

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 40

(Nos. 7012-7169)

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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 NRCP 68 (filed 07/10/2019)	Vol. 53, 9346–9349

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

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

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

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

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

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

CASE NO. CV13-02663

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

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

11/5/18 **NON-JURY TRIAL – DAY SIX**
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.
1:16 p.m. Court convened.

Jan Friederich called by counsel Gilmore, sworn and testified.

EXHIBIT 230 offered by counsel Gilmore; no objection by counsel Pilatowicz;
ordered admitted into evidence.

Witness Friederich further direct examined.

Counsel Gilmore requested that this Witness be qualified to give opinion
testimony based on his knowledge of Superpumper, Inc., and the industry.
Counsel Pilatowicz objection to such testimony.

Witness Friederich excused from the courtroom in order for respective counsel
to present additional arguments.

Respective counsel presented additional arguments regarding the qualifications
of Witness Friederich. **COURT ORDERED** that Witness Friederich would not
be allowed to testify as to an expert, nor would he be able to testify as to the
valuation of Superpumper.

Witness Friederich, heretofore sworn, resumed stand and was further direct
examined; cross-examined by Pilatowicz; redirect examined; excused.

Michelle Salazar called by counsel Gilmore, sworn and testified.

***Witness qualified to testify as to her opinion as to the topics listed in her expert
witness disclosure.

Witness Salazar further direct examined.

CASE NO. CV13-02663

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

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE TWO

APPEARANCES-HEARING

CONT'D TO

11/5/18

NON-JURY TRIAL – DAY SIX

J. Schonlau
(Reporter)

EXHIBIT 235 offered by counsel Gilmore; stipulated by counsel Turner; ordered admitted into evidence.

Witness Salazar further direct examined.

3:11 p.m. Court recessed.

3:44 p.m. Court reconvened with respective counsel and parties present.

Witness Salazar, heretofore sworn, resumed stand and was further direct examined; cross-examined by counsel Turner; redirect examined; excused.

Court advised respective counsel that exhibit 302, the designated portions of the deposition of Paul Morabito, has never been formally admitted as evidence in this matter.

EXHIBIT 302 ordered admitted into evidence based on stipulation of respective counsel.

Discussion ensued regarding the trial schedule for the next day and closing arguments.

5:51 p.m. Court recessed until November 6, 2018 at 8:30 a.m.

**11/6/18
8:30 a.m.
Ongoing
Non-Jury
Trial – Day
Seven**

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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

MONDAY, NOVEMBER 5, 2018, 1:00 P.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>
JAN iUVEN FRIEDERICH	5	33	40	
MICHELLE SALAZAR	42	101	140	

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EXHIBITS:

Marked for
Identification

Admitted
into
Evidence

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1 RENO, NEVADA; MONDAY, NOVEMBER 5, 2018; 1:00 P.M.

2 -oOo-

3 THE COURT: Thank you. Please be seated. Good

4 afternoon. So I think we are at your case, Mr. Gilmore, so are

5 you ready to go.

6 MR. GILMORE: We are indeed. Today we have two live

7 witnesses we intend to get through by the end of the day. The

8 first witness will be Jan Friedrich. Friedrich.

9 THE COURT: You may proceed

10

11 JAN IUVEN FRIEDERICH

12 called as a witness, having been first duly sworn,

13 took the witness stand and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. GILMORE:

17 Q Good afternoon Mr. Friedrich?

18 A Good afternoon.

19 Q Please introduce yourself to this Court by stating

20 your full name and spelling your last name for the record?

21 A My name is Jan, middle name iUven Friederich.

22 F-R-I-E-D-E-R-I-C-H.

23 Q Mr. Friedrich, would you please give the Court a bit

24 of your educational background?

1 A I grew up in Germany, went through high school at
2 the University of Hamburg. Finished with the equivalent of a
3 Master degree in 1968.

4 Q What was your Master degree in?

5 A In economics.

6 Q Do you have any further post secondary education?

7 A No.

8 Q What is your current occupation or profession?

9 A I am basically retired, help myself.

10 Q Can you please give us your work experience
11 background starting from the time in which you received your
12 Master degree until today?

13 A I started out as a consultant to the supermarket
14 industry in Germany. I was hired by one of the clients I think
15 it was 1968 to become -- no, 1971 to become President of a
16 division of the largest supermarket company in Germany.

17 Q What did you do? What were your job
18 responsibilities in that position?

19 A As the President, I was in charge of running the
20 company.

21 Q What did you do after that?

22 A In 1979 I went to the United States. My employer at
23 the time asked me to look for opportunity in the United States
24 in the supermarket industry, and we bought the Furr's

1 supermarkets, F-U-R-R-S supermarkets in West Texas and New
2 Mexico.

3 Q What was your affiliation with Furr's?

4 A I became the CEO.

5 Q What did you do as the CEO of Furr's?

6 A The company was taken out of bankruptcy and acquired
7 out of bankruptcy, and it was basically a turn-around scenario
8 for me to try to bring the company back to black numbers.

9 Q When you say turn-around, explain what you mean by
10 that?

11 A The company was acquired out of the chapter. It was
12 a failing company. We bought it. As such, my responsibility
13 was to get the company back into profitability.

14 Q How long were you affiliated with Furr's?

15 A In 1989 -- I came to the United States, in 1979. In
16 1989 my German partners left to go back to Germany because the
17 wall came down and opportunities were there for them in
18 eastern Germany and eastern Europe. I stayed and looked for
19 investors, found investment groups in 1991 to join to become
20 majority partners in the company.

21 Q At that point in time, what were your
22 responsibilities?

23 A I was CEO and Chairman of the Board

24 Q What did you do? Roughly, what were your day-to-day

1 activities like?

2 A Again, you run the company.

3 Q What did you do after that?

4 A In 1999 I retired, and in 2001 I had a company
5 actually that my son was operating, a grocery distributor,
6 grocery wholesaler in Albuquerque that supplied small
7 supermarkets and convenience stores. But that was for me only
8 a part-time occupation. So in 2001 I was asked by the
9 creditors committee of a company that was in bankruptcy the
10 Convenience USA. They had about three hundred plus
11 convenience stores in Georgia, North Carolina, Florida, and
12 they asked me to develop a business plan. It was in the
13 beginning mainly to see if the liquidation value of the
14 company, that the creditors estimated around twenty million
15 dollars, they asked me if there is an opportunity to get more
16 than that if they continue to operate. Operate and sales.

17 Q What did you do in response to their request?

18 A I consented. I became the acting CEO. I don't know
19 what the technical term is, I forgot, in the bankruptcy
20 proceeding. I became the acting CEO and developed a debt
21 capacity model in order to determine if the twenty million
22 dollars could be improved upon.

23 Q In doing that, did you have to determine a valuation
24 of the 250 stores that you were operating?

1 A Yes. We bought-- we sold the stores at the time in
2 areas where we found that the real estate value was exceeding
3 the business value. Many of the stores were company owned,
4 owned by the company. And, obviously, when you get out of the
5 Chapter 11 you are debt free. So, yeah, I had quite a bit of
6 association with the interested buyers to sell convenience
7 stores that we didn't find to be profitable for us.

8 Q Can you describe for the Court what you did
9 practically speaking in order to determine the value of these
10 250 respective stores, the 250 stores that were not sold in
11 the first round?

12 A As I said, we developed a debt capacity model, said
13 the company could probably sell thirty million dollars plus in
14 debt. And if people find an opportunity or if the creditors
15 would be willing to finance a thirty million plus five
16 million, I told them that I would operate the company. I
17 would buy the company and operate the stores with thirty-five
18 million in debt at the time. But I was certain that I could
19 do better than that.

20 Q Who determined the figure of thirty-five million
21 debt capacity?

22 A It was me.

23 Q How did you come to that number?

24 A Went store by store, looked at the historical P &

1 L's and saw where we could improve the performance of the
2 stores. And the indicator has always been the EBITA, earning
3 before interest, taxes and depreciation. If I found that the
4 EBITA was a good basis to go forward and improve upon, we kept
5 those stores.

6 Q And at the time, what experience did you have that
7 assisted you in determining what the debt capacity of these
8 250 convenience stores was?

9 A Mostly common sense.

10 Q And what became of those 250 stores, ultimately?

11 A I bought 250 stores in 2003 I think. There was a
12 plan to turn them around and sell them within five years, and
13 I sold the stores for more than fifty million dollars. And
14 the share the creditors got out of it was over thirty-five
15 million. That way they were satisfied as was us.

16 Q And approximately when was that that these
17 convenience stores were sold or the last of the convenience
18 stores were sold?

19 A 2007, 2008.

20 Q In that process, how many different convenience
21 stores would you say you have been involved in the purchase or
22 sale if in your entire career?

23 A In the sale of convenience stores where I actually
24 bought and sold them, it is 200 plus, 300 convenience stores.

1 And I bought 250 and sold, I mean that is part of 300 that I
2 sold.

3 Q Outside of the Convenience USA stores, have you been
4 involved as a consultant, a buyer or a seller of gas stations
5 or convenience stores?

6 A As a consultant operating a grocery distributorship
7 in Albuquerque we had 200 plus customers who bought from us
8 and on a regular basis and we were consulting them on how to
9 do better.

10 Q What was your responsibility as consultant for those
11 customers for your grocery distributors?

12 A If they succeeded, the grocery distributor
13 succeeded.

14 Q Give us a brief sketch of your duties in helping
15 these customers. What would you do for them?

16 A We sat in stores. We changed assortments. We
17 looked at the pricing strategy of the fuel business. But first
18 we had to analyze where the soft spots were and where the
19 problems were.

20 Q And that analysis, was that performed by you or
21 someone else?

22 A By me.

23 Q Now at some point in time, did you become familiar
24 with a chain of gas stations and convenience stores in

1 Scottsdale, Arizona called Superpumper?

2 A Yes, I did.

3 Q How did you first became aware of Superpumper?

4 A When I owned the stores in Florida and Georgia, I
5 had a business banker partner or friend who I think he knew
6 the law firm that Superpumper or Snowshoe was working with in
7 New York, and then Paul Morabito called me on the
8 recommendation of the law firm. Morabito called me and asked
9 me if I would be willing to help straighten out the situation
10 in Scottsdale. And after that, I said I would at least be
11 willing to look at it. He gave me Sam's number, Sam Morabito's
12 number, and I called him right away and met him the same week
13 and discussed it.

14 Q When you say straighten out the situation, what did
15 you mean?

16 A Between 2007 and 2009 Superpumper was a failing
17 company. The sales measured in gallons went from, gasoline
18 went from 129 million to 22 million within three years. The
19 merchandise sales went from 17 to 13 million. And at the time
20 when I arrived in 2009, the end of 2009, I didn't see any
21 indication that the trend was stopped, the negative trend was
22 stopped.

23 Q Were you hired to try to reverse that trend?

24 A Yes.

1 Q Who told you that?

2 A Sam, and I think I talked to Ed as well.

3 Q Now behind you there are a number of binders where

4 we're keeping all the trial exhibits. You see there are seven

5 volumes, maybe by now there is eight?

6 A Eight.

7 Q Would you please turn to the volume that has Exhibit

8 230. 230. Should be the bottom middle?

9 A 230.

10 Q The middle one?

11 A This one?

12 Q No?

13 A This one?

14 Q That one right there?

15 A That is not 230.

16 Q That has 226 to 299. 230 should be in there.

17 A Yes.

18 Q Would you turn to Exhibit 230 and familiarize

19 yourself with it?

20 A Yes.

21 Q This is an e-mail from Paul Morabito to you and

22 others; is that true?

23 A Yes.

24 Q At the time, what was your e-mail address?

1 A Janfriede@aol.com.

2 Q J-A-N-F-R-I-E-D-E?

3 A @aol.com.

4 Q Do you recall receiving this e-mail on or about
5 November 9, 2009?

6 A Must have, yeah.

7 MS. GILMORE: Your Honor, I will offer Exhibit 230
8 into evidence.

9 MS. PILATOWICZ: No objection.

10 THE COURT: Exhibit 230 is admitted.

11 (Exhibit 230 admitted in evidence.)

12 BY MR. GILMORE:

13 Q Now, Mr. Friedrich, this is an e-mail from Paul
14 Morabito to a number of people. Do you know who
15 Daniel Fletcher?

16 A Yes.

17 Q What was his role?

18 A He was general manager of Superpumper.

19 Q Who was Jim Pembroke?

20 A Jim Pembroke was in charge of the fuel business.

21 Q Who is Don Whitehead?

22 A He was CFO or controller.

23 Q Now Mr. Morabito says that Jan /GEI has entered into
24 a consulting agreement with Superpumper. Is that consistent

1 with your understanding?

2 A Paul Morabito.

3 Q I'm sorry, what did I say?

4 A You said Sam.

5 Q Paul sent an e-mail to his management team where he
6 said that Jan Frederick has entered into a consulting
7 agreement with Superpumper. Is that consistent with your
8 understanding?

9 A Yes.

10 Q And then he said, to supervise and direct operations
11 of the company. Did you understand that was what your role was
12 going to be, your role at Superpumper after November 9, 2009?

13 A Yes.

14 Q Did you in fact supervise and direct operations of
15 Superpumper from November 2009?

16 A Yes.

17 Q How long were you in that position?

18 A I think it was 2013.

19 Q And while you were supervising and directing the
20 operations of Superpumper, what did you do?

21 A I looked again where the soft spots were, the big
22 points. Superpumper, as I said, was clearly failing at the
23 time. There were some concerns expressed to me by Sam and Ed
24 that they were not comfortable with the management, so I

1 looked at that as well and built budgets and plans to hold
2 them more accountable.

3 Q Did you review any documents?

4 A Yes.

5 Q What documents did you review?

6 A P & L's. Financial statements.

7 Q Did you have access to all the company's historical
8 financials?

9 A Yes.

10 Q Did you review them?

11 A Yes.

12 Q For what purpose were you reviewing the historical
13 financials?

14 A In order to see what the trend was and what the
15 cause was that the company went from 29 million to 22 million
16 in gallon sales and 17 million to 13 in merchandise sales. It
17 was in a very short period of time.

18 Q And through that review and analysis, did you come
19 to some opinions as to why this company was failing?

20 A Number one, I think it was to a certain extent
21 management. Management incompetence. And in addition to that,
22 the market in Scottsdale had a bad five years or three years.
23 2008 through 2010 or so.

24 Q Now throughout your duties as a consultant, did you

1 deal with Paul Morabito?

2 A Not as far as Superpumper is concerned. Very, very
3 little. Most of the time I had the impression that Paul was
4 more chasing deals other than Superpumper business. And that
5 was my only involvement with Paul was a company for sale in
6 Chicago. There was a company, at least we analyzed the company
7 in south Texas. Those were my only interactions with Paul.
8 Early on he was concerned, about probably the first month, he
9 was concerned about how the company didn't generate more cash
10 with EBITA numbers like they had in 2007, 2008, and I did the
11 analysis for it.

12 Q And so did you ever have involvement with
13 Paul Morabito in 2009 as to the day-to-day operations of the
14 company?

15 A No.

16 Q Who were you dealing with?

17 A With Sam, and to certain extent Ed.

18 Q Did you ever -- Did you have discussions with Paul
19 about this idea of the EBITA cash flows that you just referred
20 to?

21 A Once I put a little memo together.

22 Q What in essence did you explain to him?

23 A I explained that most of the cash that he was
24 missing was taken out by the owners of the company or the

1 owner of the company.

2 Q At that time, did you know who the majority owner
3 was?

4 A At that time, I think it was Paul Morabito.

5 Q By that time, I mean late 2009?

6 A I thought it was Paul.

7 Q Now in familiarizing yourself with the company, as
8 part of your job duties, did you happen to read various
9 agreements that Superpumper had with Shell its gasoline
10 supplier?

11 A Yeah. Those and at least the contracts, the Shell
12 agreement, the three Shell agreements that were there I knew
13 about.

14 Q And how would you characterize your familiarity with
15 those Shell agreements?

16 A I know what the essence of it is.

17 Q How many agreements did Superpumper have with Shell?

18 A I think three.

19 Q Can you please describe those briefly?

20 A One was a wholesale agreement that established at
21 what price and at what quantity the supermarket was committed
22 to buy fuel from Shell.

23 They had a wholesale agreement. It was a wholesale
24 agreement that they had, and I didn't-- I wasn't familiar with

1 the Shell companies, because most of the time Shell sells
2 through larger companies, larger wholesalers to retailers.

3 Then there was an agreement that described the
4 investment that Shell did in converting the gasoline stations
5 to Shell stations and they invested money in that.

6 And they had the third agreement which I think it
7 was called TIP agreement. That was dealing with improvements
8 of credit card readers and updating of dispensers in order to
9 be able to accept credit cards.

10 Q Now can you describe how these agreements with Shell
11 impacted Superpumper's future performance?

12 A Yes. Shell, the wholesale contract had two elements.
13 The one was a two and a half million dollars was amortized
14 contingent liability for Superpumper. They could not
15 terminate the agreement without having to pay two and a half
16 million dollars at the time in 2010. The other part of the
17 agreement was that they got five years of I think it was two
18 cents per gallon in discounts. Superpumper was recording those
19 two cents discounts as a reduction in expenses in their P &
20 L's and that was 2007, 2008, and 2009 to the tune of \$560,000.

21 Q Per year?

22 A Per year. So --

23 Q I am sorry. Let me ask a clarifying question. So in
24 the company's Profit and Loss statements could you identify

1 how that Shell discount was being carried on the Superpumper
2 books?

3 A Yes.

4 Q How would you identify it?

5 A It was a line item in the expenses ledger given as a
6 credit in the expenses ledger. It was called discount given.

7 Q What was the practical effect of that line item on
8 the P & L's to the company's bottom line?

9 A It improved the bottom line by exactly the amount
10 that was recorded there. It was \$600,000 in 2008. \$500,000 in
11 2009, \$250,000 or so in 2010. And it went for \$70,000 in 2011
12 then it was gone pretty much. It was gone.

13 Q When you say it was gone, tell me how that then
14 affected, for the years after it expired, tell me how that
15 affected the company's bottom line and Profit & Loss
16 statement?

17 A Because in the Superpumper report, they had it as a
18 reduction in expenses. The expenses went up by that amount.
19 That was not given anywhere.

20 Q Based on your understanding, in 2009 there was a
21 \$600,000 expense reduction?

22 A It was either \$500,000 or \$600,000, I'm not sure.

23 Q And in 2012?

24 A \$18,000 if anything at all.

1 MR. GILMORE: Your Honor, I would offer
2 Mr. Friedrich is qualified to give opinion testimony in this
3 case based on his training, education and experience coupled
4 with his personal knowledge of the operations of Superpumper

5 MS. PILATOWICZ: Plaintiff objects to the witness'
6 qualifications. He's being offered as a rebuttal expert
7 related to valuation. He has no special training or special
8 knowledge regarding valuation. He has no methodologies. When
9 questioned about what he used to determine value certain
10 companies, it was common sense. So there is nothing that the
11 witness can provide that will offer the trier of fact, the
12 Court, special assistance.

13 MR. GILMORE: Mr. Friedrich is not intending to
14 testify as to the value. He's not prepared and he's not being
15 offered to provide a valuation assessment of Superpumper. His
16 testimony was disclosed to address four discreet factual
17 issues associated with Superpumper's financial performance and
18 conditions that, according to the opinions of Mr. Friederich
19 Mr. McGovern missed or incorrectly stated. So Mr. Friederich
20 is not being produced to give a value. He's only here to
21 testify as to his opinions based on his knowledge of
22 Superpumper, his understanding of the industry that Mr.
23 McGovern failed to consider or incorrectly considered as
24 factors, inputs Mr. McGovern's ultimate conclusion of value.

1 His opinions will be strictly limited to those which were
2 contained in the rebuttal disclosure. There are particularly
3 four.

4 THE COURT: I am going to stop you there. Sir, I am
5 going to need a little argument from them. It is really not
6 appropriate for you to sit here while they argue, so I am
7 going to ask that you step outside for just a few minutes.

8 THE WITNESS: Certainly.

9 THE COURT: Thank you. Okay. You were about to tell
10 me the four areas.

11 MR. GILMORE: Yes. So as disclosed in our rebuttal
12 expert disclosures, Mr. Friederich intends to testify as to
13 four discreet issues. Number one, well with respect to his
14 opinions that Mr. McGovern's inputs on his valuation were
15 faulty, number one, that fuel sales as reflected in the
16 company's Profit & Loss statements should be measured in
17 gallons and not dollars. And he will testify as to the reasons
18 for that in performing the analysis associated with trends of
19 gas stations. Mr. McGovern testified he didn't do that, and he
20 didn't understand how those numbers affected the analysis of
21 the company's future performance. That is number one.

22 Number two, he will testify as to his experience of
23 what he calls the multiple associated with the company's EBITA
24 which is a factor that's built into the cap rate that

1 Mr. McGovern testified to. His only testimony in that area
2 will be as to how, in his experience, the multiple is used for
3 gas station IBITA's.

4 Number three, he will testify that in the gas
5 station industry, particularly Superpumper which is a cash
6 flow investment, receivables like the due from affiliates
7 should not be assumed collectible, and in the ordinary course
8 of business would not be acquired by any buyer in an
9 arms-length transaction.

10 And then number four, Your Honor, that
11 Mr. McGovern's failure to take into account the financial
12 ramifications of the two cents per gallon discount and the
13 expiration of that discount into 2011 and 2012 would have
14 reduced the company's bottom line by somewhere between
15 \$600,000 a year and zero, and that Mr. McGovern did not take
16 into account the fact that that discount expired. When
17 Mr. McGovern did his discounted cash flow projections into the
18 future, he did it based on historical numbers when the
19 operators of Superpumper knew that the discount would expire,
20 and that would result in essentially \$600,000 more of expenses
21 to the company's bottom line, and as a result Mr. McGovern's
22 EBITA, annual EBITA is overstated sometimes in the amount of
23 at least \$600,000 per year.

24 Those are the only opinions that Mr. Friederich

1 intends to provide to the Court today.

2 THE COURT: Counsel.

3 MS. PILATOWICZ: Each of those issues goes to what
4 Mr. Friederich believes should or should not be considered in
5 valuation, and whether they were considered or not considered
6 how they were considered and whether that was proper in the
7 contents of valuation. With those questions, whether they
8 should be applied, how they should be interpreted, how they
9 ultimately impact value are areas for expert opinion, somebody
10 who has specialized knowledge, specialized training and can
11 offer methodologies in getting to what the valuation should
12 be. These are seeking to directly request testimony on expert
13 issues for a witness who has testified that his basis, his
14 methodology is common sense. That is not appropriate for an
15 expert opinion.

16 THE COURT: With regard to the fourth area, the two
17 cent per gallon discount, it sounds to me, when you were
18 making that presentation, Mr. Gilmore, you were basically
19 arguing your position. This witness does not have any
20 expertise that is going to assist in that argument. We have
21 already heard the two cent per gallon discount and the changes
22 in it. You certainly can argue the lack of acknowledgment by
23 Mr. McGovern, and you can argue it causes his evaluation to be
24 less persuasive and the Court shouldn't rely on it. So I don't

1 see where Mr. Friederich would be an expert in that area and
2 that he would give expert testimony as to the valuation. Your
3 argument is just argument.

4 The due from affiliates issue, it sounds to me like
5 you want to call the witness to say that, in his experience of
6 running convenience stores, that if you have loans owed to the
7 convenience store from the affiliates which are really the
8 owner and close parties, that those would never be
9 collectible. And I have not heard any expertise to support
10 that opinion.

11 MR. GILMORE: I don't believe he'll say they're not
12 collectible. I think his testimony would be in buying and
13 selling over 300 gas stations himself, that when a gas station
14 operator is looking to acquire, what assets would that gas
15 station operator be interested in buying.

16 THE COURT: I don't think that goes to value. That
17 is anecdotal information. I don't think that is true rebuttal
18 evidence.

19 MR. GILMORE: Your Honor, if I may, it goes to
20 value, because Mr. McGovern, who has never done valuation of a
21 gas station in his entire career took six and a half million
22 dollars in non-operating assets and threw them into the
23 valuation.

24 THE COURT: I understand your argument, Mr. Gilmore,

1 but I am looking at whether or not this witness has some sort
2 of expertise that is going -- If you want him to talk more
3 about what he bought and sold in South Georgia and Florida
4 where he has some experience, he's told us it was in Chapter
5 11, I think it was a reorganized. He was appointed he said
6 CEO or whatever it is called in bankruptcy, it is probably
7 Trustee, and he sold them over time. There has been no
8 indication even there were loans due affiliates in his
9 particular experience. There were creditors. I mean, I don't
10 see where he has some experience doing valuation.

11 The issue of the multiple, again he used one EBITA
12 multiple when he determined value when he sold the 250
13 convenience stores that he purchased, but I don't see where
14 that multiple is different. I don't see where he can give me
15 an expert opinion that somehow affects Mr. McGovern.

16 I am going to allow him to testify about the fuel
17 sales in gallons versus dollars. I think he does have direct
18 knowledge of that, and in his sale of the convenience stores
19 that he has, obviously, he has some information on that and
20 that was very vague at least in my mind in Mr. McGovern's
21 valuation. So I want to get more information on that and hear
22 what your witness has to say on that. I think your witness has
23 given me the two cents a gallon discount information now, and
24 you can argue what you want out of that.

1 MR. GILMORE: Okay. So I understand, so I don't go
2 beyond the Court's limitation, the Court is not interested in
3 hearing his opinions as to the EBITA or the multiple
4 associated with that.

5 THE COURT: It isn't I am not interested. It is
6 very interesting. I would love to hear it, but I don't find
7 he has the expertise to give you an opinion on that.

8 MR. GILMORE: And with respect to -- with respect,
9 if I may very briefly, I am not offering him as an expert to
10 address the valuation. I say "valuation" with due from
11 affiliates. That is not why he's being offered. There is a
12 disconnect I believe between the fair market value construct
13 and the academic nature in which Plaintiff's expert has simply
14 said in fair market value inputting these operating assets.
15 And what we're really talking about under the law here is fair
16 market value assumes a buyer, assumes a real hypothetical -- I
17 mean hypothetical buyer in a real market situation.
18 Mr. McGovern could not and did not speak to that. I would be
19 offering Mr. Friederich not to testify to value but to testify
20 to what a real buyer in the gas station market is generally
21 looking for when acquiring assets. It is not necessarily, Your
22 Honor, directly related to these due from affiliates. It is a
23 bigger picture, what a hypothetical gas station buyer is
24 looking to acquire and the reasons why the hypothetical buyer,

1 what they would be looking for when searching to buy a gas
2 station. So I don't offer it as a component of value. He's
3 not going to address the Superpumper due from affiliates. I'm
4 not going to address Mr. McGovern's treatment of due from
5 affiliates. It would be simply when you are out looking for a
6 supermarket to buy on behalf of yourself or your client, what
7 type of assets are you looking to acquire and what type of
8 assets would you not acquire.

9 THE COURT: What is the relevance of what he would
10 or would not do?

11 MR. GILMORE: Because it underscores Mr. McGovern's
12 inexperience when it relates to a fair market buyer in the gas
13 station context. That no gas station buyer would ever acquire
14 more assets value of due from affiliates than they would in
15 the actual operating asset of the gas station. He's not going
16 to go there. He's going to identify or he would identify what
17 a buyer is really looking for. So I don't think it speaks to
18 value. I think it speaks directly to what a fair market buyer
19 really does and wants.

20 MS. PILATOWICZ: If I may. First to clear the
21 record, I believe Mr. McGovern did speak directly to that. As
22 it relates to this witness and whether he would or would not
23 purchase receivables, there has been nothing in his testimony
24 that suggests that what he would or would not do is what the

1 entire pool of buyers would do. He doesn't have that
2 expertise as the Court pointed out. His experience is limited
3 to a certain geographic region, and in the context of Chapter
4 11. I don't think he's presented the Court with enough
5 expertise to say what any buyer would be interested in buying
6 or interested in purchasing amounts due from affiliates.

7 MR. GILMORE: Your Honor, he's valued -- bought and
8 sold over 300 gas stations and convenience stores. If that
9 doesn't qualify somebody to give expertise testimony what a
10 buyer in the market place is looking for, I don't know who
11 could be qualified as to that.

12 THE COURT: The question really is what is the
13 relevance of what Mr. Friederich's experience is? If he comes
14 in as an expert, that creates a relevancy issue. That
15 resolves it. It doesn't create it, it resolves the relevancy
16 issue. If he is not an expert and he's not testifying as to
17 value, why is it relevant that Mr. Friederich bought and sold
18 convenience stores before? It all goes to argument, and I am
19 not going to let it in over the objection.

20 MR. GILMORE: Okay. So then he will only be
21 addressing the concept of the fuel sales measured in gallons.

22 THE COURT: And what that means.

23 MR. GILMORE: But none of his other opinions will be
24 used going forward.

1 THE COURT: You can bring Mr. Friederich back in.
2 Thank you, sir, for your patience. Mr. Gilmore, you
3 may continue.

4 MR. GILMORE: Thank you.

5 BY MR. GILMORE:

6 Q Mr. Friederich, will you turn to Exhibit 284 in that
7 binder? 284. Now on page 2 there is identification of summary
8 of various opinions that you held with respect to
9 Mr. McGovern's opinion of value. Do you agree?

10 MS. PILATOWICZ: Objection. I don't believe that
11 this exhibit has been admitted into evidence. If it has,
12 there only three pertinent opinions that Mr. Friederich is
13 permitted to testify on. I am not sure why it's being shown
14 to you.

15 MR. GILMORE: This is 284. It is my understanding
16 it has been admitted by stipulation. The only thing I am
17 going to skip is with respect to Sub(a).

18 THE COURT: 284 was admitted by stipulation.

19 MS. PILATOWICZ: My apologies. The objection is to
20 the use of the exhibit which has now been limited to simply
21 one of the opinions and showing the entire.

22 THE COURT: It is admitted. I theoretically should
23 be able to look at the whole thing.

24 MS. PILATOWICZ: Withdraw the objection, Your Honor.

1 BY MR. GILMORE:

2 Q Mr. Friederich, this document discloses that
3 Mr. Friederich has an opinion summarized as follows: One,
4 that Mr. McGovern's market value analysis is faulty. Then it
5 gives Sub(a). Do you see that?

6 A Yes.

7 Q Fuel sales should be measured in gallons and not
8 dollars?

9 A Yes.

10 Q What is your opinion as to why Mr. McGovern's market
11 value was faulty for the failure to measure fuel sales in
12 gallons instead of dollars?

13 A The industry measures performance of gasoline
14 stations, sales of gasoline stations in gallons for the simple
15 reason that the retail price of fuel has huge swings from
16 eighty dollars a barrel to forty dollars a barrel on the
17 wholesale level. In this specific case, McGovern has said
18 that the trend, the negative trend of Superpumper sales was
19 reversed in 2009 and 2010 which is important for the -- going
20 forward for the determination of what potential does a company
21 have going forward. There is the revenues in dollars which
22 actually went from fifty million dollars to sixty-four million
23 dollars while the gallons went from 22 million gallons to 21
24 million gallons. The reason was the retail price for gasoline

1 went from \$2.47 to \$2.94. The amount of gallons is an
2 indicator of the performance of the company, not the revenues
3 you get out of it. So when the company goes from 74 million
4 dollars in fuel sales to 60 million dollars in fuel sales
5 doesn't mean that the company -- or the other way around, goes
6 from 60 million to 70 million doesn't mean the company is
7 doing better, because it is the effect of the price per gallon
8 rather than improving the company's performance.

9 Q What was your understanding how Mr. McGovern had
10 analyzed the increase in revenues as it relates to this idea
11 of bottom out that is described?

12 A He strictly used -- Not once in his whole appraisal
13 I think has he used the cents per gallon or gallons as an
14 indicator of success or failure of the company.

15 Q So in what way was his report faulty as a result of
16 his failure to do that?

17 A In the sense that you -- I said that -- I pointed
18 out Superpumper was a failing company. And the reason for that
19 was that the gallons went from 29 million gallons in 2007 to
20 20 million, 22 million in 2009. While McGovern is saying the
21 trend was reversed only on the basis of, McGovern, only on the
22 basis of the revenues, the dollars and not the gallons.

23 MR. GILMORE: Thank you very much. Pass the witness.

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CROSS-EXAMINATION

BY MS. PILATOWICZ:

Q Good afternoon, Mr. Friederich?

A Good afternoon.

Q You are not aware of any publication that requires gas measurements in gallons versus dollars in the valuation of convenience or gas stores, are you, or gas stations?

A A requirement?

Q Correct.

A For analytical purposes you need the gallons rather than the dollar revenues.

Q But you are not aware of any publication that requires that, are you?

A No.

Q You are aware Mr. McGovern used the discounted cash flow method to reach his valuation of Superpumper, correct?

A Yes.

Q And in order to do that, he reviewed past performance and future projections. Are you aware of that?

A Yes.

Q You know in this case that he used the financial statements and budgets provided by Superpumper? Do you know that?

A I know that.

1 Q And those financial statements and budgets, those
2 were reporting the sales of fuel in gross profit, right?

3 A Yes. Not the sales of fuel.

4 Q I'm sorry?

5 A You said the sales of fuel in gross profits.

6 Q It reported the sales of fuel in fuel gross profit?

7 A In fuel gross profit.

8 Q Correct?

9 A Yeah.

10 Q And you believe that cents per gallon should be used
11 as the measure for determining the sale of fuel, correct?

12 A For analytical purposes, to determine the state of
13 the company you have to have the gallons and not the revenues.

14 Q But cents per gallons convert into gross profit
15 dollars, correct?

16 A Yeah, multiplying gallons by cents per gallon.

17 Q With respect to the dollars versus gallons issue,
18 you are not disputing the value McGovern came up with is
19 incorrect with respect to that, are you?

20 A The actual valuation, I think he's incorrect.

21 Q Your concern was more it didn't identify gas or it
22 didn't identify the dollars versus gallons issue in his
23 report?

24 A Yes, I think so. I think that every reasonable

1 informed buyer will look at the cents per gallon and look at
2 the trend the company is having. That will have a impact on
3 the multiple you apply to the EBITA that he arrives at. Other
4 than the fact the EBITA is wrong that he uses. Even if I'm
5 saying 2010 through 2015 what the projections are, so what if
6 I am a buyer because it's from a company that wants to sell.

7 Q I am just asking you --

8 A Yeah. That's just-- let me -- if I -- when he
9 has -- You asked me about the valuation of the company by
10 McGovern.

11 Q I am asking you with respect --

12 A One reason is the cents per gallon or the gallons,
13 when they are declining, every buyer would say it is a problem
14 company, I am not going to apply the multiple that he does. On
15 top of that, with regard to the gallons he's not applying, he
16 doesn't even look at the discounts that are given by Shell as
17 a reduction -- as an increase in cents.

18 Q Mr. Friederich, I am going to stop you. I have a
19 very pointed question. You ultimately didn't consider how
20 Mr. McGovern's opinion would change if he had applied the
21 gallons measurement rather than the dollars; isn't that true?

22 A I don't know. That is not true. I am saying it
23 affects the value of the company, because every buyer would
24 apply a lower multiple than McGovern did. If I look at a

1 failing company and I don't recognize it as a failing company
2 because I only look at revenues and not at the true indicator
3 of success of a company, then it affect the value of the
4 company.

5 Q Okay. So that is with respect to EBITA, another
6 factor but dollars --

7 A No. No. No.

8 Q Do you recall being deposed in this case?

9 A Huh?

10 Q In March of last year?

11 A Yeah.

12 MS. PILATOWICZ: Your Honor, Mr. Friederich
13 transcript has already been published.

14 THE WITNESS: It was two years ago.

15 MS. PILATOWICZ: Correct. March of 2016, correct.

16 THE COURT: Do we have his deposition?

17 MS. PILATOWICZ: He did. It was published at the
18 outset of the case.

19 THE CLERK: Here you go.

20 MS. PILATOWICZ: May I approach the witness?

21 THE COURT: You may approach.

22 BY MS. PILAOWICZ:

23 Q Mr. McGovern, I am sorry, Mr. Friederich I will ask
24 you to turn to page 59 of your deposition transcript that has

1 been handed to you. And the question during deposition was:
2 Have you considered how Mr. McGovern's opinions would change
3 if he applied the gallons measurement rather than dollars?
4 And your response was: No. It ended up to be a report that
5 relied completely on the EBITA line, you know, from -- and
6 there is a blank space -- from 2015 projected something. Do
7 you recall that?

8 A Yeah. I should say yes.

9 Q Mr. Friederich, you are the CEO of Super Mesa. Is
10 that an LLC., you said? Chief Executive Officer?

11 A Yeah, in name, yeah.

12 Q Who is the owner of that entity?

13 A Who? My son.

14 Q Super Mesa closed on a purchase of Superpumper in
15 April of 2017, correct?

16 A '16.

17 Q In '16?

18 A Yeah.

19 Q Super Mesa, that actually executed the initial
20 purchase agreement in March of 2016, correct?

21 A Could be yes.

22 Q Do you recall signing it on March 31st of 2016?

23 A I did.

24 Q That was two days after your deposition in this

1 case?

2 A Yes.

3 Q When you submitted your rebuttal points, you were
4 seeking actively to acquire Superpumper?

5 A Yes.

6 Q So when you were deposed on March 29th of 2016, you
7 were preparing to execute a Purchase and Sale Agreement for
8 Superpumper in just a couple of days, correct?

9 A Yes.

10 Q You never disclosed that during your rebuttal
11 report?

12 A I was never asked.

13 Q You never disclosed that during your deposition?

14 A I was not asked. I could have disclosed it

15 Q You're aware a fraudulent transfer can be avoided
16 from a subsequent transferee who doesn't take in good faith,
17 correct?

18 A I didn't understand your question.

19 Q Are you aware a fraudulent transfer can be avoided
20 from a subsequent transferee that doesn't take in good faith?

21 A I don't know that.

22 Q Is Super Mesa prepared, if a judgment is entered in
23 favor of my client, the Trustee of Paul Morabito bankruptcy
24 Estate to return Superpumper back to the Estate?

1 MR. GILMORE: Objection. Relevance.

2 MS. PILATOWICZ: This goes to the credibility and
3 bias of the witness in issuing his opinions.

4 THE COURT: I'm not sure I understood the question
5 when you said "prepared."

6 MS. PILATOWICZ: Sure.

7 MR. GILMORE: It is a veiled threat is what it is.
8 That is why I am objecting.

9 MS. PILATOWICZ: Your Honor, I will rephrase the
10 question.

11 THE COURT: Okay.

12 BY MS. PILATOWICZ:

13 Q Let me explain to you Mr. Friederich, under Nevada
14 law a subsequent transferee of a fraudulent transfer is
15 entitled to recover from a subsequent transferee that doesn't
16 take in good faith. Do you know that Superpumper is the
17 subject of a fraudulent transfer case?

18 A No.

19 Q You were identified as an expert in this case, and
20 you are not aware this is the subject of a fraudulent
21 transfer?

22 A I did not know the fact it was a fraudulent -- part
23 of the lawsuit is fraudulent transfer.

24 Q Nobody from Superpumper disclosed that to you when

1 you were purchasing the entity?

2 A No.

3 Q Not on March 21st, two days after you were deposed?

4 A No.

5 MS. PILATOWICZ: Your Honor, if I may.

6 THE COURT: You may.

7 MS. PILATOWICZ: Your Honor, I have nothing further.

8 THE COURT: Redirect.

9

10 REDIRECT EXAMINATION

11 BY MR. GILMORE:

12 Q Mr. Friederich, today do you know what the claims
13 against the various parties are in this case that bring you
14 here today?

15 A No.

16 Q Have you endeavored to find out what those are?

17 A No.

18 Q Were you involved in negotiating the transaction for
19 the Super Mesa purchase of Superpumper?

20 A Yes.

21 Q And how did you arrive at the ultimate purchase
22 price that Super Mesa was willing to pay to acquire the assets
23 of Superpumper?

24 A There was negotiations going on before with a third

1 party, and they developed a scenario that could have worked,
2 and I was at the time representing Superpumper. And their
3 value was basically the value that I accepted. What they
4 offered to buy it was what I-- to buy Superpumper for was the
5 value I accepted as well. That offered as well.

6 Q Finish, please. I interrupted you before you
7 finished.

8 A That is exactly the price they offered.

9 Q Who was the third party?

10 A It was John Knight.

11 Q And did that third party provide an offer to
12 Superpumper?

13 A I think there was a letter of intent. I don't know
14 if it was signed.

15 Q And do you have any personal knowledge why that
16 transaction did not close?

17 A No, I don't.

18 Q And so is it your testimony the Super Mesa's offer
19 mirrored the initial offer that had been made?

20 A Very close.

21 MR. GILMORE: Nothing further, Your Honor.

22 MS. PILATOWICZ: Nothing further, Your Honor.

23 THE COURT: Okay. Thank you very much. You may
24 step down. You're excused.

1 (Witness excused.)
2 MS. GILMORE: He can stay or he can go. Your Honor,
3 the defendants' next witness is Michelle Salazar.
4 THE COURT: Okay. You may proceed.
5
6 MICHELLE SALAZAR
7 called as a witness, having been first duly sworn,
8 took the witness stand and testified as follows:
9
10 DIRECT EXAMINATION
11 BY MR. GILMORE:
12 Q Mrs. Salazar, good afternoon.
13 A Hello.
14 Q Please introduce yourself to the Court by stating
15 your full name and spell your last name for the record.
16 A Michelle Salazar. S-A-L-A-Z-A-R.
17 Q Ms. Salazar, how are you currently employed?
18 A I am the owner and President of Litigation and
19 Valuation Consultants.
20 Q What is Litigation and Valuation Consultants'
21 primary business?
22 A We specialize solely in business valuations,
23 forensic accounting, computation of damages, litigation
24 support.

1 Q Will you please describe for the Court your
2 educational background?

3 A Yes. In 2001 I obtained my Batchelor of Science in
4 business administration with a major in accounting. In 2004 I
5 earned my Certified Public Accountant credential. In 2005 I
6 earned my Certified Valuation Analyst credential. In 2006, I
7 became a certified fraud examiner. In 2007 I was accredited
8 in business valuation. In 2017 I obtained by Certified Divorce
9 Financial Analyst credential.

10 Q Do you have any post secondary education or
11 certificates that you have not already described?

12 A No.

13 Q Will you please give us the benefit of your
14 professional background in terms of your employment?

15 A Yes. I started with a local firm known as Muckel
16 Anderson CPA's in August of 1999, and I worked there under
17 Wally Behrenz was my mentor until approximately May of 2005.
18 In May of 2005 Wally Behrenz started a firm known as Meridian
19 Business Advisors. I gave my notice to leave the firm and go
20 work with Wally. They did not allow me to do so because I had
21 a non-solicitation agreement. So for a period of six months I
22 worked for International Game Technology in the audit
23 department. And in December 2005 I did go and work for Wally
24 Behrenz at Meridian Business Advisors. I stayed until Wally

1 retired in July 2010. In July 2010 I started my firm which is
2 Litigation and Valuation Consultants where now Wally Behrenz
3 serves as a consultant.

4 Q What were your job duties for Muckel Anderson?

5 A I was responsible for -- Well, I did business
6 valuation, forensic accounting and litigation support. But I
7 additionally assisted in the preparation of audited financial
8 statements, reviewed financial statements. I prepared income
9 tax returns. I basically did any assignment that the
10 shareholders asked me to do.

11 Q What were your job duties at IGT?

12 A At IGT I worked in the internal audit department, so
13 I was responsible for following the rules of Sarbane Oxley to
14 guide others in the organization and following these
15 requirements.

16 Q What were your job duties at Meridian?

17 A At Meridian I was a director, and I was responsible
18 for preparing the analysis of valuations, forensic accounting
19 assignments. I did some testifying and working under Wally
20 Behrenz.

21 Q And what are your daily job duties at Litigation and
22 Valuation Consultants?

23 A The same thing except I am the sole person in our
24 firm who testifies. Again, we only do litigation support,

1 economic loss, damage calculations.

2 Q Have you ever been disclosed as an expert witness in
3 pending litigation?

4 A Yes.

5 Q Or active litigation matters?

6 A Yes, sir.

7 Q How many instances?

8 A Are you asking how many times I testified or have
9 been disclosed?

10 Q Just been disclosed?

11 A I don't know.

12 Q Can you give us an estimate?

13 A I don't have an estimate.

14 Q More or less than 200?

15 A Probably between 100 and 150.

16 Q And those designations, how many times have you
17 testified in court or in a deposition?

18 A I have testified 47 times.

19 Q As a designated expert?

20 A Yes.

21 Q And were any of those instances not involving your
22 expertise in forensics or valuation?

23 A No.

24 Q Have you prepared any writings or works that have

1 been published?

2 A I have.

3 Q And are those identified in the CV that was attached
4 to your report?

5 A Yes. Since then, I published at least one
6 additional article, but I have a revised CV or a current CV.

7 Q How many times have you testified in trial in the
8 Second Judicial District?

9 A I would have to reference my schedule of testimony,
10 but several times. I have testified in a total of 27 trials
11 throughout the various judicial courts.

12 Q Were any of those instances related to your
13 expertise in anything other than business valuation or
14 forensics?

15 A I have testified in Bankruptcy Court. I have
16 testified regarding business valuation, shareholder disputes.
17 I have testified in various divorce cases involving various
18 aspects of business valuation and forensic accounting.

19 Q What was the scope of your expertise in each of
20 those instances?

21 A Each case is different, but sometimes I am retained
22 by the Plaintiff and sometimes I am retained by the Defendant,
23 and they provide me with a scope of work at the onset of my
24 assignment.

1 MR. GILMORE: Your Honor, I will offer Ms. Salazar
2 as qualified to give expert opinion testimony related to the
3 subject matters contained in her disclosure.

4 THE COURT: Any objection?

5 MS. TURNER: Your Honor, so long as it is within the
6 scope of the reports that have been provided, I have no
7 objection.

8 THE COURT: Okay.

9 BY MR. GILMORE:

10 Q Directing your attention to Exhibit 283 which would
11 be in the binder in front of you. This exhibit has been
12 admitted into evidence.

13 A Okay.

14 Q Do you recognize this document?

15 A I do.

16 Q And who prepared this?

17 A I prepared this.

18 Q Please turn to page 16 of this report. When the
19 Defendants retained you for this engagement, what was the
20 scope of your work?

21 A The scope of my work as outlined on page 16 of my
22 report was to evaluate the August 31st, 2010 valuation report
23 prepared by Cavalier and determine whether he applied
24 reasonable and standard procedures.

1 Q What is the summary of your conclusion in that
2 regard?

3 A I concluded that Cavalier applied standard and
4 customary procedures except for I don't agree with the
5 capitalization rate that he utilized.

6 Q Okay. Were you asked to -- What other areas were
7 you asked to opine?

8 A Secondly, I was asked to look at information
9 subsequent to Cavalier's valuation date of August 31, 2010 and
10 determine whether the actual financial result as of that date
11 contradicted or supported Cavalier's opinion.

12 Q And what is the summary of your conclusion?

13 A I looked at the financial information up to December
14 31, 2014 and I determined that Cavalier's, using Cavalier's
15 methodology, his valuation conclusion would have decreased if
16 he had used information through August 31, 2014.

17 Q When you say "decreased"?

18 A His final opinion of value would have been less than
19 what it was in August of 2010.

20 Q And anything else that you were asked to review and
21 opine?

22 A Thirdly, I was asked to evaluate the impact on the
23 valuation of the 8.9 million dollar amount due from
24 affiliates.

1 Q And what was your conclusion in that regard?

2 A I concluded that if -- I did an analysis if it is
3 included and if it is not included. But it is my
4 understanding that there was not a lot of information. There
5 were no Promissory Notes and Cavalier and McGovern generally
6 just accepted, without doing any due diligence of those due
7 from affiliates.

8 Q In summary, did you do any investigation?

9 A Yes.

10 Q What did you conclude?

11 A I concluded that there were no Promissory Notes as
12 of the date of Cavalier's valuation.

13 Q How did that impact your ultimate opinion?

14 A In my opinion, I would have, if I were asked to do
15 the valuation, I would have most likely adjusted the amount
16 due affiliates off the balance sheet because it wasn't deemed
17 to be collectible. There was no documentation to support those
18 amounts

19 Q Were you also asked to perform any review or
20 rebuttal of Mr. McGovern's report?

21 A Yes.

22 Q We'll get to that momentarily. In performing your
23 service, what documents did you review?

24 A If you look at pages 10 through 12 of my report, you

1 will see the documents I reviewed in preparing this expert
2 report. And then the rebuttal report I prepared to
3 Mr. McGovern was dated February of 2016, and I provided Bate
4 numbers of reference in the documents I referred to in that
5 report. Additionally, I have reviewed the Internal Revenue
6 Service Job Aid regarding discount regarding lack of
7 marketability. I reviewed Mr. McGovern's deposition
8 transcript, and I have since reviewed his report in preparing
9 my rebuttal.

10 Q In performing your work, whether it be your initial
11 opinions or rebuttal opinions, were there any documents you
12 were not able to review that you considered critical to
13 arriving at an opinion?

14 A I did ask to speak with Mr. Cavalier about his
15 valuation conclusions, because I wanted to understand how much
16 due diligence he did in regard to the due from affiliates.
17 Also his adjustment on other certain assets on his balance
18 sheets, and I wasn't able to obtain that information.

19 Q Did you determine it was necessary to obtain that
20 information in order to render your ultimate opinion?

21 A I was still able to render my ultimate opinions. I
22 just had a limiting condition regarding that ability.

23 Q Did you review, in preparation of your opinions, the
24 audited financial statements of Superpumper?

1 A Yes, I did.

2 Q And in your review of those financial statements,
3 did you determine from your own review there appeared to be
4 any misrepresentations by Superpumper's management that gave
5 you concern?

6 A I reviewed the audited financial statements. The
7 only thing I noted was that they did identify the lack of
8 valuation for the amounts due from affiliates. Other than
9 that, I didn't see anything that caused me concern.

10 Q In the opinions that are delivered in your initial
11 report and in your rebuttal report, do you include the
12 opinions of others or are the opinions exclusively your own?

13 A The opinions are exclusively my own.

14 Q Did you endeavor or seek to obtain the opinions of
15 my clients as to what their personal opinions were as to the
16 matters that you were investigating?

17 A I didn't.

18 Q What do you understand the allegations in this case
19 to be, generally?

20 A Generally, my understanding is that the allegation
21 is Mr. Cavalier understated the valuation of Superpumper and
22 there was a fraudulent transfer of the Superpumper asset.

23 Q Do you know anymore specifics related to the
24 fraudulent transfer allegation?

1 A I don't.

2 Q Can you state generally sort of the big picture
3 thirty-five thousand foot what goes into a business valuation?

4 A In every business valuation assignment, we have to
5 determine an appropriate standard of value. We have to
6 determine an appropriate premise of value. Then we also must
7 consider the three approaches to valuation as well as any
8 discounts that may be applied.

9 Q Now would you please turn to the Cavalier report
10 which is admitted into evidence as Exhibit 235?

11 A Okay.

12 Q Is that a document you have seen before?

13 A Yes, it is.

14 THE COURT: We are going to stop a second.

15 MS. TURNER: This is not in evidence.

16 MR. GILMORE: It is not?

17 MS. TURNER: No.

18 THE COURT: We don't show it in either.

19 MS. TURNER: I will stipulate to it, Your Honor.

20 THE COURT: Okay. Exhibit 235 is admitted.

21 (Exhibit 235 admitted in evidence.)

22 BY MR. GILMORE:

23 Q Ms. Salazar, among the documents you reviewed in
24 anticipation of preparing your opinions or in testifying

1 today, did you review the deposition of Spencer Cavalier?

2 A I did.

3 Q Now I will direct your attention to Exhibit 235
4 which is now admitted in evidence. Do you recognize this
5 document?

6 A Yes, I do.

7 Q Do you recognize this to be Mr. Cavalier's valuation
8 of 100 percent of the common equity of Superpumper on a
9 controlling marketable basis? Do you see that?

10 A I do see that.

11 Q Do you have an opinion as to what this phrase refers
12 to, "the common equity in Superpumper on a controlling
13 marketable basis?"

14 A So this tells me Cavalier is valuing the equity and
15 not the assets of Superpumper. A hundred percent interest on
16 a controlling basis which means he doesn't believe a lack of
17 control or minority interest discount applies. And on a
18 marketable basis, it means that's easily converted into a
19 liquid asset.

20 Q These are terms you are familiar with based on your
21 experience, education and training?

22 A Yes.

23 Q If you would turn to the letter dated October 13,
24 2010. Mr. Cavalier gives a citation to his understanding of

1 fair market value. Do you see that?

2 A Yes.

3 Q Do you agree with his characterization of the
4 definition of fair market value?

5 A Yes.

6 Q Two sentences or less, can you describe what that
7 is?

8 A The fair market value standard assumes there is a
9 hypothetical willing buyer and a hypothetical willing seller,
10 neither under any compulsion to buy or sell both with
11 knowledge of the underlying facts.

12 Q Your understanding of the term is consistent with
13 Mr. Cavalier's?

14 A It is.

15 Q Now in preparation of your opinion, in reviewing
16 documents in anticipation of delivering your opinions, did you
17 have a chance to review certain allegations that were
18 contained in the First Amended Complaint?

19 A Yes.

20 Q Now I would like to show you what has been
21 highlighted in the First Amended Complaint. This is paragraph
22 30 as it relates to Superpumper. There is an allegation that I
23 would like you to accept as true for purposes of this line of
24 questioning. That Paul Morabito's stock basis in

1 Superpumper's 2009 tax return was \$5,500,000 and change. Do
2 you see that?

3 A Yes.

4 Q Then there is an allegation that on September 30,
5 2010, despite the debtor, who is Paul Morabito, 2009, 5.5
6 million dollars and change stock basis. The debtor sold his
7 interest in Superpumper to Snowshoe Petroleum for
8 approximately 2.5 million dollars. Do you see that?

9 A I do, yes.

10 Q In your training, education and experience, what is
11 the relationship between stock basis and fair market value as
12 you just defined it?

13 A Basically, stock basis and valuation are comparing
14 apples to oranges. Stock basis is a concept different from
15 valuation, and it is only used to calculate the gain or loss
16 on the sale of an asset in the future.

17 Q Now to the bottom of that first or second page of
18 Exhibit 235, Mr. Cavalier identifies or explains valuation has
19 the following qualities, and then he lists four different
20 factors. Are you familiar with those factors?

21 A Yes.

22 Q Do you agree or disagree with his assessment a
23 business valuation has these following qualities?

24 A A business valuation does have those qualities, yes.

1 Q On the following page he opines that: "The
2 conclusion of value given is based on information provided in
3 part by the management of Superpumper." Do you understand --
4 What is your understanding as to what he means by that?

5 MS. TURNER: Objection. Calls for speculation?

6 THE COURT: Sustained.

7 BY MR. GILMORE:

8 Q In your experience in performing business
9 valuations, what reliance do you give to the representations
10 of management?

11 MS. TURNER: Objection. Calls for speculation and it
12 is irrelevant with respect to what Mr. Cavalier --

13 THE COURT: Are you asking what she gives?

14 MR. GILMORE: Correct. I moved on from Cavalier. I
15 asked in her experience, education and training what role
16 representations of management play in a business valuation.

17 THE COURT: The objection is relevance?

18 MS. TURNER: No.

19 THE COURT: Okay.

20 MS. TURNER: I have no objection, go ahead and
21 answer.

22 THE WITNESS: I often times rely upon information
23 that is provided to me by management.

24 ///

1 BY MR. GILMORE:

2 Q Why is that?

3 A Because that is generally how often times we obtain
4 financial information such as a balance sheet, Profit & Loss
5 statement, information regarding the background of the
6 company, competition, etcetera.

7 Q Now Mr. Cavalier makes reference to standard
8 valuation approaches and methodologies. In your education,
9 training and experience do you have familiarity with valuation
10 approaches and methodologies?

11 A I do, yes.

12 Q Can you give us a high point on what approach in
13 methodologies you might use in your business valuing, in your
14 education, training and experience in valuing a business?

15 MS. TURNER: Objection. Not relevant. This witness
16 has not provided a valuation. If she wants to talk about
17 Mr. Cavalier's and whether his points were appropriate, that
18 is one thing. What she does is not.

19 THE COURT: Sustained.

20 BY MR. GILMORE:

21 Q Well then let's go straight to Mr. McGovern -- I
22 mean Mr. Cavalier. If you would turn to page 2 of his report.
23 The page number is at the bottom right-hand corner. Let me
24 know when you're there.

1 A I'm there.

2 Q Mr. Cavalier opines that there are three approaches,
3 and several methods are available for valuing closely held
4 corporate interests. And he identifies these various
5 approaches. One, the income approach. Two, market approach.
6 Three cost approach. Are these terms with which you are
7 familiar?

8 A Yes, they are.

9 Q Could you explain briefly your understanding as to
10 the income approach?

11 A Sure. The income approach, there is a couple
12 different methodologies under the income approach. One
13 approach is referred to as the single period capitalization
14 method. That is a valuation method based upon the historical
15 figures of the company. So you look at the historical profits
16 and losses of the company, then you apply a rate of return to
17 the historical cash flow to derive a value under the income
18 approach. Under the income approach, you can also use a
19 discounted cash flow model. And the discounted cash flow model
20 looks at the future forecasts and projections instead of the
21 historical data of the company. And using these forecasts or
22 projections that are either prepared by management and/or the
23 valuation expert, you apply a discount rate to calculate the
24 present value of the future expected benefits.

1 Q What is the cost approach?

2 A The cost approach is essentially what is referred to
3 as an asset approach. What you do is take the balance sheet
4 as of the valuation date. So in Cavalier's valuation, it would
5 be as of August 31, 2010 and go line by line to each asset and
6 taking each asset and say what is the fair market value of
7 those assets, and you adjust the cost basis from the balance
8 sheet to the fair market value of each asset and each
9 liability on that balance sheet.

10 Q What is the market approach?

11 A The market approach is looking at guideline company
12 transactions that have happened in the same industry. What
13 other convenience stores, gas stations sold for in this
14 industry.

15 Q Now can you identify in Mr. Cavalier's report what
16 approach or methodologies he used in determining ultimate
17 conclusion of value?

18 A Sure. On Exhibit 4 of 14 of his report he utilized
19 two income approaches, the market approach and a cost
20 approach, and he applied a weighting of fifty percent to the
21 income approach using the single period cash flow method. He
22 applied 10 percent weight to the income approach using the
23 historical cash flow method; ten percent weight to the
24 guideline public market approach; and he applied thirty

1 percent weight factor to the cost approach also known as the
2 asset approach.

3 Q Explain in what circumstances someone in your
4 profession might apply a weighted method as opposed to simply
5 relying on one of these approaches?

6 A I don't use a weighted method when I am arriving at
7 a final value conclusion. Some experts in our field do use a
8 weighting. That is in my experience. In talking to other
9 professionals, they use a waiting factor, because they think
10 more than one method explains the true value of the company.

11 Q And do you take issue with, according standards and
12 customary practices in your business, do you take issue with
13 the way in which Mr. Cavalier weighted these approaches?

14 A I wouldn't do it this way, but it is a common method
15 for valuation.

16 Q Now you explained earlier that you took issue with
17 Mr. Cavalier's capitalization rate that he applied to his
18 discounted cash flow approach; is that true?

19 A And Mr. Cavalier didn't use a discounted cash flow
20 method. He used the historical income approach.

21 Q I misspoke. You made reference to a cap rate.

22 A Correct.

23 Q Explain what cap rate is?

24 A A capitalization rate is a rate of return an

1 investor would expect to receive given the specific risks of
2 that investment.

3 Q How is a cap rate determined in your profession?

4 A In my profession, a capitalization rate is derived
5 using empirical data and subjective data. Empirical data
6 capitalization rate is used in my field or in my company, we
7 use a publication referred to as Duff and Phelps. And Duff and
8 Phelps is a guide that provides risk premiums that can be
9 associated to a small closely held company like Superpumper.

10 Q Can you identify for us in Mr. Cavalier's report
11 where he makes reference to a cap rate?

12 A In exhibit, it is difficult to read, but I can see
13 on Exhibit 8 of 14 he derives his capitalization rate of 14.26
14 percent.

15 Q Okay. Looking at Exhibit 8 in the schedules attached
16 to his report, tell us what we are looking at here?

17 A We're looking at the-- This is Mr. Cavalier's,
18 essentially his work papers or support for how he arrived at
19 his capitalization rate of 14.26 percent. Essentially, if you
20 start at the top, he starts with a 20 year treasury bill rate,
21 then he applied the risk premiums using -- it is not clear
22 what study he used -- then he applied specific company risk
23 factor of 11 percent to derive at his total capitalization
24 rate of 14, he rounded it to 14.4 percent.

1 Q How is this capitalization rate of 14.4 percent, how
2 is that utilized in determining the ultimate conclusion of
3 value?

4 A Essentially, what he did, he takes the cash flow of
5 Superpumper. He divides it by 14.4 percent to arrive at the
6 value under the income approach. So it has a direct impact on
7 his final valuation conclusion.

8 Q And did you endeavor to determine what you believed
9 to be an appropriate cap rate for Superpumper as of September,
10 October of 2010?

11 A I did.

12 Q How did you do that?

13 A Well, first I contacted Mr. Cavalier to try to
14 figure out what study he used and how he really -- why he
15 believed a capitalization rate of 14.4 percent was relevant. I
16 didn't get any information from him on that. So what I did, I
17 did my own analysis using the Duff and Phelps premium study.
18 I started with the risk free rate which is the 20 year
19 treasury rate. I applied the risk premium from the Duff and
20 Phelps report and a specific company risk factor to derive at
21 an adjusted capitalization rate which I feel is more
22 appropriate.

23 Q What do you mean specific company risk factor?

24 A One of the things that is important when you're

1 looking at a capitalization rate -- and it is a subjective
2 factor. This is the subjective part of a capitalization rate,
3 how much risk should be awarded to this company because of
4 things like geographic location, depth of management, ability
5 to commit, regulatory restrictions. There are a lot of
6 factors that aren't taken into consideration when you look at
7 the empirical data. If you don't apply an additional risk
8 premium for that, you are not really truly accounting for the
9 risk of a company like Superpumper.

10 Q What type of Superpumper specific risk did you
11 factor in in concluding your cap rate?

12 A I wasn't really asked to do a valuation. So what I
13 did, I found an article by Linda Trugman, a well-respected
14 author in the business valuation industry. She gave a range
15 of specific company risk, and I used a number within the
16 range. It was five percent.

17 Q Any other factors that you considered in determining
18 what you believed to be the appropriate capitalization rate?

19 A No.

20 Q Now in your report, can you direct us to where --
21 how your calculations of your capitalization rate impacted
22 your ultimate conclusion of value?

23 MS. TURNER: Objection. There is no ultimate
24 conclusion of value from this witness.

1 MR. GILMORE: Your ultimate opinion.

2 THE COURT: Did you want to rephrase your question?

3 MR. GILMORE: I will, yes.

4 BY MR. GILMORE:

5 Q Can you direct us to the page or schedule or exhibit
6 in your report which addresses how the capitalization rate
7 informed your ultimate opinion?

8 A Yes. If you turn to Exhibit 283, page 18, Exhibit
9 2, and it looks like Cavalier's final capitalization rate was
10 13.25 percent, so that would have been on the previous
11 schedule that we looked at. If I applied a capitalization rate
12 of 22.9 percent, the valuation, assuming everything else stays
13 the same, I made no other changes to Cavalier's opinions, the
14 value went from 8.3 million to 3.6 million rounded. That is
15 shown on Exhibit 2 on page 18 of my report.

16 Q So is your opinion, based on the different
17 capitalization rate you applied, do you have an opinion as to
18 whether Mr. Cavalier's total final opinion of value was
19 overstated or understated?

20 A It is my opinion it was overstated merely because
21 his capitalization rate is too low.

22 Q Are there any other factors associated with your
23 judgment as to the appropriate capitalization rate you haven't
24 already discussed?

1 A The other thing I did look at is it's common for a
2 business expert to look at the rule of thumb book. Often
3 times when people are buying and selling a business, they talk
4 in terms of a multiple. A multiple of EBITA or a multiple of
5 gross sales. I did look at the rule of thumb for convenience
6 stores/gas stations, and it shows a multiple of four and a
7 half to five and a half percent -- or a multiple of four and a
8 half to five and a half is a reasonable rate. So if you look
9 at a capitalization rate of 13.25 percent, if you take 1
10 divided by 13 percent, that gives you a multiple of 7. If you
11 take 1 divided by 22.9 percent, it gives you a multiple of
12 four point -- somewhere in the range of four.

13 Q Why is that important?

14 MS. TURNER: Your Honor, I am going to object to this
15 testimony, move to strike as this was not, this rule of thumb
16 was not part of the witness' report. She's gone beyond her
17 report criticizing Mr. Cavalier.

18 THE COURT: Counsel, do you agree she's gone beyond
19 her report?

20 MR. GILMORE: I can rehabilitate with one question.
21 If she can't answer, then I agree she shouldn't be testifying
22 to it.

23 THE COURT: Okay.

24 ///

1 BY MR. GILMORE:

2 Q Prior to reaching you ultimate opinions in this
3 case, did you review any documents with respect to the gas
4 station multiples?

5 MS. TURNER: Your Honor, again, unless it was in her
6 report on what gas station multiples may be appropriate or
7 not, this is going well beyond the report and I move to
8 strike.

9 THE COURT: Can you show me where in the report it
10 is?

11 MR. GILMORE: I'm not sure it is specifically
12 identified in the report. Is that true?

13 THE WITNESS: It is not.

14 THE COURT: Motion granted. The testimony is
15 stricken.

16 BY MR. GILMORE:

17 Q Anything else that went into factoring your ultimate
18 opinion as to the appropriate cap rate that you have not
19 already discussed with the Court?

20 A No.

21 Q Thank you. Now let's go to back to page 16 of your
22 report related to your scope of work. So with respect to
23 question number one, what was your conclusion?

24 A My conclusion is, if Mr. Cavalier had provided a

1 reasonable capitalization rate, his valuation conclusion would
2 have been 3.6 million instead of 8.3 million. So we have to
3 look at three different approaches. We haven't actually gotten
4 to the final conclusion. That is only one income approach.
5 We have to go back to page 18, Exhibit 3 to talk about the
6 second part of his conclusion. So Exhibit 3, essentially the
7 same analysis where we start with the free cash flow as
8 calculated by Mr. Cavalier. He applied a capitalization rate
9 of 13.399 percent, and my adjusted capitalization of 22.9
10 percent results in a difference of 3.6 million dollars. So
11 his final value under that approach only was 5.7 million. My
12 final conclusion just making a change to the capital rate is
13 2.2 million.

14 Q Then Exhibit 2 and Exhibit 3 are factored into
15 Mr. McGovern's ultimate conclusion of value in what way?

16 A Mr. Cavalier's ultimate conclusion, if you look at
17 Exhibit 4 on page 19, you will see -- I think it would be
18 helpful to compare -- if you go to page 17 of my report, this
19 is Mr. Cavalier's final conclusion of value as stated in his
20 report of \$5,484,000, and you will see under the cost approach
21 he has a value of \$6,956,000. Under the market approach he
22 has a value of \$6,713,000.

23 The income approach, which is the first method we
24 just talked about, value of \$8,331,000 and then the last

1 approach, the income approach as well, but a value of
2 \$5,785,000. So taking Exhibit 1 and fast forwarding to
3 Exhibit 4 on page 19, you will see that the cost approach is
4 exactly the same as Cavalier's final conclusion. The same with
5 the market approach, exactly the same figure and then the two
6 income approaches have been revised to the adjusted figures
7 using the revised capitalization rate.

8 Q Were you utilizing his same weight in terms of how
9 much weight to give to each approach?

10 A I did. So the final conclusion is if he had used an
11 appropriate capitalization rate using his methodology and his
12 same weighting, his value would not have been \$6,484,000 as
13 his report shows. It would have been \$4,196,000 as shown on
14 Exhibit 4 page 19.

15 Q So with respect to those schedules, did you reach an
16 opinion as to whether or not Mr. Cavalier had overstated or
17 understated the value of Superpumper's equity?

18 A It's my opinion, again, only adjusting the
19 capitalization rate, that his value is overstated by
20 \$2,228,000 that is shown in Exhibit 5 on page 19.

21 Q Now please turn to page 16 of your report as to
22 question number two. What were you asked to do with respect to
23 two?

24 A I was asked to look at information subsequent to

1 Cavalier's valuation date to determine whether the actual
2 financial results supported or contradicted Cavalier's opinion
3 of value as of August 31st, 2010.

4 Q What did you do to conduct that analysis?

5 A Essentially, what I did is I took the audited and
6 reviewed financial statements, and I applied Cavalier's same
7 methodology with the same weighting approach to derive at what
8 his opinion would have been as of December 31, 2014.

9 Q Considering Superpumper's actual financial
10 performance that postdated the valuation date?

11 A Correct.

12 Q And what did you conclude?

13 A I made two conclusions in this section of my report.
14 I included the amount due affiliates, and I arrived at a final
15 value using Cavalier's methodology as of December 31, 2014 of
16 \$3,988,000. That is shown on page 20 of the first exhibit.

17 Q What is that figure intended to reflect?

18 A That figure is intended to reflect the -- if I had
19 done the analysis just as Cavalier had, what would, using
20 subsequent information, so financial information through
21 December 31, 2014, what would his conclusion of value have
22 been.

23 Q And in the top schedule or exhibit did you apply the
24 due from?

1 A The first schedule includes the amount due from
2 affiliates.

3 Q And what about the second schedule, what is that
4 reflecting?

5 A The second schedule is the exact same analysis
6 except for I removed an amount due from affiliates.

7 Q Without due from affiliates, what was your opinion
8 as to the value?

9 A If I remove the amount due from affiliates, the
10 asset approach resulted in a negative value, meaning the
11 liabilities exceeded the assets. And so if I used his same
12 weighting, then the market approach and the income approach
13 would have been the only applicable methods.

14 Q Explain the issue associated with the asset approach
15 after the fact. Assets as compared to the company's
16 liabilities?

17 A Are you asking about the valuation process of a
18 balance sheet or the asset approach?

19 Q I am talking about in the adjusted balance sheet
20 method, there is no dollar figure associated with that line
21 item, right.

22 A Correct.

23 Q Explain why.

24 A Essentially what I did, I took the balance sheet of

1 Superpumper as of December 31, 2014, and I removed the due
2 from affiliates balance off of the balance sheet so it is no
3 longer shown as an asset. And then using the remaining assets
4 minus the liabilities, there was a deficit. There was no
5 equity in the company.

6 Q Why would you have made that adjustment to the
7 balance sheet?

8 A I figured the trier of fact would want to understand
9 both concepts because it was a legal issue in this case.

10 Q So with respect to that second question you were
11 asked to evaluate, what was your ultimate conclusion?

12 A That regardless of whether you leave on the amount
13 due from affiliates, or if you take it off, the value,
14 Cavalier's value would have decreased from his valuation
15 conclusion in 2010 as of 2014.

16 Q Thank you. And then what was the third opinion you
17 were asked to review and opine on for your scope of work for
18 this project?

19 A I was asked to discuss the impact on the final
20 valuation of the 8.9 million dollars due from affiliates.

21 Q What are due from affiliates?

22 A Due from affiliates in my opinion is essentially
23 somebody who has close association either formally or
24 informally with another person or an organization.

1 Q And can you tell from looking at Mr. Cavalier's
2 report how he treated the due from affiliates on his adjusted
3 balance sheet?

4 A Mr. Cavalier removed the amounts due from affiliates
5 from the balance sheet in arriving at his final conclusion.

6 Q If you turn to his report which is Exhibit 235, can
7 you show us what you're referring to.

8 A If you turn to Exhibit 235, within there there is
9 Exhibit 7 of 14. And about halfway down the page you will see
10 under other assets there is an amount due from affiliates of
11 \$8,925,000. So you will see in the second column he removed
12 the entire balance due from affiliates and the adjusted
13 balance sheet shows zero for that asset.

14 Q What does that mean to the reader of this adjusted
15 balance sheet? What does that adjustment mean?

16 A If I were making that adjustment, what I would be
17 telling the reader of the valuation report would be I don't
18 believe that those assets have any value. That there is no
19 collectability of those notes receivable.

20 Q Now did Mr. Cavalier give any written explanation as
21 to why he made that adjustment?

22 A He did not.

23 Q Were you asked to give an opinion as to whether or
24 not his treatment of the due from affiliates by adjusting it

1 off the company's balance sheet was appropriate or
2 inappropriate?

3 A I was asked to investigate what sort of
4 documentation existed for the amounts due from affiliates. I
5 don't know I was asked to give my opinion, but I did look at
6 the underlying documentation which didn't exist as of the
7 valuation date of Cavalier.

8 Q Are there standards that govern adjustments of this
9 type in your business?

10 A Yes.

11 Q What might they be?

12 A Essentially, what we are required to do under the
13 asset approach, we're required to adjust each of the assets to
14 fair market value. And when you're valuing a Promissory Note,
15 you really have to look at the details of the written
16 Promissory Note. So, one, is there a written Promissory Note.
17 Two, what is the interest rate, and is it consistent with the
18 market interest rate. Three, you have to look at whether
19 there is any collateral, and then whether the debtor -- what
20 the debtor's financial position is. So what is the likelihood
21 that note is going to be repaid.

22 Q Now have you reviewed Mr. James McGovern's report
23 and how he gives treatment to the due from affiliates?

24 A Yes.

1 Q What is your understanding how Mr. McGovern treats
2 these due from affiliates?

3 A Mr. McGovern essentially relies upon the audited
4 financial statements. What he does, he says I'm not going to
5 rely upon how the auditors have recorded the due from
6 affiliates as an asset. But instead, I'm going to reclassify
7 the amount due from affiliates to a current asset.

8 Q I would like to show you from Mr. McGovern's report
9 on Exhibit 91, he says: Based on notes to the audited
10 financial statements and for purposes of this valuation, I
11 have assumed that the advances to affiliates bona fide loans
12 and are collectible. Did you understand that was his position?

13 A Yes.

14 Q How did that -- What's your understanding as to how
15 that impacted his final conclusion of value.

16 A That assumption impacted his final conclusion of
17 value by 6.5 million dollars.

18 Q In which way, overstated?

19 A It increased his value by 6.5 million dollars.

20 Q Can you tell from Mr. Cavalier's report whether
21 Mr. Cavalier did the same thing?

22 A Mr. Cavalier did not do the same thing.

23 Q We can see that from the balance sheet?

24 A Correct.

1 Q Do you have an opinion as to whether or not
2 Mr. McGovern's treatment of due from affiliates is appropriate
3 based on the standards as you understand them to be?

4 A If I were provided with audited financial
5 statements, I would place reliance on those auditors in their
6 categorization of the asset. So I have never had an instance
7 where I have had an auditor who classified an asset as an
8 other asset, and I move it and recategorized it to a current
9 asset.

10 Q Explain the distinction between current asset and
11 non-current asset?

12 A Well, in adjusting a balance sheet, removing or
13 reclassifying an asset from other assets to a current asset,
14 essentially what you're doing is showing that the company has
15 working capital. So working capital is current assets minus
16 current liabilities. So how much liquid assets does the
17 company have to pay its current debts. So what Mr. McGovern
18 is essentially saying is the company is more liquid because of
19 the amounts due from affiliates, and that just doesn't make
20 sense to me.

21 Q And did you do any independent investigation to
22 determine whether Mr. McGovern's assumptions were correct in
23 that regard?

24 A Yes. I asked for the supporting documentation for

1 those amounts due from affiliates.

2 Q Who did you ask for those documents?

3 A I believe I e-mailed Sam Morabito.

4 Q Anybody else?

5 A Stan Bernstein. I did have contact with Stan
6 Bernstein who is Superpumper's accountant.

7 Q In your communications with Stan Bernstein, what did
8 you come to discover?

9 A I verified with Bernstein that as of Cavalier's
10 valuation date of August 31, 2010, none of the Promissory
11 Notes were in existence. Meaning they were not documents. I
12 also verified with Mr. Bernstein as of September 30, 2010,
13 McGovern's valuation date, only one of the Promissory Notes
14 were documented.

15 Q What did that mean to you?

16 A That means essentially we have assets on the balance
17 sheet for which we have no repayment term. So, really, there
18 is no way to assess the things that I talked about previously
19 when you're calculating the value of a Promissory Note which
20 is what are the repayment terms, what is the stated interest
21 rate, is the note collateralized, is the debtor able to repay
22 or not.

23 Q Those are the factors you believe necessary in order
24 to determine whether they should be adjusted off the balance

1 sheet?

2 A Those factors are necessary in order to determine
3 the fair market value of those notes.

4 Q Okay.

5 THE COURT: Is this a good time to take a recess?

6 MR. GILMORE: Sure.

7 THE COURT: We'll take our afternoon recess now.

8 Court's in recess.

9 (Short recess taken.)

10 THE COURT: You may proceed.

11 BY MR. GILMORE:

12 Q Ms. Salazar, before the break I showed you page 8 of
13 Mr. McGovern's report where he indicated that he had assumed
14 that the advances to affiliates are bona fide loans and are
15 collectible. Do you remember I showed you that?

16 A Yes.

17 Q In your original report with respect to question
18 three that you were asked to examine and give an opinion, you
19 addressed the treatment of the due from affiliates that were
20 contained on the Superpumper balance sheet, true?

21 A Yes.

22 Q Now amongst the other documents, did you have an
23 opportunity to review the 2009 financial, audited financial
24 statements?

1 A Yes.

2 Q Did you review -- strike that. If I showed you
3 Exhibit 115, -- I don't know why we're getting that new
4 coloration -- if I showed you Exhibit 115 that has been
5 identified as the notes receivable interest income calculation
6 from Gurseay Schneider, would you know what that is?

7 A I've looked at this document, and it appears to be a
8 work paper that supports the audited financial statements.

9 Q Do you have an understanding what role this paper
10 would play for the auditors in issuing their opinion?

11 A In my experience, in preparing this type of work
12 paper, it would be to calculate the interest portion on the
13 amounts due.

14 Q And in identifying the interest calculation on the
15 amounts due, do you believe the auditors would have an
16 understanding what the underlying source of the obligation of
17 the receivable is?

18 MS. TURNER: Objection calls for speculation.

19 THE COURT: Sustained?

20 BY MR. GILMORE:

21 Q Based on your training experience and education in
22 performing audits, in doing audit testing for clients, do you
23 believe it is necessary for the auditor to understand the
24 source of the receivable in order to calculate interest on

1 that receivable?

2 MS. TURNER: Objection, Your Honor. This witness
3 lacks foundation. The witness has not said she's done
4 auditing.

5 MR. GILMORE: Your Honor, may I address that?

6 THE COURT: Yes.

7 MR. GILMORE: She testified that her first job at
8 Muckel Anderson was to do audit work for her clients. She's a
9 trained CPA. She has various certifications. She's
10 definitely qualified to render opinions as to that particular
11 issue.

12 MS. TURNER: That particular issue is not in her
13 report. She didn't do an audit with respect to this company,
14 and anything beyond that is beyond the scope of her expert
15 assignment in this case.

16 THE COURT: Is this not in her report?

17 MR. GILMORE: It is, definitely. It is the key
18 issue associated with her third opinion as to the valuation of
19 the company.

20 THE COURT: Just point to where it is in her report.

21 MR. GILMORE: Page 20. She identifies on page 20
22 and 21, identifies in the second sentence: "Assets are
23 generally adjusted to fair market value and uncollectible
24 amounts are removed." She then gives treatment to

1 Mr. Cavlier's treatment where he removed due from affiliates.
2 This is the key question here: "In order to determine whether
3 Cavalier appropriately removed the amount due to affiliates.
4 LVC requested of Superpumper and was provided written
5 Promissory Notes. The existence of those Promissory Notes
6 bear directly to whether or not the due from affiliates
7 carried on Superpumper's balance sheet were appropriately
8 adjusted off the balance sheet."

9 THE COURT: Counsel, do you withdraw your objection?

10 MS. TURNER: Your Honor, I don't. I don't think
11 Mr. Gilmore's question actually pertains to what is set forth
12 in here in the report. He asked if this -- if the analysis of
13 the auditors was to determine the propriety of the interest
14 rate or something to that effect.

15 THE COURT: Based on -- It was about her training,
16 experience and education is it necessary for the auditor to
17 understand the source of the receivable --

18 MR. GILMORE: That is the question.

19 THE COURT: -- in order to calculate the interest.

20 MR. GILMORE: I was tying this particular document,
21 which is an interest income calculation, auditors cannot
22 calculate until they understand the source of the obligation.
23 It is axiomatic.

24 THE COURT: You can have her testify to what was in

1 her report, but you can't go beyond that.

2 MR. GILMORE: I don't believe I am, with all due
3 respect, Your Honor. This is a spreadsheet that reflects all
4 due from affiliates, Exhibit 115 established by almost every
5 witness that spoke to it. The only question I was asking this
6 witness is you can't do an interest calculation unless you
7 understand what the note is or what the obligation is. It is
8 axiomatic. It goes without saying the auditors cannot
9 calculate interest on those notes receivable due from
10 affiliates unless they understand what due from affiliates
11 are.

12 THE COURT: There is no question she testified
13 without the note then you couldn't consider it.

14 MR. GILMORE: Fair enough.

15 THE COURT: I don't think it is an issue of
16 calculating the interest. The interest is on the note. You
17 don't recalculate the interest on the note.

18 MS. GILMORE: Well, with all due respect, there is a
19 fact question as to whether or not there are notes in
20 existence.

21 THE COURT: I understand that.

22 MR. GILMORE: And so I will withdraw that question
23 with respect to the notes receivable and ask this witness --
24 ///

1 BY MR. GILMORE:

2 Q Do you understand what these items purport to be
3 with respect to Superpumper's balance sheet?

4 MS. TURNER: Objection, speculation.

5 THE COURT: Without telling me what they are, do you
6 understand them?

7 THE WITNESS: I understand that the total balance
8 agrees to the audited financial statement figure for due from
9 affiliates, yes.

10 BY MR. GILMORE:

11 Q So as part of your investigation, in order to reach
12 an opinion as to question three of your report, what did you
13 do to determine the collectability of the notes receivable
14 that were carried on the Superpumper balance sheet?

15 A I just wanted to understand what was included in the
16 due from affiliates, because Mr. Cavalier didn't discuss it.
17 Mr. McGovern just accepted it was there and it shouldn't be
18 adjusted. So I wanted to really understand what was included
19 in the due from affiliates, so I asked for the supporting
20 documentation.

21 Q Who did you ask?

22 A I asked Sam Morabito, and then I also spoke with
23 Mr. Sam Bernstein about it.

24 Q What were you provided to assist you in your

1 inquiry?

2 A I was provided with Promissory Notes for six notes
3 that were dated subsequent to Mr. Cavalier's valuation, and
4 all but one of the notes were dated subsequent to
5 Mr. McGovern's valuation.

6 Q In your mind, what was significant about that fact?

7 A What was significant about that is that as of the
8 preparation of the audited financial statements leading up
9 until that time period, Promissory Notes couldn't have
10 existed. If they did they haven't been provided in this case.

11 Q Now the existence of the notes, how does that factor
12 into your ultimate opinion with respect to this third area of
13 inquiry?

14 A So going back to the asset approach, the goal of the
15 asset approach is to adjust each of the assets to their fair
16 market value. And if you had an asset of 8 million dollars due
17 from affiliates, I would want to understand what is the
18 likelihood of collection of that asset. And so I asked for
19 Promissory Notes which would tell me more about the repayment
20 terms, the interest being charged, whether the notes were due
21 on demand and who the obligors are.

22 Q Okay. And based on the response that you received
23 from your inquiries as to the existence of notes, how did that
24 factor into any of your opinions related to the value of

1 Superpumper?

2 A Based upon the fact the Promissory Notes didn't
3 exist, my opinion was there is not sufficient information, I
4 haven't been provided information that would deem it necessary
5 to leave those assets on the balance sheet. However, on
6 Exhibit 8 which is page 21, I do provide Mr. Cavalier's
7 valuation with the revised capitalization rate that I derived
8 assuming that the due from affiliates remain on the balance
9 sheet. So assuming the trier of fact determines it is
10 appropriate not to adjust off the due from affiliates, using
11 my revised capitalization rate, Mr. Cavalier's value would be
12 \$6,873,00 as set forth on Exhibit 8 page 21 of my report.

13 Q As compared to his original valuation?

14 A Which was \$6,484,515.

15 Q Mr. McGovern did not adjust those due from
16 affiliates off the balance sheet?

17 A Mr. Cavalier --

18 Q My question is with respect to Mr. McGovern.

19 A Mr. McGovern did not adjust off the due from
20 affiliates from the balance sheet.

21 Q What did Mr. Cavalier do?

22 A Mr. Cavalier did adjust off the due from affiliates.

23 Q That then leads us to your rebuttal opinion. Ms.

24 Salazar, were you asked to review Mr. McGovern's report and

1 give a rebuttal analysis?

2 A Yes, I was.

3 Q And is that analysis and your conclusion found in
4 your rebuttal report?

5 A Yes.

6 Q Your rebuttal report is attached as an exhibit,
7 Exhibit 284. It is attached as Exhibit 1 to 284 which is
8 admitted into evidence.

9 MR. GILMORE: I don't know why we lost focus on this.

10 THE COURT: I don't either.

11 MR. GILMORE: Seems like it went back just
12 automatically. I don't know. I can't explain it. I think it
13 is a contrast issue.

14 MS. TURNER: It is better over here.

15 THE COURT: That screen is having problems.

16 THE CLERK: It looks like it, especially from over
17 here you can see green dots.

18 MR. GILMORE: It appears to be a screen issue. I
19 won't worry about it.

20 THE CLERK: Do you want me to turn that off?

21 THE COURT: Do you want to keep going while she does
22 that?

23 MR. GILMORE: I can, sure. No problem.

24 THE COURT: I can't see this one unless the lights

1 get turned off. No, still too blurry. You can have these
2 lights on but not those back there. I don't think you can do
3 it with that.

4 Let's see if this works. You can see this,
5 Ms. Salazar?

6 THE WITNESS: I can.

7 THE COURT: That is good. That will work.

8 BY MR. GILMORE:

9 Q Ms. Salazar, drawing your attention to your rebuttal
10 report, you identified several issues that you had with
11 Mr. McGovern's input or his conclusion; is that true?

12 A Yes.

13 Q Please identify what your first issue that you
14 identified to Mr. McGovern's report was?

15 A The first issue I identify is that Mr. McGovern,
16 under issue one on page one of my report, I summarized
17 Mr. McGovern's final conclusion of \$13,050,000. The way he
18 derived at that was using an income approach, the discounted
19 cash flow method which is based upon the forecasts and
20 projections of the company. And then to that number
21 Mr. McGovern takes the amount due from affiliates which is
22 classified as an other asset by the auditors, reclassifies it
23 without really doing any due diligence to other current assets
24 and then calculates excess working capital and basically says

1 that Superpumper has excess liquidity not necessary for the
2 continued operations of the business totaling 6.5 million
3 dollars.

4 Q And did you believe that he was incorrect arriving
5 at that conclusion?

6 A Yes.

7 Q Explain why?

8 A When you look at Mr. McGovern's report, and we
9 talked about what his report said, essentially he says I have
10 assumed that the advances to affiliates are bona fide loans
11 and are collectible. And then when I look at the actual
12 Promissory Notes, I determined that none of -- only one of the
13 Promissory Notes existed as of his valuation date. And so had
14 he done further investigation into what really made up the
15 amount due from affiliates, he would have understood they
16 weren't documented notes with the exception of the one note.

17 Q And so with that opinion how do you-- what is your
18 opinion as to how that impacted his ultimate conclusion?

19 A Had he not reclassified the amount due from
20 affiliates to other current assets, there would not have been
21 working capital. The liabilities would have exceeded -- the
22 current liabilities would have exceeded the current assets.

23 Q Do you have an understanding how that would have
24 impacted his final value conclusion?

1 A I know for sure the 6.5 million dollar non-operating
2 asset would have been removed, and his indicated value would
3 not have changed, because he used an income approach and not
4 and asset approach, so it would have reduced his value by 6.5
5 million dollars.

6 Q Do you know the difference between Mr. McGovern's
7 indicated value based on his DCF analysis and Mr. Cavalier's
8 ultimate conclusion of value?

9 A They were very close.

10 Q Within how much?

11 A Within I believe \$300,000.

12 Q Now what was the second issue you identified with
13 respect to Mr. McGovern's report?

14 A The second issue addressed -- I think moved forward
15 a little bit too quickly, but the second issue in my rebuttal
16 report talks about the reclassification from other assets to
17 current assets. What Mr. McGovern says, he says the auditors
18 claim that the Promissory Notes are due on demand, and because
19 of that it's appropriate to reclassify those due from
20 affiliates to current assets.

21 Q What was your response to that?

22 A My response is, as of his valuation date, which was
23 September 30, 2010, there are no audited financial statements
24 I am aware of. When you look at the December 31, 2010

1 financial audited statements, there is only one note for
2 \$285,000 that says due on demand. When I looked at the
3 previous audited financial statements, the Promissory Notes
4 are grouped together into different categories which don't
5 necessarily coincide with the Promissory Notes that were
6 marked for identification.

7 Q What is the significance of that?

8 A The significance to me is that the auditors likely
9 did not have Promissory Notes for which to base their final
10 conclusion.

11 Q Now in reaching that analysis, did you review the
12 2010 audited year-end financial statements of Superpumper?

13 A Yes.

14 Q What did you come to understand about how the
15 auditors treated the due from affiliates for year end 2010?

16 A The auditors on page 1 or on their first cover page
17 letter of their financial statement they essentially say that
18 we have not addressed the valuation of the amounts due from
19 affiliates.

20 Q And is your understanding of how the auditors
21 treated it consistent with Mr. McGovern with how he treated it
22 in his report?

23 A Mr. McGovern left -- yes.

24 Q Now in the 2010 audit report, do you know if the

1 auditors considered the due from affiliates to be current
2 assets or noncurrent?

3 A Noncurrent assets. They specifically, in the notes
4 to the financial statements explained that they're classifying
5 them as noncurrent assets, because they don't expect repayment
6 within a year.

7 Q What is the significance of that?

8 A Current assets are generally categories of assets
9 such as cash, accounts receivable, inventory, things that are
10 liquid within the one-year period. If you're expecting
11 repayment after the one-year period, generally those items are
12 classified as noncurrent assets.

13 Q Did you agree or disagree with Mr. McGovern's
14 reclassification of the due from affiliates from noncurrent to
15 current?

16 A I have never, in my experience, taken an audited
17 financial statement and reclassified assets for any reason.

18 Q With respect to issue two, is there anything else
19 you would like to bring to the attention of the Court?

20 A Did I already talk about the due on demand clause?
21 So he --

22 Q No?

23 A He talks about the Note 6 of the audited financial
24 statements contains a due on demand clause, and the December

1 31, 2010. Again there are no September 2010 audited
2 financials, but the December 31, 2010 audited financials only
3 show one due on demand. The remaining balances are due in a
4 later period greater than one year.

5 Q And what I am showing you is 296.

6 MR. GILMORE: I don't know if it has been admitted.

7 THE CLERK: 296 has not.

8 MR. GILMORE: Okay.

9 BY MR. GILMORE:

10 Q I won't show it on the screen, but do you have 296
11 in front of you?

12 A Yes.

13 Q Will you take a look at it? Is 296 a document that
14 you reviewed in preparing your opinions?

15 A Yes.

16 Q And when you were referring to the due on demand
17 clause, what relationship does Exhibit 296 have to the due on
18 demand clause?

19 A If I look on Note 9 which is related party
20 transactions, this is the footnote that talks about the amount
21 due from affiliates. Under the fourth column from the left
22 you'll see "principal" and under that the total amount of the
23 principal balance is \$8,127,043. Right above that --

24 THE COURT: I am going to stop you. 296 has not

1 been admitted.

2 MR. GILMORE: I agree.

3 THE COURT: Is she testifying from the document?

4 MR. GILMORE: She's testifying to the document which

5 informed her opinion. It does not have to be admissible in

6 order to inform her opinion under the expert rules.

7 MS. TURNER: So there--

8 MR. GILMORE: I could offer it.

9 THE COURT: No.

10 MS. TURNER: There is the very same information

11 without handwritten notes that is part of the December 2010

12 financials that is in evidence. So I have no objection to that

13 table as it is contained within Exhibit 120. I would just ask

14 that you use that.

15 MR. GILMORE: That is fine. I have no problem. I

16 agree with that, Your Honor.

17 THE COURT: Okay.

18 MR. GILMORE: We are going to go now to Exhibit 120.

19 MS. TURNER: Try to get to page 13.

20 MR. GILMORE: Thanks.

21 BY MR. GILMORE:

22 Q Ms. Salazar, I am showing you now a different

23 version of that table. Rather than the one from

24 Mr. Bernstein's file, this is actually the Note 9 of the 2010

1 audited financial statement, fair enough?

2 A Yes.

3 Q You have seen this before?

4 A I have.

5 Q So, when you were referring to the due on demand,
6 what information does this pertain to to help inform that
7 opinion?

8 A The fourth column from the left you will see a
9 column identified as principal. If I go right there where you
10 are pointing, \$285,000. That is the only note that is shown
11 as due on demand.

12 Q What is the significance of due on demand with
13 respect to adjustment of the balance sheet?

14 A Mr. McGovern opined that, because the notes are due
15 on demand, it is appropriate to reclassify them from other
16 assets to other current assets.

17 Q And you believe that was inappropriate?

18 A When I looked at the Promissory Notes again which
19 were dated subsequent to his valuation date, they're not due
20 on demand notes, and they have later repayment dates.

21 Q Now, will you go back to your rebuttal opinion
22 Exhibit 284. You take a third issue with Mr. McGovern's
23 report. What is that?

24 A Mr. McGovern opines an appropriate discount rate is

1 14.20 percent. In his deposition, he testified that he used
2 Duff and Phelps which is the same premium study that I use,
3 but that essentially he used a program that calculates the
4 rate for him. So he plugs in the data and out comes his final
5 answer. I contacted Duff and Phelps and BBV Resources to talk
6 to them a little bit more about the calculation, how
7 capitalization is derived when you put the inputs into this
8 program. They verified what doesn't get included is the
9 subjective factor which is the company's specific risk.

10 Q And in what way did his failure to take into account
11 the company's specific risk impact his ultimate conclusion?

12 A In my opinion, his discount rate is too low which
13 overstates his final value conclusion.

14 Q Now in reaching that conclusion, what company
15 specific risk factors as it pertained to Superpumper did you
16 apply?

17 A Again, as I testified previously, what I did, Linda
18 Trugman, a respected author in the industry, published an
19 article regarding Duff and Phelps and company specific risk.
20 She's not the only one that has published such articles. We
21 have essentially a range of specific company risk acceptable
22 in our industry is anywhere from 3 to 10 percent increase. I
23 used 5 percent.

24 Q Did you apply any specific factors of Superpumpers'

1 business model or its operation in concluding your cap rate?

2 A I didn't, I was not asked to do my own valuation, so
3 I just looked at a reasonable specific company risk.

4 Q And if, according to your opinion, Mr. McGovern
5 applied the wrong capitalization rate, what would that have
6 done to his ultimate conclusion of value?

7 A It would have decreased the \$6,500,050 to
8 \$5,333,000.

9 Q So is it your opinion, by applying the wrong cap
10 rate, he overstated the value of Superpumper?

11 A Yes, by 1.2 million.

12 Q Now was there a fourth issue you identified in your
13 report?

14 A Yes, a fourth and a fifth.

15 Q Okay. What was the fourth issue you took with
16 respect to McGovern's opinion?

17 A On page 22 of his report, Mr. McGovern opined that
18 the values developed above reflect a control and
19 non-marketable position of 100 percent interest. He notes
20 that when valuing a controlling interest, a discount for lack
21 of marketability may be appropriate in limited conditions
22 according to Shannon Pratt, however, he ultimately does not
23 apply such a discount. So my issue with this is Mr. McGovern
24 references Shannon Pratt again, who is a well respected author

1 in the business valuation industry, and he says Shannon Pratt
2 says that it's not appropriate to apply a marketability
3 discount, here's the treatise that says so. When I look at
4 that, what Shannon Pratt is talking about is the applicability
5 of a marketability discount when you are using a market
6 approach to valuation. So there is a real difference between
7 the valuation using an income approach which is what
8 Mr. McGovern has done and using a market approach, because
9 market transactions are inclusive of a marketability discount.
10 If he had relied upon a market approach, which he didn't, then
11 it would be appropriate to not apply that discount. But,
12 because he used an income approach, to ignore the fact of lack
13 of marketability overstates the valuation.

14 Q And what is the marketability discount?

15 A The marketability discount is a discount that's
16 taken into account for the fact that a closely-held company
17 like Superpumper is not as liquid as a publicly traded
18 company. If you have publicly traded stock and wanted to get
19 cash today, you could sell your stock and tomorrow you would
20 have the cash in the bank. But with Superpumper and its most
21 closely held companies, if you wanted to sell your equity in
22 Superpumper today, don't expect the cash tomorrow. There is
23 going to be a time lapse if it is marketable at all. And so
24 discount amount accounts for the inability to transfer your

1 interest to cash.

2 Q What is your understanding why Mr. McGovern didn't
3 apply a discount?

4 A Mr. McGovern relies upon Shannon Pratt and his
5 guidance related to the market approach, again, which is an
6 approach Mr. McGovern did not end up using.

7 Q So is it your opinion a marketability discount
8 should have been applied to the discounted cash flow valuation
9 of Superpumper?

10 A Yes.

11 Q What were your opinions in that regard?

12 A I've looked-- in the valuations that I do, I use
13 restricted stock studies, I use IPO studies, I use tax court
14 cases. There is a pretty wide range of marketability
15 discount, 20 to 40 percent. I applied a 20 percent
16 marketability discount.

17 Q How did that ultimately impact Mr. McGovern's
18 conclusion of value?

19 A If I had applied a 20 percent marketability discount
20 to Mr. McGovern's value of \$6,550,000 the final valuation
21 would be \$5,240,000.

22 Q Is it your opinion that a marketability discount
23 should have been applied to the valuation of Superpumper
24 assets?

1 A Yes.

2 Q Is there a fifth issue you took with Mr. McGovern's
3 report?

4 A I think also on the Exhibit 2 on the previous page,
5 I should mention that if Mr. McGovern's capitalization rate
6 were adjusted to my rate, that's how I got the adjusted figure
7 of \$5,333,000, then if you apply 20 percent marketability
8 discount, the ultimate value would be \$4,266,000

9 Q Either case, is it your opinion Mr. McGovern
10 overstated the valuation of Superpumper?

11 A Yes.

12 Q And then issue number five?

13 A The last issue is in Mr. McGovern's report he calls
14 out that company's management asserts that in September of
15 2010 the company took an additional debt in the form of a loan
16 of \$3,000,000 that was not reflected on the Company's
17 September 30, 2010 balance sheet. He essentially says he
18 hasn't been able to confirm the existence of the loan, and it
19 hasn't been included in his ultimate valuation.

20 Q What did you believe was incorrect about that?

21 A If the loan did exist and Mr. McGovern was made
22 aware that the loan existed, I would have expected him to ask
23 management for the loan documentation, for the loan ledger,
24 any sort of evidence that would prove that it should have been

1 on the balance sheet even though it wasn't.

2 Q Is it your opinion Mr. McGovern did not attempt to
3 do that?

4 A It doesn't sound like, from his report, he did
5 attempt to do that.

6 Q Now do you have an opinion as to whether or not he
7 had done that, how that might have impacted his conclusions?

8 A The book value-- so under the asset approach, it
9 impacts the final net asset value by \$3,000,000. It would
10 reduce the net asset value by \$3,000,000. If there was an
11 additional liability, that should have been added to the
12 balance sheet.

13 Q Any other way in which that would have impacted his
14 conclusion of value?

15 MS. TURNER: Objection. Calls for speculation.

16 THE COURT: I am going to overrule the objection.
17 You can answer that.

18 THE WITNESS: If there is a short-term portion of
19 that note, then that would also impact the calculation of
20 excess working capital which Mr. McGovern used to overstate
21 his value.

22 BY MR. GILMORE:

23 Q In the last sentence of your report you indicate if
24 the amounts due from affiliates were removed, the book value

1 would be negative. What is the significance of that?

2 A The significance of that is the importance of
3 whether the amounts due from affiliates should remain on the
4 balance sheet or whether it is appropriate to remove that
5 amount from the balance sheet. Now if it is removed, then the
6 liabilities exceed the total assets when all those items are
7 adjusted to fair market value. And so the value used in an
8 asset approach, Superpumper would be zero in that instance.

9 Q And if the asset approach valuation were at zero, do
10 you know how that would have impacted Mr. Cavalier's weighted
11 approach?

12 A Mr. Cavalier applied a certain percentage weight. I
13 don't remember what the weight was, but it would impact it. I
14 think I quantified that in my original report. Can you ask
15 your question again?

16 Q Sure. In your original report you gave some
17 treatment to the result under Cavalier's methodology the asset
18 value was given zero fair market value. Do you remember that?

19 A Yes.

20 Q And so my last question will be, what would be the
21 impact if the book value of the company's assets were
22 determined to be zero or less than zero, how would that impact
23 Mr. Cavalier's ultimate conclusion of value?

24 A It would have substantially reduced his ultimate

1 conclusion of value based upon Exhibit 80 page 21 of my
2 report, because the 30 percent rate was applied by Cavalier to
3 the asset approach in which he opined that an operating value
4 of 15.8 is appropriate.

5 Q Okay. Page 20 the schedule I am referring to there?

6 A Yes.

7 Q If you apply zero fair market value to the cost
8 approach on the negative equity of the book value.

9 A Yes. This is using December 31, 2014 information.

10 MR. GILMORE: Thank you. Pass the witness.

11 THE COURT: Okay.

12

13 CROSS-EXAMINATION

14 BY MS. TURNER:

15 Q Good afternoon?

16 A Hi.

17 Q Okay. Let me understand your assignment. You did
18 not do a valuation of your own of Superpumper, right?

19 A Correct.

20 Q You were hired to provide litigation support
21 services in the form of reviewing the reports of Spencer
22 Cavalier from Matrix as well as Jim McGovern and critiquing
23 their analyses and conclusions right?

24 A I was specifically asked to perform the scope of

1 work that is identified in my original report which is
2 identified on page 16 of Exhibit 283.

3 Q The three questions?

4 A Correct. So that ties into valuation when you're
5 looking at capitalization rates and method of valuation.

6 Q You did not come to any independent determination of
7 value?

8 A I utilized Cavalier's and McGovern's methodology
9 with revised capitalization rates to show the Court how it
10 impacts the final valuation conclusion using these
11 methodologies.

12 Q Now were you advised why Matrix or Spencer Cavalier
13 was hired to value Superpumper as of-- actually he was hired
14 to value 100 percent of the equity in Superpumper as of August
15 30, 2010.

16 A According to Mr. Cavalier's report, it was for
17 corporate planning purposes, but I don't have any
18 understanding outside of that.

19 Q And you testified a few minutes ago you had
20 questions for Mr. Cavalier but never communicated with him?

21 A I actually spoke with Mr. Cavalier, but he wouldn't
22 answer any of my questions.

23 Q Did you make any attempt to communicate with
24 Mr. McGovern?

1 A The way that I communicated with Mr. McGovern was
2 through his deposition.

3 Q Did you ever have any communication with him where
4 he could speak words to you or write to you?

5 A I asked my questions of counsel and counsel relayed
6 those questions to Mr. McGovern at his deposition.

7 Q Now do you have any particular expertise in valuing
8 C-stores or gas stations?

9 A I have valued companies that own convenience stores
10 and gas stations, yes.

11 Q How many occasions?

12 A I can think of one group of gas stations and
13 convenience stores where there were approximately six
14 different businesses that had to be valued. So they were
15 independent convenience stores and gas stations. Then I was
16 involved in a litigation case that involved a convenience
17 store/gas station, but it didn't necessarily pertain to the
18 value of that entity.

19 Q In this particular case, both Mr. Cavalier and
20 Mr. McGovern, they valued 100 percent of the equity in
21 Superpumper not an asset valuation. You understood that?

22 A Yes.

23 Q And I believe you testified as asset valuation is
24 like apples and oranges to an equity valuation?

1 A Not necessarily. I think it is being taken out of
2 context, because even when you're valuing the equity of the
3 company, one of the methods to value is an asset approach.

4 Q You have to look at the assets or should you look at
5 the assets? Your testimony earlier was it was apples and
6 oranges?

7 A But we were talking, when I testified earlier, stock
8 basis versus valuation. Stock basis is completely different
9 from asset valuation and it is completely different from an
10 equity valuation.

11 Q Were you advised the transfer of equity was at issue
12 in this case?

13 A I don't think I had an understanding of really what
14 it was.

15 Q Now with respect to the Matrix valuation, Spencer
16 Cavalier's, as of August 30, 2010 set forth at Exhibit 283,
17 you had an ultimate conclusion of value of \$6,484,514, right?

18 A So we are on my report, right, Exhibit 283?

19 Q Oh, actually Exhibit 283 I believe you do -- His is
20 235. Pardon me?

21 A Okay.

22 Q I think you summarize it?

23 A I do.

24 Q It is Exhibit 235 if you want to go to it.

1 A Yes.

2 Q That was as of August 31, 2010. Now you spoke to one
3 of the differences between August 31, 2010 and September 30,
4 2010 the date of the Mr. McGovern's report was there was a
5 note, a Promissory Note that was executed in favor of Snowshoe
6 Capital, correct, or Snowshoe-- strike that -- in favor of
7 Consolidate Western Corporation?

8 A I know on September 1, 2010 there was the \$939,000
9 note, and I would have to look at the audited financial
10 statements to see who it was with.

11 Q If you go to Exhibit 110. It might be in a
12 different book, Ms. Salazar, 110.

13 A Yes.

14 Q You have seen this note before?

15 A Yes.

16 Q Exhibit 110 is the one term note that was executed
17 between the time of Spencer Cavalier's report and
18 Mr. McGovern's, the date of their reports, correct?

19 A This is the only documented Promissory Note that
20 existed as of McGovern's valuation date, yes.

21 Q And this was not included in Mr. Cavalier's because
22 it didn't exist as of August 30th, 2010, correct?

23 A Well, I think there is still a question.

24 Mr. Cavalier did not identify what was included in the amount

1 due from affiliates. So whether that amount was included on
2 the balance sheet is a question outside of the fact of whether
3 there was actually a written Promissory Note or not. So it may
4 have been on the balance sheet without a formal Promissory
5 Note until September 1, 2010.

6 Q You have no indication from reviewing Mr. Cavalier's
7 report or otherwise through communication to Mr. Cavalier that
8 he considered the term note of \$939,000 dated as of September
9 1, 2010?

10 A He did not discuss the amount -- Mr. Cavalier did
11 not discuss the amount of due from affiliates or what was
12 included in that amount, no.

13 Q Now Mr. Cavalier's report for the \$6,484,514 as of
14 August 30, 2010, he used a cap rate of between 13.25 and 13.4
15 percent, correct?

16 A Yes.

17 Q And we don't know where he determined his cap rate
18 from, but that was -- he didn't indicate the source of
19 calculating that cap rate, but that was his cap rate, right?

20 A Correct.

21 Q And then you have McGovern's report as of September
22 30, 2010 and he used a 14.2 percent cap rate. Pretty close,
23 correct?

24 A He used a discount rate, so there is a difference

1 between a capitalization--

2 Q I need you just to focus on the cap rate. What was
3 his cap rate?

4 A He didn't have a cap rate.

5 Q Mr. McGovern didn't have a cap rate?

6 A He had a discount rate. So when you're using
7 forecasts and projections, it is a discount rate.

8 Q A discount rate includes a cap rate?

9 A A discount rate and capitalization rate are
10 essentially a rate of return, but it varies depending on
11 whether you're using historical information of future
12 forecasted information.

13 Q And Mr. McGovern's opinion of value as of September
14 30, 2010, it was \$13,050,000, correct?

15 A Yes.

16 Q And 6.5 million of the 13 million, that was the due
17 payables, the non-operating assets that he determined to be
18 appropriately considered in value, right?

19 A That was a result -- the 6.5 million was a result of
20 his reclassification of the auditors' classification of due
21 from affiliates, yes.

22 Q You have six and a half million from McGovern and
23 6.484 from Mr. Cavalier of Matrix within a month of each
24 other's valuation of Superpumper, right?

1 A If you exclude Mr. McGovern's adjustment of 6.5
2 million, yes.

3 Q And really where the rubber hits the road is whether
4 or not to include those non-cash due from payables as assets
5 for the purpose of determining value or fair market value of
6 Superpumper's 100 percent equity in this September 2010 time
7 frame, right?

8 A Can you ask your question again?

9 Q Sure. It is important to the determination of value
10 in 2010 whether to include the non-cash due from payables in
11 determining the fair market value of equity in Superpumper?

12 A In the valuation as of September 30th, I am not
13 aware of any non-cash due from payables.

14 Q Well non-cash means there is no liquid cash in the
15 company. There is a due from payables on the books of the
16 company, correct?

17 A There is a due from affiliates but not -- I don't
18 know what a due from payable is.

19 Q Okay. There is an amount indicated as due from
20 owners or affiliates of the owners of Superpumper, correct?

21 A Yes.

22 Q Okay. Now before we get to those amounts, let's go
23 back to this cap rate or discount rate. You disagree with
24 Mr. Cavalier for using the 13.25 to 13.4 percent cap rate,

1 correct?

2 A Yes. I believe his capitalization rate is
3 understated.

4 Q You said it should be 22.9 percent; is that right?

5 A Yes.

6 Q And you said it should be 22.9 percent because --
7 and this goes with respect to Mr. Cavalier as well as to
8 Mr. McGovern -- you read an article and Linda Trugman wrote an
9 article who said there can also be a subjective risk factor,
10 right?

11 A Are we talking about the Cavalier capitalization
12 rate or McGovern, because I did a different analysis depending
13 on which report we're talking about.

14 Q Let's start with Mr. Cavalier?

15 A Okay.

16 Q Now so that I understand your testimony, you said
17 that you reviewed Duff and Phelps, right?

18 A Yes.

19 Q And Duff and Phelps, that was used by McGovern?

20 A Are we talking Cavalier?

21 Q I am asking if it is the same Duff and Phelps used
22 by Mr. McGovern.

23 A Mr. McGovern used a calculator I have never used,
24 but he did indicate he used a Duff and Phelps study, yes.

1 Q Now back to Mr. Cavalier. You said you read an
2 article by Linda Trugman who said you also have a subjective
3 amount of risk that you add. What was the range of risk in
4 Ms. Trugman's article?

5 A Linda Trugman provided a range of 3 to 10 percent
6 for the subjective risk premium factor.

7 Q If we go to your report, you are very careful to
8 list the information that you relied on and that you reviewed
9 in preparing your analysis. If we go to pages 10, 11 and 12,
10 you outline documents that were provided to you, right?

11 A Yes.

12 Q And you also outline the Federal Reserve website and
13 the Duff and Phelps risk premium report dated 2011 as well as
14 2014; is that accurate?

15 A Yes.

16 Q Now nowhere in the documents listed is there
17 Ms. Trugman's article you indicated you reviewed?

18 A Trugman. T-R-U-G-M-A-N. So if you turn to Exhibit
19 284 under rebuttal number 3--

20 Q No. I am talking about Mr. Cavalier's report we are
21 talking about right now.

22 A Correct. So my analysis of Mr. Cavalier's --

23 Q My question is am I missing you outlining this
24 article in the list of materials you reviewed in preparation

1 of your rebuttal to Mr. Cavalier's report?

2 A I did not testify regarding Linda Trugman in respect
3 to my original report only in respect to my rebuttal report.
4 I properly referenced her in my rebuttal report.

5 Q Okay. Your rebuttal report is Exhibit 284?

6 A Yes.

7 Q If you could explain where you discuss Ms. Trugman's
8 range of subjective risks that she says is appropriate to add
9 in addition to the risk factors used by Duff and Phelps?

10 Q If you turn to page 4 of 6, and the page number on
11 the heading rebuttal number three, you will see the discussion
12 regarding Linda Trugman and her range for the company's
13 specific risk.

14 Q It does not say that this is in addition to the Duff
15 and Phelps risk factors, correct?

16 A Because I did not recalculate Mr. McGovern's
17 capitalization rate. I only included the company's specific
18 risk factor.

19 Q Now you saw the summary that was prepared by
20 Mr. McGovern from due from affiliates when he determined his
21 discount rate and the risk factors that were calculated as
22 part of that analysis?

23 A I saw that during his deposition, yes.

24 Q Okay. With respect to Mr. Cavalier, Mr. Cavalier

1 alone, you went from 13.257429 percent to 13.4 percent, that's
2 Spencer Cavalier's cap rate, to 22.9 percent. Your testimony
3 was you added five percent subjective amount. How did you get
4 to 22.9 percent?

5 A My testimony regarding the additional five percent
6 was with respect to the rebuttal report. But with respect to
7 my original report and Mr. Cavalier's valuation, I calculated
8 my own capitalization rate using the Duff and Phelps premium
9 study, using the U.S. Treasury rate, applying a specific
10 company risk to arrive at the 22.9 percent. The reason I did
11 was because Mr. Cavalier wouldn't speak to me so I could
12 understand how he ultimately came up with his capitalization
13 rate.

14 Q So with respect to your response to Mr. Cavalier set
15 forth in Exhibit 283, you did not rely on Ms. Trugman's
16 article. You did your own cap rate analysis and came to 22.9
17 percent?

18 A I relied upon the risk premium information from Duff
19 and Phelps, and I applied the same five percent company
20 specific risk as I did in my rebuttal report.

21 Q But you used Ms. Trugman's analysis in the rebuttal
22 report. You did not use that when preparing the first report
23 and response to Mr. Cavalier's Matrix report?

24 A Because it is a subjective assessment. It is just

1 something that is known in our industry. When I was preparing
2 the rebuttal report, I felt it was important to provide a
3 reference to support that range of additional risk.

4 Q Now the 14.2 percent that was used by Mr. McGovern
5 is pretty close, that risk of return, that is pretty close to
6 what Mr. Cavalier used, and you came to the same determination
7 of a 22.9 percent appropriate risk rate to be applied,
8 correct, with respect to Mr. McGovern?

9 A The McGovern, the adjusted capitalization rate was
10 18.2 instead of 13.2 which is what he used.

11 THE COURT: Do you mean Cavalier?

12 THE WITNESS: We are talking about McGovern.
13 McGovern had a capitalization rate, discount rate of 13.2. I
14 added the five percent company specific risk factor and came
15 up with 15.2. Then I added an additional risk factor,
16 marketability which is a completely separate issues.

17 BY MS. TURNER:

18 Q A different discount rate for marketability?

19 A I applied a marketability discount to McGovern's
20 valuation conclusion, yes.

21 Q And so that we understand, this subjective five
22 percent that you added to both gentlemen's determination of an
23 appropriate risk factor, five percent as opposed to three
24 percent as opposed to eight percent, that is subjective based

1 on your review of the materials provided to you?

2 A I provided a reasonable company specific, I believe,
3 risk to show the impact on the valuation using Cavalier's
4 report and McGovern's report, yes.

5 Q When you reviewed the summary of user inputs that
6 are set forth at Exhibit 91 as part of Mr. McGovern's report,
7 did you see the company specific risk factors that were
8 included in the analysis with three measures of that risk
9 outlined in the multiple pages of calculation?

10 A What pages.

11 MR. GILMORE: EBITA.

12 BY MS. TURNER:

13 Q McGovern 55 through 74 is the summary of user input.
14 Did you review that?

15 A I did. And, actually, based upon my review of these
16 user inputs, that is what prompted me to contact Business
17 Valuation Resources to get a better understanding of the
18 input. And I spoke with them specifically about this report,
19 and they told me that this does not account for specific
20 company risk. And I can provide the name and phone number of
21 the person I spoke with if you like.

22 Q When you say specific company risk, what are you
23 referring to?

24 A I am referring to the factors that aren't taken into

1 consideration when you're looking at the empirical data Duff
2 and Phelps produces to us. Duff and Phelps doesn't account for
3 things such as geographic location, depth of management,
4 restrictions on transferability. There are lots of factors
5 that come into play when you're looking at -- when you're
6 calculating a capitalization rate.

7 Q When you say restrictions on transferability, there
8 were none here, right?

9 A Well, what I'm talking about is more so government
10 regulations. And in the fuel industry, you have, probably,
11 regulations that should be taken into consideration.
12 Underground water issues. I mean there is a lot of issues
13 when you're talking about convenience stores and gas stations
14 that can impact the ability to sell an equity interest in a
15 company.

16 Q Is it your testimony there is a restriction on
17 transferability of equity in Superpumper?

18 A No.

19 Q Is it your testimony that there is some governmental
20 requirement to approve transferability?

21 A I have not looked into that issue, so I'm not sure.

22 Q Or that the value of the equity in Superpumper is
23 some how affected by the laws of the State of Arizona?

24 A The valuation of Superpumper when deriving the risk

1 rate, so the company specific rate, that is one of the factors
2 that could be taken into consideration.

3 Q What percentage of risk did you ascribe to the laws
4 of the State of Arizona and the geographical location of
5 Superpumper's assets?

6 A I did not.

7 Q What else was included in this subjective five
8 percent?

9 A The subjective five percent was intended to be on
10 the lower range of what the authors in the business industry
11 set forth as an acceptable range. Three to ten percent. Five
12 percent is an absolutely supportable position for this type of
13 business.

14 Q What specific company information did you take into
15 account to ascribe five percent and call it a specific company
16 risk factor that could not be found in Duff and Phelps? What
17 are those specific company risks?

18 A In calculating -- In utilizing the five percent, I
19 didn't address the specific risk factors. Again, I just
20 accepted the lower range of the accepted company specific
21 risk.

22 Q When you say lower range, instead of three percent
23 you determined five percent. What was the difference between
24 three and five percent? What specific company factors made

1 you decide subjectively five percent was more appropriate than
2 three?

3 A I just looked at the valuation that I did for the
4 other convenience store/gas station, and I used five percent.
5 But I didn't look at each specific line item and try to
6 quantify a percentage. I didn't do that.

7 Q Now with respect to an additional discount that you
8 applied to Mr. McGovern's determination of value for "lack of
9 marketability", what was that percentage again?

10 A I applied a 20 percent discount for lack of
11 marketability.

12 Q Twenty percent. Now marketability discounts usually
13 come with minority ownership that would have minority control.
14 Here by a 100 percent control of the person selling 80 percent
15 of the ownership in Superpumper, what was the justification
16 for 20 percent lack of marketability when you're selling a
17 controlling interest?

18 A There is a difference between a controlling interest
19 and marketability and non-marketable interest. Often times
20 people get confused when they are applying discounts. There
21 are two separate discounts when you're valuing a controlling
22 or non-controlling interest and valuing a marketable or
23 non-marketable interest. If you are valuing a controlling
24 interest, what that tells me is that irrespective of the

1 ownership percentage that you are valuing, there is no lack of
2 control or minority interest to be applied. Completely and
3 apart from marketability discount. Marketability is the
4 ability to convert your equity interest to cash quickly and
5 efficiently. Two completely different discounts.

6 Q So here you are saying there needs to be a 20
7 percent discount because there is a sale of a controlling
8 interest?

9 A No.

10 Q And you're saying it would take a 20 percent
11 discount to receive fair market value?

12 A I am saying that if you wanted to -- if the
13 shareholders of Superpumper wanted to sell their interest in
14 Superpumper, they couldn't go out tomorrow and sell it and get
15 the cash, similar to what they would do if they had a
16 publically traded stock. So you own stock, you sell your
17 stock, you have cash in the bank the next date. Same is not
18 true with a closely-held company like Superpumper. It is not
19 a liquid asset, and it takes time to sell that asset, so a
20 marketability discount is applied to account for that.

21 Q What was the range of discount applied to non-
22 public companies?

23 A If you look at the restricted stock study, if you
24 look at the IPO study, if you look at the tax court cases, the

1 range is anywhere from 20 percent to 40 percent.

2 Q This isn't a restricted stock scenario. This is not
3 an IPO scenario, correct?

4 A It is not, but that is the way that valuation
5 experts support their opinion in regards to what marketability
6 discount is acceptable.

7 Q So you used restricted stock and IPO analyses to
8 determine a 20 percent discount here?

9 A Right, because that is in the low end of the range.

10 Q Now back to the list of due from owners and their
11 affiliates. You looked at the December 2009 financial
12 statements, correct?

13 A Yes.

14 Q And Mr. Gilmore showed you the note from the auditor
15 set forth at Exhibit 115 where there is a table?

16 A I think that was December 31, 2010, but yes, I
17 looked at that table.

18 Q Why don't we go to Exhibit 115 and I will refresh
19 your recollection?

20 A Okay. Yes.

21 Q You recall seeing this table here?

22 A Yes.

23 Q And that is as of December 31, 2009, correct?

24 A Correct.

1 Q And if you go to Exhibit 114. If you go to the
2 balance sheet as of the year end 2009 Superpumper 322.

3 A Yes.

4 Q You see other assets and there is accounts payable.
5 Do you see that? And then if you go a bit further there are
6 other assets?

7 A Yes.

8 Q Okay. That is what I want you to focus on, other
9 assets due from. Remember we went through that due from, due
10 from affiliates, that is \$7,683,918 right?

11 A Yes.

12 Q And that matches with Exhibit 115, the notes
13 receivable, correct?

14 A Yes.

15 Q Now you said you talked to management in determining
16 or in conducting your analysis, correct?

17 A I specifically asked for supporting documentation
18 for the due from affiliates amount, yes.

19 Q Now at the same time that you talked to management
20 about getting documents, did you ask for the statements of
21 assets and liabilities that were provided to the auditors from
22 the owners relating to their ability to pay the obligation
23 outlined in Exhibit 115?

24 A I wasn't-- I didn't specifically ask for that

1 information, because I haven't seen this work paper until
2 recently.

3 Q So you didn't see this Exhibit 115 when you
4 conducted your analysis. That was something that was not
5 provided to you?

6 A Correct.

7 Q And you were provided no information about the
8 ability to pay by the owners or the willingness to pay,
9 correct?

10 A Think that the reason why I didn't ask -- I didn't
11 ask that question, and I think the reason why I didn't ask
12 that question is because I didn't want to -- I wanted
13 documentation to support the balances to prove what was
14 included and due from affiliates. What are the terms of
15 repayment, not necessarily what the amounts were.

16 Q So it was explained to you that the owners of the
17 company had received value from the Superpumper operations,
18 and that value was treated as a loan on the books as opposed
19 to a distribution to the owners. That was explained to you,
20 right?

21 A There are two Promissory Notes, one with Sam
22 Morabito and one with Edward Bayuk that were the result of the
23 an equity transaction that I am aware of.

24 Q So was it explained to you when you conducted your

1 analysis and you're communicating with the management, that
2 the management controlled whether or not there would be
3 repayment?

4 A I didn't specifically have that conversation, no.

5 Q That it was Paul Morabito and his affiliates or Sam
6 or Ed that controlled whether or not there would be repayment?

7 A I didn't have that discussion with them, no.

8 Q And that Paul Morabito, Ed and Sam had provided
9 proof of their ability to repay the amounts. That was not
10 explained to you?

11 A No.

12 Q Now if we go to, kind of fast forward from we were
13 talking about the time period of September 2010, you were
14 advised and I believe paperwork was provided to you to show
15 that CWC, Consolidated Western Corporation, the equity holder
16 for Superpumper, merged with Superpumper as of September 30,
17 2010, right?

18 A Yes.

19 Q And as a result of that merger, any due from
20 Consolidated Western Corporation was zeroed out by the effect
21 of that merger. Do you recall that?

22 A I see there is a due from affiliate from CWC on the
23 work papers we just discussed. That is not one of the
24 Promissory Notes I was provide, yes.

1 Q Now the date of Spencer Cavalier's report where he
2 valued Superpumper's equity as of August 2010, that report was
3 dated October 2010, right?

4 A Yes.

5 Q And so by virtue of the merger, that zeroed out the
6 obligation due from's. And then were you advised by December
7 2010 they were put back on the books to reflect the new equity
8 position of Ed and Sam?

9 A I know that many of the Promissory Notes that I was
10 provided were dated in December of 2010.

11 Q Okay. So were you provided Exhibit 116, the audit
12 conclusion memo from December 31, 2010?

13 A I don't recall seeing this.

14 Q Okay. If I could take you to about the middle of the
15 page where it says related party transactions?

16 A Yes.

17 Q And it says Paul Morabito owes SPI an additional
18 \$285,580. Do you see that?

19 A Yes.

20 Q Okay. The next line it says: Amounts due from the
21 current parent company owners total, and there is some numbers
22 consisting of principal amounts. Do you see that?

23 A Yes.

24 Q If you could read that to yourself?

1 A Okay.

2 Q Does this comport with your understanding there was
3 new-- there were new loans or notes put on the books following
4 the equity event, I will indicate the merger of September 30,
5 2010, in order to reflect the new equity ownership?

6 A I think there is -- it is not exactly clear cut,
7 because the due from affiliates may be included on the balance
8 sheet but no formal Promissory Note was provided until a
9 subsequent date. So when we are talking about what is on the
10 balance sheet and whether they had supporting documentation, I
11 think we would have to go through each Promissory Note for me
12 to properly answer that.

13 Q If you could go to Exhibit 119, if this is in?

14 MR. GILMORE: I believe it is, yes.

15 BY MS. TURNER:

16 Q Exhibit 119?

17 A Yes.

18 Q We have the August 2010 balance sheet. Do you see
19 the note receivable?

20 A Yes.

21 Q Okay. And we have 8.9 million or so at the end of
22 August 2010, correct?

23 A Yes.

24 Q Okay. If you could go to December 2010, it is two

1 pages further down. December 2010 you have the same amount,
2 right?

3 A No, because you have to look at the ending balance.
4 So the ending balance is different between August and
5 December.

6 Q That is at the end of December. If you could look
7 at -- you're right. There is about, there is a couple hundred
8 thousand dollar difference. If you look at the notes
9 receivable beginning balance as of August 2010 and then
10 December 2010, it is the same?

11 A The beginning balance is, yes.

12 Q Okay. And if we go to Exhibit 120, this is page 13,
13 this is the table Mr. Gilmore showed you?

14 A Yes.

15 Q Now we have a new note from Paul Morabito, \$939,000
16 right?

17 A Correct.

18 Q And then the restated notes from equity are what are
19 set forth, Ed Bayuk and Sam Morabito, correct?

20 A Yes.

21 Q Now did Sam Morabito or Ed Bayuk tell you that they
22 had an inability to pay those amounts?

23 A We did not have that discussion.

24 Q Or that they were unwilling to pay those amounts?

1 A I did not ask them that.

2 Q They certainly controlled whether they would pay
3 those amounts, right?

4 A I didn't ask them that.

5 Q If you look at Exhibit 122 and Exhibit 123, those
6 are term notes from Sam and Ed that were provided to you?

7 A Correct, yes.

8 Q Okay. And they certainly include percentage of
9 interest?

10 A They do, yes.

11 Q Did you look at how those correlated to the interest
12 outlined in the 2009 financials?

13 A They are not the same as what is outlined in the
14 2009 financials.

15 Q Now if management believes that a payable has zero
16 value to the company, it is either not collectible or it is
17 more than not current, there is an unwillingness or an
18 inability to obtain payment, they write that off. They
19 properly write it off, correct?

20 A Are we talking about a payable or a receivable?

21 Q Good point. A receivable?

22 A Okay. In what context? Are you talking about in
23 terms of their internal financials or audited financials? In
24 what context are you asking me?

1 Q At the end of the year, as an auditor, you look at
2 that to determine -- you look at that to determine if it is
3 collectible, right?

4 A If you are auditing, and in this instance they
5 specifically didn't address the valuation of the due from
6 affiliates, but part of the audit would be to look at the
7 underlying documentation and terms of repayment, yes.

8 Q In 2009 with the audited financials, that was done
9 by the auditors, correct?

10 A That work paper doesn't necessarily say that that
11 was done. Generally, when I was auditing, if we had done
12 procedures, our work paper would specifically set forth what
13 procedure we did, and I don't see anything on that schedule.

14 Q What we know is that there was no write-off of the
15 amounts of the due froms, and you had analysis by the auditors
16 about whether there was an ability to pay, correct?

17 A The only thing that I saw on that schedule was a
18 little asterisk on the left-hand side that said we saw Paul
19 Morabito's financial statements. I think that is all that was
20 on -- Can you point me to that exhibit again?

21 Q 115?

22 A -- 115. So if we look at 115, it says we obtained a
23 personal financial statement from Paul Morabito to test the
24 valuation of the receivable. So my question would be as an

1 auditor, if I had obtained a personal financial statement,
2 what did they do in terms of looking at the underlying
3 information on that personal financial statement? I don't
4 know. We would have to ask the auditors that question.

5 Q Were you provided the financial statements
6 certifying the assets of Paul Morabito?

7 A Of Paul Morabito? I was not provided the financial
8 statements of Paul Morabito.

9 Q Or Ed or Sam?

10 A I was not.

11 Q And with respect to 2009, the notes from the
12 auditors, the notes to the financial statements, the audited
13 financial statements describe here it is \$7,683,918 and you
14 have all but \$623,021 due on demand, correct?

15 A That's what that says, yes.

16 Q Did you determine what the basis for the payables
17 was, the consideration for the payables to the owners or their
18 affiliates?

19 A Are we talking about the receivables or the
20 payables.

21 Q These notes that we are talking about in 2009, the
22 description of due from payables from the owners and their
23 affiliates to the company, did you determine what the
24 consideration was?

1 A I specifically asked for supporting documentation as
2 of September-- August 31, 2010 and September 30, 2010 because
3 those were the dates of valuation. I was provided with a
4 Promissory Note that I testified to.

5 Q Now I want to make sure I understand your testimony.
6 Did you criticize Mr. McGovern and Mr. Cavalier for not
7 looking at actual performance through December 31, 2014?

8 A I did not.

9 Q Okay. You looked at performance through 2014,
10 right?

11 A Correct.

12 Q But when the date of valuation is August 2010 or
13 September 2010, you're not saying that it should have been
14 done by these two gentlemen to look at?

15 A I wasn't saying they should have done a 2014
16 valuation date, no.

17 Q Or looked at actual performance through 2014?

18 A No.

19 Q Now you have not looked at Paul Morabito's assets on
20 behalf of the defendants at any point in time?

21 A Not in this case, no.

22 Q You did in the bankruptcy case?

23 A I don't remember what type of case it was, but that
24 different case, yes.

1 Q If you look at Exhibit 44? Exhibit 44 is your report
2 done as of March 15, 2011, correct?

3 A Yes.

4 Q And it is in the underlying --

5 THE WITNESS: The fact that I have a nondisclosure
6 agreement, how does that impact my testimony today, if at all?
7 So I signed a nondisclosure agreement in this case. Does that
8 impact it?

9 THE COURT: With who?

10 THE WITNESS: With Consolidated Nevada Corporation
11 and Paul Morabito.

12 THE COURT: Well --

13 MS. TURNER: Your Honor, the report was stipulated
14 into evidence.

15 THE COURT: How did you get the report?

16 MR. GILMORE: The report was attached as an exhibit
17 to the stipulation on punitive damages along with Mr. Greene's
18 competing report.

19 THE COURT: So your nondisclosure has already been
20 released by the person who said you wouldn't disclose it?

21 MR. GILMORE: I understand that to be the case.

22 THE WITNESS: Okay.

23 BY MS. TURNER:

24 Q If you look at Exhibit 44, page 8?

1 A Yes.

2 Q You looked at Mr. Morabito's assets as of March 2nd
3 2011, correct?

4 A Yes.

5 Q Now is it your position that Mr. McGovern should not
6 have attributed any value to the \$939,000 note payable that
7 was executed by Paul Morabito September 1, 2010 when he valued
8 100 percent of the equity of Superpumper as of September 30,
9 2010?

10 A What my major issue with due from affiliates is is
11 the lack of due diligence surrounding the amount due from
12 affiliates as well as the undocumented due from affiliates and
13 subsequent to those, and that is my main issue with regard to
14 Mr. McGovern's treatment to that.

15 Q Okay. It is not that you criticize Mr. McGovern for
16 attributing value to the note payable from Paul Morabito as of
17 September 1, 2010 for \$939,000?

18 A So the note receivable, not note payable?

19 Q Not payable to the company?

20 A Right. Correct.

21 Q You are not criticizing him for attributing that
22 value?

23 A Well, I'm talking about, -- I testified to adjusting
24 the fair market value and understanding whether the

1 documentation exists, whether the repayment terms were
2 considered, whether there was interest included. The credit
3 worthiness of the debtor. There are factors that come into
4 play, and Mr. McGovern just accepted without doing any due
5 diligence, the amount due from affiliates in its entirety
6 including the \$939,000.

7 Q But you recommended that the entire amount call it
8 receivable or the due from payable, the entire amount should
9 be excluded from Mr. McGovern's conclusion of value? What I am
10 hearing from you is it was because of his methodology as
11 opposed to whether or not it should properly be included in
12 the determination of value.

13 A In my report essentially what I say is I don't see
14 any evidence that would support why we would leave it on
15 there, but I provided the analysis assuming it is left on and
16 assuming it is removed for the trier of fact to determine.

17 Q A buyer would certainly be very interested, I am
18 saying the \$939,000 note as an example, they would be
19 interested in that receivable on the books, correct?

20 A They would, and they would also be interested in the
21 credit worthiness of the debtor and what other obligations
22 they have. And I think that is important in terms of this
23 report under Exhibit 144-- I mean under 44.

24 Q In the 2009 year end which was the only year end

1 that was available by September 2010, right?

2 A Correct.

3 Q Those audited financials did include a credit
4 worthiness analysis, correct?

5 A Can you point me to the audited financials where it
6 says that?

7 Q I just showed you the note that related to it being
8 included as part of the financial, audited financial statement
9 where there was no qualifier to indicate that it was not
10 collectible. Did you ask for the work file of the auditors for
11 2009?

12 A No.

13 Q And with respect to the statement of assets and
14 liabilities, you did zero analysis on the credit worthiness or
15 collectability from Sam, Edward or Paul?

16 A Can you say that again? Are we talking about the
17 March 2011 report?

18 Q I am talking about when you did your critique of
19 McGovern and Mr. Cavalier, did you not do any analysis of the
20 collectability of those receivables?

21 A I did not do any analysis of the credit worthiness
22 of Sam Morabito or Edward Bayuk.

23 Q Yeah. And for Paul Morabito, you did not do any
24 analysis of credit worthiness for that purpose?

1 A Right.

2 Q The only time you did an analysis of credit
3 worthiness was with respect to your March 2011 analysis in the
4 punitive damage phase of the underlying case with the Herbsts;
5 is that accurate?

6 A Yes.

7 Q Okay. When you did the statement of net worth as of
8 March 2011, was that information provided to you by
9 Mr. Morabito and/or his counsel?

10 A I would have to go through each line item, but it
11 looks like I referred to statements, then appraisals, and then
12 for each line item I have a footnote that indicates the source
13 of that information.

14 Q Okay, if we go to the 20 percent interest in
15 Woodland Heights joint venture. Do you see that?

16 A Yes.

17 Q \$1,600,684, who provided you that information?

18 A I indicate it is a schedule reflecting the
19 calculation of percent interest that was provided by Paul
20 Morabito.

21 Q And were you provided a copy of the conveyance?

22 A I don't remember.

23 Q If we go to footnote two of your statement, net
24 worth of Paul Morabito, see where it says Arcadia Living Trust

1 assigned the note to the principals of an entity known as
2 Woodland Heights, Ltd?

3 A Yes.

4 Q Were you advised of the details of where Woodland
5 Heights Ltd.'s property is located?

6 A I don't recall having that conversation.

7 Q Okay. Were you provided any statements of Paul
8 Morabito's assets dated prior to March 2nd, 2011?

9 A According to my documents relied upon, I had his
10 personal income tax returns, and appraisal of real property
11 that he dated prior to 2011.

12 Q If you go to Exhibit 43 in that same book.

13 A Yes.

14 Q This is an e-mail dated March 10, 2010 from Paul
15 Morabito to a CPA, then there is an attachment. Can you tell
16 me whether or not that attachment was ever provided to you?

17 A I would have to pull my work paper file to tell you
18 for sure, but I don't remember seeing this document.

19 Q Did Paul Morabito tell you what he had valued the
20 equity interest in Superpumper as?

21 A I don't remember having that conversation.

22 Q Did he advise you that he had valued 100 percent
23 interest at 20 to 30 million dollars in 2009 and 2010?

24 A No.

1 Q Now what management values the business at would be
2 relevant?

3 A It depends.

4 Q Okay. Garbage in garbage out. But it would be
5 relevant?

6 A I mean it is something that you would take into
7 consideration, but often times business owners think their
8 businesses are worth more than they truly are. So depending on
9 their background and how much they understand about valuation,
10 I think that all has to be taken into consideration.

11 Q But Paul Morabito could say we have those notes on
12 the books and they are collectible. How do I know that?
13 Because they are my obligations to the company?

14 MR. GILMORE: Objection.

15 BY MS. TURNER:

16 Q That is relevant, right?

17 MR. GILMORE: Is this a hypothetical question?

18 MS. TURNER: It is.

19 MR. GILMORE: It is incomplete.

20 THE COURT: I don't know whether this witness can
21 says it is complete enough for her to answer.

22 THE WITNESS: Can you ask me what the question is?

23 BY MS. TURNER:

24 Q Sure. You said collectability of the receivables is

1 relevant to determining value. If Paul Morabito is the obligor
2 either directly or through his affiliates, a vast majority of
3 those receivables, it is certainly relevant to ask the
4 question, do you believe that the company has value, do you
5 have the ability to pay and do you have the willingness to
6 pay, those questions to Paul Morabito are relevant?

7 A I think more relevant is looking at the underlying
8 supporting documentation to prove whether there is evidence of
9 repayment and what the repayment terms are.

10 Q Exhibit 115 outlining the obligations of principal
11 and interest was not sufficient for you?

12 A I was looking at the amounts due from affiliates as
13 of August 31st 2010 and September 30, 2010, and those notes
14 are different than what is shown on the December 31 financial
15 statement, 2009 financial statement.

16 Q The September 2010 Promissory Note from Paul
17 Morabito, that was sufficient to show there is a Promissory
18 Note with an principal and interest obligation, right?

19 A Right. I didn't provide an opinion on whether it is
20 sufficient or not, just that it existed.

21 Q And same with the Ed Bayuk and Sam Morabito notes,
22 these are hard notes reflecting, those amounts that were
23 previously on the books without those hard notes, right?

24 A They may or my not have been previously on the

1 books. But, yeah, those are and it is supported by a formal
2 Promissory Note, yes.

3 Q And on the three million dollar loan obligation, you
4 said that the fair market value determination of Mr. McGovern
5 at least should have been reduced by the amount of the three
6 million dollars loan that was funded by Compass Bank, correct?

7 A I said under the asset approach which Mr. McGovern
8 did not use, the valuation would be reduced by three million
9 dollars.

10 Q And if there had been repayment of that loan by
11 September 30th in the amount of 1.318 million dollars, that
12 would be offset by this three million dollar amount, right?

13 A Right, because the amount shown as the debt should
14 just be the principal, total principal and accrued interest
15 due as of that date, correct.

16 Q So if there had been recapitalization of that amount
17 by September 30th, it would not be a three million dollar
18 reduction, it would be three million less than the amount
19 recapitalized, right?

20 A Less any amount repaid, right?

21 Q Yup?

22 A Yes.

23 Q Did you take into the account the \$939,000 note
24 payable for that portion of the three million dollar loan that

1 was provided to Paul Morbito?

2 A I did address that in my report when I discussed the
3 three million dollar loan, yes.

4 Q That should be included as well as an offset of the
5 three million dollar liability because you have at least
6 \$939,000 that zeroed out by a note payable from Paul Morabito,
7 to the company?

8 A So there is \$939,000 due from Paul Morabito from the
9 company. Now what are you asking?

10 Q So if that was for repayment of \$939,000 paid from
11 the three million dollar loan or distributed to Paul Morabito,
12 that would zero out as to the \$939,000 anyway?

13 A You would have to look at the Compass loan to see
14 how the loan was paid down with that \$939,000, if at all. So
15 really you have to look, it is pretty easy, just look at that
16 statement and see what the balance due is as of any point in
17 time.

18 Q If there was no -- if it was just a note provided,
19 it would zero out the principal amount and you would just have
20 interest, that would then be a liability, correct?

21 A If you're asking if there was a note payable due
22 from Superpumper and the amount due from affiliates, they were
23 both \$939,000, they would offset each other not taking into
24 consideration accrued interest, correct.

1 Q And if the note payable equaled the same interest as
2 the Compass loan, it would just zero it.

3 A If they were the exact same calculations yes.

4 MS. TURNER: Court's indulgence?

5 THE COURT: Yes.

6 MS. TURNER: I will pass the witness. Thank you for
7 your time.

8 THE WITNESS: Thank you.

9 THE COURT: Counsel.

10

11 REDIRECT EXAMINATION

12 BY MR. GILMORE:

13 Q Ms. Salazar, I would like to focus on two exhibits.
14 The first one would be Exhibit 114 and the other would be 116.
15 If you could pull that book in front of you. Let's start with
16 114?

17 A I have it.

18 Q You were shown this before. 114 is the 2009
19 Superpumper audited financial statement, right?

20 A Yes.

21 Q Now in the notes to these financial statements,
22 specifically Note 8, the auditors confirmed that it is fair
23 treatment, at least there is no material misstatement that the
24 bulk of the due from affiliates, 6.6 million and change, is

1 due on demand. Do you see that?

2 A Yes.

3 Q Now did you recognize that Mr. McGovern, in reliance
4 on these due on demand classifications, justified the
5 conversion from noncurrent to current?

6 A Yes.

7 Q Okay. Below the auditor specifically classified
8 these assets as noncurrent, right?

9 A Correct.

10 Q Despite the fact that just above that line they're
11 identified as due on demand. Do you realize that?

12 A Yes.

13 Q Do you know what Mr. McGovern's justification was
14 for converting these due from affiliates from noncurrent to
15 current?

16 A He indicated that because they were due on demand
17 per the audited financial statements, that it is appropriate
18 to reclassify them from other assets to current assets.

19 Q Okay. That was year end 2009, right?

20 A Yes.

21 Q Now let's go to 116, which Ms. Pike Turner showed
22 you the audit conclusion memo for exactly one year later,
23 right?

24 A Yes.

1 Q So if the auditors concluded in 2009 year end the
2 notes were due on demand, what would that suggest to you about
3 what they understood related to the payment terms?

4 A That they were due whenever Superpumper asked for
5 the money.

6 Q Did it lead you to conclude there were not physical
7 notes identifying alternate payment terms?

8 A No.

9 Q So now I would like to direct your attention to
10 Exhibit 116 which are the notes to the financial statement a
11 year following the time in which they were classified as
12 noncurrent, due on demand. Do you follow me? Now counsel
13 asked you to evaluate this line here: In addition, Paul
14 Morabito owes Snowshoe Petroleum an additional \$285,000. And
15 this is due on demand?

16 A Correct.

17 Q That squares with the 2010 notes to the financial
18 statement which shows this \$285,000 is due on demand, correct?

19 A Correct.

20 Q In the 2010 financials were any of the other
21 affiliates due from affiliates due on demand?

22 A No.

23 Q Only the \$285,000?

24 A Correct.

1 Q Yet in the 2009 audited financial statement all of
2 them or the bulk of them were due on demand, right?

3 A Correct.

4 Q So help us understand this. If then in 2010 the
5 auditors conclude that the amounts due from current parent
6 company/owners total these amounts, and then (for which we
7 obtained signed note agreements), does it suggest to you that
8 the due from affiliates number in 2010 for which they now have
9 signed note agreements, something changed between year end
10 2009 when they were all due on demand and now year end 2010
11 there are notes?

12 A Yes.

13 Q What is the significance of that?

14 A I think that when you look at the footnote to 2009,
15 the Promissory Notes are completely different than when you
16 look at December 31, 2010. So it can mean a number of
17 different things. But in my opinion, it looks like they got a
18 handle on what the true due from affiliates amount was,
19 because they contemplated being asked what is included in that
20 amount.

21 Q Okay. Now in this audit conclusions memo, do you see
22 an area where they explain when those notes were executed,
23 irrespective of the date the obligation was incurred?

24 A I would have to read it.

1 Q Go ahead and take as much time as you need on those
2 two. It is really only in the first two pages, and see if
3 there is any treatment given to when these notes were actually
4 executed.

5 A I don't see any discussion when the notes were
6 executed.

7 Q Did you see any discussion when the notes were
8 executed in the notes to the 2010 financials?

9 A No.

10 Q So we can't tell from looking at the auditor's
11 reports or even their notes as to when these written
12 Promissory Notes were executed evidencing these obligations,
13 true?

14 A When the written Promissory Notes were executed or
15 when they appeared on the balance sheet?

16 Q Specific question is when they were executed
17 evidencing the debt?

18 A No.

19 Q So you don't know if they were executed on December
20 30th do you?

21 A Only based upon the date on the Promissory Note.

22 Q Now the date on the Promissory Note, do you know if
23 that was the date the note was actually executed?

24 A I do not.

1 Q In fact, with respect to the \$939,000 note that was
2 shown to you dated September 1, 2010, right?

3 A Yes.

4 Q Are you aware that one of the stipulated facts in
5 this case is that loan didn't even fund until September 15th?

6 A No.

7 MR. GILMORE: 15th or after is the stipulated fact.

8 MS. PILATOWICZ: 13th is the stipulated fact.

9 THE COURT: Are we 13 or 14 or 15?

10 MR. GILMORE: Could be the 13th.

11 MS. TURNER: The date of the oral ruling.

12 MS. PILATOWICZ: It was the 13th or after.

13 BY MR. GILMORE:

14 Q Let me restate that. I am not sure it makes any
15 difference. Are you aware that the stipulated facts in this
16 case are that that loan was not funded until after the
17 purported date of that Promissory Note?

18 A No.

19 Q Now the fact that the auditors conclude at year end
20 2010 that they have written Promissory Notes, that is not
21 inconsistent with your own due diligence, is it?

22 A No.

23 Q Why is it not consistent?

24 A Because I obtained the Promissory Notes.

1 Q And you efforted to obtain the Promissory Notes from
2 what time period?

3 A I wanted to understand what was included in the due
4 from affiliates as of September 30, 2010 and August 31, 2010,
5 and I was provided those Promissory Notes.

6 Q So you don't know, didn't effort to determine which
7 notes would be executed from say October 1st to December 31st,
8 did you?

9 A No.

10 Q All you know is what you asked for, what you were
11 given with respect to when the notes existed, right?

12 A The date of the Promissory Note, yes.

13 THE COURT: Do you have more questions?

14 BY MR. GILMORE:

15 Q When Ms. Pike Turner was asking you about company
16 specific risk, you testified that you did not effort to obtain
17 or identify specific company risk as it pertained individually
18 and discreetly to Superpumper, true?

19 A Correct.

20 Q Now if that information were provided to you, would
21 that have impacted your conclusion as to the company specific
22 risk?

23 A I think that five percent is very reasonable and
24 within the range of what I would have concluded.

1 Q Hypothetically, if you had been provided evidence
2 that Superpumper owns no durable assets --

3 MS. TURNER: Objection. Assumes facts not in
4 evidence.

5 MR. GILMORE: It is a hypothetical.

6 THE COURT: Let's get the hypothetical.

7 BY MR. GILMORE:

8 Q If you were asked to assume Superpumper had no
9 durable assets, it had an income stream and liabilities, would
10 that factor into company specific risk?

11 MS. TURNER: Objection, assumes facts not in
12 evidence.

13 THE WITNESS: No, that is all --

14 THE COURT: Wait. I am not sure it assumes facts
15 not in evidence do you have those facts? Can you establish
16 those facts.

17 MR. GILMORE: Yes. In fact, I believe Mr. Sam
18 Morabito, testified to that and so did Dr. Friederich
19 testified this company has no durable assets. It owns leases.

20 THE COURT: A predicate for your question will
21 depend on what the trier of fact finds, so I am going to
22 overrule the objection. The answer will have only that amount
23 of value that the Court finds is supported by the facts.

24 MR. GILMORE: That is fair, Your Honor.

1 BY MR. GILMORE:

2 Q This is a couple of hypotheticals. I am not asking
3 you to testify as to whether any of these conditions exit. I
4 am saying, in your training and professional experience, if
5 those factors were made available to you, for example the
6 entity which you're valuing owned no durable assets, would
7 that impact at all your conclusion as to company specific
8 risk?

9 A Those factors, the factors you discussed, would be
10 included or not included on the balance sheet. And that is all
11 built into the empirical analysis from Duff and Phelps.

12 Q Your testimony is those kinds of things are built
13 into the calculation that you arrived at through these third
14 sources?

15 A Correct.

16 Q Got it?

17 MR. GILMORE: No further questions, Your Honor.

18 THE COURT: All right. Ms. Turner?

19 MS. TURNER: I have nothing further.

20 THE COURT: Okay. Then you may down. You are
21 excused.

22 (Witness excused.)

23 THE COURT: So, counsel, I have a question while
24 she's getting ready to leave. Exhibit 302 I thought it was

1 admitted. What do you all show?

2 MS. TURNER: It was admitted.

3 MR. GILMORE: I show it was as well. That was added
4 to the list after evidence had opened.

5 THE COURT: Okay. So 302 then will be admitted. I'm
6 not sure we did that. If I didn't, I will now. Okay. And
7 then Marci told me there was an exhibit that had a Social
8 Security number on it.

9 MS. TURNER: It has been replaced.

10 MR. GILMORE: We fixed it the first day

11 THE COURT: I was trying to make sure that had
12 happened. I couldn't remember the exhibit number.

13 And then I am just trying to look at my little notes
14 of things that I have. I think that is all I have for today.

15 Tomorrow when we looked at the schedule, it is going
16 to be a full day again. And we have to recess a few minutes
17 before 5:00 for voting, and I am going to vote in the morning.
18 We may not be able to start until around 8:30. I am not sure
19 how long it will take me at the polls. I think it is best,
20 even though I might be here at 8:00, I think it is probably
21 best for you all to plan on starting at 8:30.

22 Have you changed anything in your schedule in terms
23 of how much time you need?

24 MR. GILMORE: Yes, we have. As we were made aware

1 before the Plaintiff closed his case-in-chief they were
2 withdrawing from their case-in-chief the designation of
3 Mr. Vacco and Mr. Bernstein.

4 THE COURT: Right.

5 MR. GILMORE: Over the weekend, counsel and I have
6 worked to pare down those designations based on Plaintiff's
7 evaluation of what was needed, what was not needed. Those
8 changes have been made, incorporated into the designation
9 binders, so I do believe that we cut several minutes if not
10 several dozen minutes from the deposition reading
11 designations. Additionally, I believe by a stipulation,
12 although I don't have it officially with respect to removing
13 Mr. Justmann entirely from the deposition schedule, so I
14 really do believe we can finish this up entirely tomorrow,
15 Your Honor. I have two live witnesses. The first witness I
16 will have will be approximately 15 minutes. I don't know how
17 much response, cross-examination, and that is Mr. Banks. I
18 expect Mr. Darryl Noble will probably be on the stand an hour
19 on direct, the same amount of time on cross. After that, it is
20 only deposition reading.

21 In reviewing it over the weekend, my expectation is
22 Mr. Vacco might be an hour and a half. Mr. Lovelace less than
23 15 minutes. Mr. Bernstein is probably a little bit less than
24 thirty minutes. And Mr. Cavalier is probably less than thirty

1 minutes. And Mr. Sewitz is probably 15 to 20 minutes. That
2 is the best estimate I can give the Court. Of course, I read
3 in my mind perhaps a little faster than we'll read into the
4 record, so I try to account for that. I think we can get done
5 before 5:00 o'clock tomorrow if we start at 8:30 or before.

6 THE COURT: Okay. So we have Dennis Vacco,
7 Christian Lovelace and Stanton Bernstein that you all have
8 given me new designations on.

9 MR. GILMORE: Correct. It has been modified in the
10 court binder.

11 THE COURT: And those will be read into the record.
12 That sounds like that is about two, three hours.

13 MR. GILMORE: Two, two and a half.

14 THE COURT: You have an hour and half for Mr. Vacco
15 and you have a quarter for Lovelace and half hour for
16 Bernstein and half hour for someone else.

17 MR. GILMORE: For just those three that were
18 originally going to be identified in Plaintiff's
19 case-in-chief, those are now my case-in-chief that I guess is
20 probably about two and a half hours total. Then I have two of
21 my own deposition transcripts which is Mr. Cavalier. His
22 deposition is about thirty pages or so, and then I have
23 Mr. Sewitz whose deposition is less than thirty pages.

24 THE COURT: Okay. Nobody is going to use

1 Mr. Justmann?

2 MR. GILMORE: I transmitted a stipulation with
3 respect to Mr. Justmann I expect would be acceptable. I
4 haven't heard back yet from that. My expectation is within
5 the minute or so we'll know.

6 MS. PILATOWICZ: We'll stipulate. We will work on
7 how it is presented to the Court, but we will stipulate.

8 THE COURT: We'll start at 8:30 tomorrow morning and
9 we will stop at 5:00 so if we're not done, we have to roll
10 over to Wednesday. I wasn't sure what you all were thinking in
11 terms of your closing. Whatever you think about, let me know
12 tomorrow if you have some ideas. I don't know if you want to
13 wait until you have a transcript. I don't know if you want to
14 augment your findings of fact after the conclusion of the
15 evidence or your conclusions in any way, or if you just want
16 to argue right away after trial. It really makes no
17 difference to me when you do that argument, although I would
18 rather we didn't wait months. That would be very difficult.
19 But if you do want to wait until you have a transcript for
20 some reason, we can do that. Think about it. You don't have
21 to tell me right now unless you already kind of reached some
22 conclusion.

23 MR. GILMORE: We certainly thought about it, haven't
24 discussed it amongst ourselves. In order to help me with

1 that, I would have to know when we were to receive rough draft
2 transcripts.

3 MS. TURNER: My thought is this is a circumstantial
4 evidence case and closing will take some time.

5 THE COURT: I am sure.

6 MS. TURNER: And I think for us to help you we
7 should have some time and some thought. I thought that coming
8 back on Friday made sense for a couple of reasons. One is so
9 that there is a concise statement for you where we are taking
10 our time and not just throwing it together the night before.

11 THE COURT: I have got a problem on Friday. There is
12 a judge's meeting which I have to attend and there is a Nexus
13 to Justice Commission meeting which I totally forgot about, I
14 I need to be there on the whole Friday afternoon. So it is a
15 little difficult for me to give you my full undivided
16 attention on Friday. I can do it. And I also can miss the
17 conference that I wanted to go to. This is important to me to
18 get this resolved. The only other option really,
19 realistically, this is the Thanksgiving week which is a whole
20 week and a half away so it might have to be Thursday instead
21 of Friday. It may turn out I can't. It is more difficult for
22 me to try to do Friday with all the other judges that I impact
23 versus missing out on the conference.

24 MS. TURNER: I only said Friday because I thought you

1 were unavailable Thursday. Thursday is certainly fine.
2 Wednesday is fine and we are prepared to argue. I am a little
3 concerned about putting it out all the way to Thanksgiving to
4 be honest.

5 THE COURT: No, I understand that. I am a little
6 concerned about that, too. So okay.

7 MR. GILMORE: Can I just address that? So I'm not
8 sure that I can be ready to do closing argument on Thursday if
9 we close evidence tomorrow or even Wednesday morning. I'm not
10 sure that gives me enough time. Three or four lawyers on
11 their side, just me on my side. I am not making that as an
12 excuse. I only have so many hours I can go through these
13 things. I also think, based on the circumstantial nature of
14 the claims and the burden that shifts throughout the trial,
15 that really, without the transcript, as complicated as some of
16 these issues are, I'm not sure that we can give the Court an
17 comprehensive closing argument without the transcript. I am
18 not offering this Judge to suggest -- I'm not making a
19 suggestion one way or the other. I am simply saying those are
20 my concerns. Thursday will be hard for me to be ready. Friday
21 I could do, but at the same time we are not going to have the
22 transcript either Thursday or Friday. It might make sense
23 perhaps we can discuss this in the morning to pick a day
24 sometime later in mid November or whatever and come back and

1 assign a full day when we have had the chance to review the
2 transcripts even if they are rough and organize our notes. I
3 think probably that is where I am at today.

4 THE COURT: Well, you all sleep on it, think about
5 it and we'll talk about it tomorrow too, okay.

6 MS. TURNER: Thank you.

7 THE COURT: All right. I will see you all in the
8 morning at 8:30. Court's in recess.

9 (Whereupon the Court adjourned until Tuesday,
10 November 6, 2018 at 8:30 a.m.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)
4
5 I, Judith Ann Schonlau, Official Reporter of the Second
6 Judicial District Court of the State of Nevada, in and for the
7 County of Washoe, DO HEREBY CERTIFY:
8 That as such reporter I was present in Department No. 4 of the
9 above-entitled court on Monday, November 5, 2018 at the hour
10 of 1:00 p.m. of said day and that I then and there took
11 verbatim stenotype notes of the proceedings had in the matter
12 of WILLIAM LEONARD, JR. TRUSTEE vs. SUPERPUMPER, INC. ET AL,
13 Case Number CV13-02663.
14 That the foregoing transcript, consisting of pages
15 numbered 1-156 inclusive, is a true, true and correct
16 transcription of my said stenotypy notes, so taken as
17 aforesaid, and is a true, true and correct statement of the
18 proceedings had and testimony given upon the trial of the
19 above-entitled action to the best of my knowledge, skill and
20 ability.
21 DATED: At Reno, Nevada this 13th day of October, 2018.
22
23
24 /s/ Judith Ann Schonlau
 JUDITH ANN SCHONLAU CSR #18