: No objection.

14 THE COURT: Thank you.

15 "THE WITNESS: I don't know what unusual is. I've
16 seen it before.

17 BY MS. PILATOWICZ:

18 Q Under what circumstances do you see it?

19 A When you have related party notes, the dating of the
20 note isn't always determined when the amounts are borrowed.

21 Q Why are they sometimes dated differently?

22 A Error in drafting; not done contemporaneously. Many
23 reasons.

24 Q But is it fair to say under an accounting standard,

1 that if money is borrowed as of a certain date, that's the
2 date it becomes a receivable?"

3 MR. GILMORE: No objection.

4 "THE WITNESS: Yes.

5 MS. PILATOWICZ: Moving to page 71 one line 12.

6 BY MS. PILATOWICZ:

7 "Q Two down from that section, 'Line of Credit,' it
8 references a revolving line of credit with Compass Bank that
9 allows borrowings of up to three million. It says, 'The loan
10 matured on November 4, 2010, and the company defaulted under
11 the terms of the agreement for failing to pay the amount
12 outstanding upon its maturity.' Were you aware of any defaults
13 in the line of credit prior to November 4, 2010?

14 A No.

15 Q Is that something that you would look at in your
16 audit?

17 A Yes.

18 Q The next section is 'Term loan.' It says, 'On August
19 13, 210, the company entered into a term loan agreement in the
20 amount of three million dollars. They also entered into an
21 interest rate swap on the three million term loan to pay
22 interest at a fixed rate of 4.0 percent in exchange for
23 receiving LIBOR plus 2.75 percent. Unrealized loss of \$26,144
24 from cash flow hedges are reflected in net income. The company

1 defaulted under provisions of its terms loan agreement as a
2 result of the CWC merger into SPI.'?

3 A Yes.

4 Q Are you aware of any defaults in the term loan prior
5 to the merger?

6 A No.

7 Q Is that something that you would have looked at in
8 your audit?

9 A We wouldn't have looked at the default, the timing
10 of the default, no, but the default we would have looked at.

11 Q But based on this note, is it your understanding
12 that default occurred as a result of the merger?

13 A Yes.

14 MS. PILATOWICZ: Page 74 starting at line 24.

15 BY MS. PILATOWICZ:

16 "Q Looking at the final page of Exhibit 11, the last
17 paragraph says, 'We met with Paul Morabito and Edward Bayuk
18 regarding the status of SPI's financing with BBVA Compass. The
19 client informed us the lender has an offer ready to refinance
20 SPI's loan but is waiting to receive the audited financial
21 statements.' Do you recall anything about that offer for a
22 refinance?

23 A I remember the conversation. I remember we talked
24 to Sean Hollenbach who pretty much told us the same thing.

1 Q Did Sean Hollenbach represent they were prepared to
2 refinance once the financials were received?

3 A I mean our standard practice in instances like this,
4 we call the banker to make sure everything is on the up and
5 up, and we verify the representation management has told us
6 and that's what we got.

7 Q Did you get a representation letter from management
8 on the 2010 financial statements?

9 A Yes."

10 MS. PILATOWICZ: There is a reference to Exhibit 12
11 which is Exhibit 125 in the Court's exhibit binders which has
12 been admitted.

13 THE COURT: Thank you.

14 BY MS. PILATOWICZ:

15 "Q You have been handed what has been marked Exhibit 12.
16 Do you recognize Exhibit 12?

17 A Yes.

18 Q Is this the management representation agreement you
19 received?

20 A Yes.

21 Q And under number 9 of the management recommendation
22 agreement it indicates that, 'The following have been properly
23 recorded or disclosed in the financial statements: Related
24 party transactions and related accounts receivable or payable,

1 including sales, purchases, loans, transfers, leasing
2 agreements and guarantees.' Do you see that?

3 A Yes.

4 Q Does this verify that all of the information
5 regarding the notes receivable that you received was correct
6 by management?

7 A Yes.

8 Q Is there any reason why you didn't write down any of
9 the notes in the 2010 finance statements?"

10 MR. GILMORE: No objection.

11 "THE WITNESS: We didn't have a reason to."

12 BY MS. PILATOWICZ:

13 "Q What do you mean by that?

14 A We did not issue an opinion on the collectability of
15 the notes. We disclaimed on issuing an opinion on that. So
16 absent knowing that it is a note, no, we would have no reason
17 to do that.

18 Q Do you recognize Exhibit 13?"

19 MS. PILATOWICZ: Which is exhibit 126 in the Court's
20 binder and interest has been admitted.

21 THE COURT: Thank you.

22 "THE WITNESS: I do."

23 BY MS. PILATOWICZ:

24 "Q what is Exhibit 13?

1 A Exhibit 13 is our work papers from our file that
2 purport to be the personal financial statements of Salvatore
3 Morabito and Edward Bayuk.

4 Q When did you receive these?

5 A I don't recall.

6 Q Do you recall the purpose of receiving those?

7 A Auditing the valuation of the notes receivable.

8 Q Are these the financial statements you ultimately
9 didn't audit?

10 A Correct.

11 Q Let's start with Sam Morabito. Did he verify to you
12 these were accurate and correct when you received them?

13 A Yes.

14 Q Did he verify, based on these, he could repay the
15 loans as of 2010?

16 A Yes.

17 Q What about Mr. Beyuk?

18 A Yes.

19 Q Yes, he verified that these were true and correct?

20 A He provided these to us. I have no reason to think
21 that they weren't correct if he provided them to us.

22 Q Did he represent to you that, based on these
23 documents, he could repay the loans that were due at the end
24 of 2010?

1 A Yes."

2 MS. PILATOWICZ: Moving to page 80 line 20.

3 ///

4 BY MS. PILATOWICZ:

5 "Q There is a statement there that says, 'The company's

6 value in 2010 was negatively impacted by the fact that the

7 money Superpumper received up front from Shell would have to

8 be repaid or amortized over the term of the contract. The

9 unamortized portion is still today 2.5 million.' Do you know

10 what that refers to?

11 A No.

12 Q Do you recall agreements with Shell during the

13 audit?

14 A I recall agreements with Shell, yes.

15 MS. PILATOWICZ: Let me mark this Exhibit 15."

16 MS. PILATOWICZ: Your Honor I believe that is Exhibit

17 237 in the Court's exhibit binders, and it has been admitted.

18 I am sorry?

19 THE CLERK: It has not.

20 MS. PILATOWICZ: I believe it is 226. My apologies,

21 which has been admitted. The Shell agreement.

22 THE COURT: Okay.

23 BY MS. PILATOWICZ:

24 "Q Is this the agreement that you were referring to with

1 Shell?

2 A Yes.

3 Q Does this require any upfront payment of 2.5
4 million?

5 A If you want me to read the whole agreement, I will.
6 I don't remember.

7 Q If there was a 2.5 million dollar liability in 2010,
8 would that be reflected on your audit for 2010?

9 A I hope so.

10 Q Could you look at your audit and tell me if there is
11 such a liability reflected?

12 A I don't believe there is. I am not aware of one,
13 but let me see. No."

14 MS. PILATOWICZ: Moving to page 89. Your Honor, I
15 apologize. In my notes there are documents referenced here,
16 but I don't have the corresponding numbers written down. With
17 the Court's indulgence I will get that information tonight and
18 supply it in the record tomorrow.

19 THE COURT: Okay.

20 MR. GILMORE: My note shows Exhibit 18 is binder
21 number 43.

22 THE COURT: You mean Exhibit 43?

23 MR. GILMORE: I should have said Exhibit 18 in the
24 deposition appears to be Exhibit 43 in the binders.

1 THE CLERK: Is it the e-mail chain between Afshar
2 and Takemoto dated 3/10/10?

3 MS. PILATOWICZ: It is.

4 THE CLERK: It is 43 and admitted.

5 MS. PILATOWICZ: Exhibit 19, I don't -- I believe
6 that was one of your exhibits.

7 MR. GILMORE: I can't tell.

8 MS. PILATOWICZ: I understand why this is. Do you
9 know what Exhibit 19 is?

10 MR. GILMORE: 18?

11 MS. PILATOWICZ: 19.

12 MR. GILMORE: I have it as 297.

13 THE COURT: Counsel, did you tell me that Gary
14 Krausz' deposition was going to be a half hour?

15 MS. PILATOWICZ: Your Honor, it clearly was poor
16 time planning. We still have quite a bit to go. I don't
17 think we'll finish this one day.

18 THE COURT: It doesn't look that way.

19 MS. PILATOWICZ: I apologize.

20 THE COURT: Based on how everybody is kind of
21 reacting to this, I think it is kind of time to take a break.
22 Everyone is tired. There is a lot here. We are close to 6:00
23 o'clock.

24 MS. PILATOWICZ: Yes, Your Honor.

1 THE COURT: So tomorrow, do you want to interrupt
2 this?

3 MS. PILATOWICZ: Your Honor, I believe we can
4 continue with this tomorrow. We are going to take a review of
5 the Vacco and Bernstein designation tonight based on testimony
6 that has been provided throughout this week and see if we can
7 streamline that. I think there is a lot of repeating. That
8 might cut that down and then we intend to still continue with
9 the live witnesses of William Leonard and --

10 THE COURT: You want to do those people tomorrow?

11 MR. PILATOWITCZ: -- Bill Kimmel. Yes, Your Honor.

12 THE COURT: Then we should stop your reading of the
13 deposition and put those live witnesses on. We have a window
14 from 10:15 or so. We'll see. The criminal case is supposed
15 to only take two hours, but who knows. And then we'll break
16 at the noon hour, but it is going to be a longer than normal
17 noon hour until 2:00, then by 2:00 until we can get done. I
18 would prefer to get those live witnesses finished up and then
19 come back to the depositions if we can. If not, we'll find
20 time next week. You may not be able to finish on Friday. But
21 if we get finished by Wednesday night I would be happy if I
22 can get to that conference on Thursday. If I can't, we'll
23 still keep going because we want to get this case finished.

24 MS. PILATOWICZ: Your Honor, we are still on pace to

1 be done by Wednesday morning with at least the testimony.

2 THE COURT: We'll see how we're doing, but I

3 appreciate everyone trying, but it is close enough to 6:00 we

4 should take a break. So tomorrow you will bring the witness

5 here, have him here by 10:15 to start. Can we do that?

6 MS. PILATOWICZ: Yes, Your Honor.

7 THE COURT: Okay. All right.

8 THE READER: You're expecting both witnesses to come?

9 THE COURT: That's what they are telling me. We may

10 have some reading, too.

11 THE READER: From a logistical standpoint what time

12 should I be here?

13 MS. PILATOWICZ: We'll discuss that.

14 THE COURT: Whatever time they tell you to be back.

15 So thank you. Is there anything else before we recess for the

16 evening?

17 MR. GILMORE: Not from our side, Your Honor.

18 MS. TURNER: No, Your Honor.

19 THE COURT: Thank you. Court's in recess.

20 (Whereupon, the proceedings were concluded.)

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

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on Thursday, November 1,
9 2018 at the hour of 8:00 a.m. of said day and that I then and
10 there took verbatim stenotype notes of the proceedings had in
11 the matter of WILLIAM LEONARD, JR. TRUSTEE vs. SUPERPUMPER,
12 INC., ET AL, Case Number CV13-02663.

13 That the foregoing transcript, consisting of pages
14 numbered 1-262 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 12th day of October, 2018.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24