

No. 82371

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRICEWATERHOUSECOOPERS LLP,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF CLARK,
STATE OF NEVADA, AND THE HONORABLE ELIZABETH GONZALEZ,

Respondents,

and

MICHAEL A. TRICARICHI,

Real party in interest.

From the Eighth Judicial District Court, County of Clark, Dept. XI
Dist. Court Case No. A-16-735910-B

**MICHAEL TRICARICHI'S RESPONSE TO
PRICEWATERHOUSECOOPERS LLP'S EXPEDITED
MOTION TO STAY TRIAL PENDING WRIT REVIEW**

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SUMMARY OF ARGUMENT

After nearly 5 years, this action for accountant malpractice is ready for trial. Petitioner PricewaterhouseCoopers, LLP ("PwC") gave bad tax advice to Michael Tricarichi in connection with the sale of his mobile telephone business. PwC vouched for a risky deal structure that was ultimately disregarded by the Internal Revenue Service, costing Mr. Tricarichi nearly \$20 million in interest and attorney's fees he otherwise would not have incurred.

At the very last minute, PwC asks this Court to delay the trial on account of its recently filed petition for a writ of mandamus. PwC's mandamus petition seeks to reverse a decision denying a motion to strike Mr. Tricarichi's jury demand. PwC filed this motion on the eve of trial and did not request an evidentiary hearing. The trial court determined PwC failed to prove the existence of an agreement to waive a trial by jury. Significantly, Mr. Tricarichi testified that he never received the "rider" in which PwC's alleged jury trial waiver was buried and PwC's witnesses could not specifically recall having provided it. Against this, PwC offered no evidence that it provided or that Mr. Tricarichi had received the "rider,"

relying solely upon what it incorrectly contends were implicit acknowledgments in pleadings that Mr. Tricarichi received it.

Having concluded as a matter of fact that no agreement to waive a jury trial existed, it was unnecessary for the Court to decide whether the alleged agreement was enforceable. On this record, it was neither error for the trial court to deny PwC's motion, nor, in any event, a matter sufficient to warrant this Court's intervention by writ. In this regard, this case is more like the Court's recent decision in *Walker v. Second Judicial Dist. Court*, 476 P.3d 1194 (Nev. 2020) (denying requested mandamus relief overturning district court's factual finding), than *Lowe Enters. Residential Partners, L.P. v. Eighth Judicial Dist. Court*, 118 Nev. 92 (2002) (issuing writ to find jury trial waiver was enforceable).

That PwC presented the issue to the trial court for decision on the eve of trial in November 2020 is PwC's own doing – it has asserted since 2016 that Mr. Tricarichi had no right to a jury trial. A stay of the district court proceedings is not appropriate when PwC could have but did not perfect the issue for this Court's review in a timely manner.

The prejudice that a stay will cause Mr. Tricarichi is not irreparable, but it is real and cognizable. This case has been pending for nearly five years.

If PwC wanted the district court to abridge Mr. Tricarichi's Constitutional right to a jury trial, it should have done so when the matter could be addressed by this Court without upsetting the trial court's administration of justice in the normal course. It is easy for PwC to now say that "mere delay" is not irreparable – but PwC's choices should not operate to delay Mr. Tricarichi's day in court.

ARGUMENT

On a motion for stay under NRAP 8(c), the court considers: (1) whether the object of the writ petition will be defeated absent a stay; (2) whether petitioner will suffer irreparable or serious injury if stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if stay is denied; and (4) whether petitioner is likely to prevail on the merits in the writ petition. The Court "ha[s] not indicated that any one factor carries more weight than the others, although *Fritz Hansen A/S v. District Court* recognizes that if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McRea*, 120 Nev.

248, 251 (2004).¹ Upon consideration of all of these factors, the Court should exercise its discretion to deny PwC's motion.

I. PwC Has Not Shown a Likelihood of Success on the Merits.

PwC bears a heavy burden to establish mandamus relief is appropriate, and it cannot do so in this case. To prevail on mandamus, PwC must show a clear error of law or an arbitrary and capricious abuse of discretion. *Archon Corp. v. Eighth Judicial Dis. Court*, 133 Nev. 816, 819-821, 407 P.3d 702 (2017). PwC's motion to stay identifies no such error and there was none. Disagreement with the district court's discretionary factfinding does not present an appropriate use of traditional mandamus. *Walker v. Second Judicial Dist. Court*, 136 Nev. ---, ---, 476 P.3d 1194, at *9-11 (Nev. Adv. Op. No. 80, December 10, 2020). Nor does such disagreement "present a serious issue of substantial public policy or involve important precedential

¹ PwC is mistaken when it suggests that the object of the appeal factor is entitled to special consideration and that it need not show a likelihood of success, citing *Mikohn and State v. Robles-Nieves*, 129 Nev. 537, 546, 306 P.3d 399, 406 (2013). In *Mikohn*, the issue was a motion to compel arbitration, and the Court noted (1) Nevada's strong policy favoring arbitration, as demonstrated by the Uniform Arbitration Act, and (2) the Legislature's decision to provide for interlocutory review of an order denying a motion to compel arbitration. *Mikohn*, 120 Nev. at 252-53. Likewise, *Robles-Nieves* involved an interlocutory appeal expressly provided for by statute. No such compelling public policy issues compel a stay in this case.

questions of statewide interest as required for advisory mandamus.” *Id.* at *13-14. PwC half-heartedly suggests the district court’s decision somehow undermines the Court’s holding in *Lowe* that an agreement to waive a jury trial is enforceable under Nevada law. In *Lowe*, unlike here, there was no dispute the agreement existed; the question was whether it was enforceable. Here, PwC had an opportunity to prove an agreement to waive the jury trial right and the factfinder concluded that it failed to do so.

Moreover, the district court’s conclusion – in essence that there was no proof of an agreement – was entirely reasonable in light of PwC’s failure to offer proof that Mr. Tricarichi had access to (much less received) the “rider” containing the alleged jury waiver. PwC offered no testimony the rider was given to, made available to, or even accessible to Mr. Tricarichi. Although parties may bargain by reference to an external document and incorporate the terms of that document into their agreement, the terms themselves must, at minimum, be accessible to the party against whom they are enforced. *Martin v. Citibank, N.A.*, 64 A.3d 477 (N.Y. App. Div. 2009) (affirming denial of summary judgment where plaintiff denied receiving page of agreement and “defendant’s employee who rented the box to plaintiff could not recall whether all of the pages of that agreement were actually given to plaintiff.”);

La Amapola, Inc. v. Honeyville, Inc., 2017 WL 10574226, *4 (C.D. Cal. July 28, 2017) (declining to incorporate terms and conditions referenced in agreement when those terms were not where the agreement said they would be (on the back side of the agreement), and no separate copy of the terms was provided to the plaintiff).

Here, as in *Martin*, Mr. Tricarichi testified the engagement letter alone “was the agreement,” he had never seen the rider before this litigation was filed, he would have proposed changes to it (as he did in the engagement itself), and he never would have signed it as is. (Deposition of Michael Tricarichi at 71:18-74:6, attached hereto as Exhibit A.) As in *Martin*, PwC produced no evidence that a copy of the rider was sent to Mr. Tricarichi with the engagement letter. And, as in *La Amapola*, there is no incorporation by reference where the agreement guided Tricarichi to something that didn’t exist – an attachment – which was not otherwise provided or made available.

PwC has no authority for a different result under Nevada law. Rather, PwC directs the Court to authority for the unremarkable proposition that parties may agree to incorporate by reference a separate writing into a contract. See *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 345-46 (1982) (subcontract was “one-page, short-form document” requiring

subcontractor's conformity with plans and specifications of the main contract); *Living Ecology, Inc. v. Bosch Packaging Technology, Inc.*, 2019 WL 7597039 (D. Nev. Dec. 9, 2019) (business-to-business dispute involving a contract containing specific references to specific terms and conditions). PwC also ineffectually relies on *Madison Who's Who of Execs. & Profs. Throughout the World, Inc. v. SecureNet Payment Sys., LLC*, 2010 WL 2091691 (E.D.N.Y. May 25, 2010). There, unlike here, the plaintiff signed a statement that "he agreed that he had received a copy of the Terms & Conditions and that he would adhere to all of the guidelines outlined therein." *Id.* at *3. Similarly inapplicable is *Koffler Elec. Mech. Apparatus Repair, Inc. v. Wartsila N. Am., Inc.*, 2011 WL 1086035 (N.D. Cal. Mar. 24, 2011), where, unlike here, the reference to incorporated terms was unmistakable and the agreement contained an offer to supply a copy of those terms. *Id.* at *1. No such language, and no such offer of supply, is contained within the engagement letter.

As this Court explained in *Walker*, the remedy of mandamus should be reserved for the rare and extreme abuse of discretion or broadly applicable questions of law. This matter presents neither. Accordingly, PwC cannot

show a likelihood of success on its writ petition and should not be entitled to interrupt the orderly course of the proceedings below.

II. The Remaining 8(c) Factors Should Be Given Little Weight Under the Circumstances.

The remaining factors listed in NRAP 8(c) are either ambiguous or do not support a stay. Under the circumstances, the Court should give the most weight to PwC's failure to show a likelihood of success on the merits.

It cannot be denied that PwC's goal in pursuing this writ could be affected if a stay is not granted. In the abstract, this factor favors a stay, but it is not dispositive. *Mikohn*, 120 Nev. at 253 (that the object of an appeal may be defeated if a stay is denied does not render a stay "automatic;" the remaining factors under NRAP 8(c) "also apply in the stay analysis"). And because this state of affairs has been brought about by PwC's own litigation decisions, this factor should be given less consideration, not more (as PwC suggests).

It also cannot be denied that neither party will be irreparably or seriously harmed by this Court's decision on this motion – *i.e.*, the second and third 8(c) factors are not dispositive. As the Court recognized in *Mikohn*, neither litigation cost nor delays constitute irreparable or serious harm in the

ordinary case. *Mikohn*, 120 Nev. at 253; *see also Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). The balance of the equities, however, counsels against a stay. The case has taken five years to become trial ready, Mr. Tricarichi has waited long enough for his day in court, and PwC should not be rewarded for the dilatoriness of its motion to strike the jury demand.

Beyond the Rule 8(c) factors, nothing about this case compels the Court's intervention. The Court has adequately addressed the enforceability of jury trial waivers in several unpublished dispositions following *Lowe*. *E.g.*, *3300 Partners, LLC v. Eighth Judicial Dist. Court*, No. 74897, 2018 WL 678465 (January 30, 2018) (unpublished disposition) (denying emergency petition for writ of mandamus; district court did not abuse its discretion in denying untimely motion to strike jury demand); *GGP, Inc. v. Eighth Judicial District Court*, No. 76100, 2019 WL 1349858 (March 22, 2019) (unpublished disposition) (writ relief inappropriate with respect to denial of motion to strike jury demand where defendant did not move to strike jury demand in 2016 complaint until 2018). As the Court observed in *GGP, Inc.*, the legal question of the enforceability of jury trial waivers was resolved in *Lowe*; this

case presents no different or unique legal issue requiring the Court's intervention.

CONCLUSION

Real party in interest Michael Tricarichi respectfully requests that the Court deny PwC's motion to stay.

Dated: February 10, 2021

SPERLING & SLATER, P.C.

/s/ Michael K. Wall

By: _____
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Michael Tricarichi*

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the *MICHAEL TRICARICHI'S RESPONSE TO PRICEWATERHOUSECOOPERS LLP'S EXPEDITED MOTION TO STAY TRIAL PENDING WRIT REVIEW* was filed electronically with the Clerk of the Nevada Supreme Court, and served on the following by Electronic Service:

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DATED this 10th day of February, 2021.

/s/ Bobbie Benitez

An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT A

HUTCHISON & STEFFEN

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Transcript of Michael A. Tricarichi

Date: October 1, 2020

Case: Tricarichi -v- PricewaterhouseCoopers LLP, et al.

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Transcript of Michael A. Tricarichi
Conducted on October 1, 2020

1 (1 to 4)

<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3 - - - - - x</p> <p>4 MICHAEL A. TRICARICHI, :</p> <p>5 Plaintiffs, :</p> <p>6 v. : Civil Action No.</p> <p>7 PRICEWATERHOUSECOOPERS : A-16-735-910-B</p> <p>8 LLP, COOPERATIVE : Department No. XI</p> <p>9 RABOBANK U.A., :</p> <p>10 UTRECHT-AMERICA FINANCE :</p> <p>11 CO., SEYFARTH SHAW LLP, :</p> <p>12 and GRAHAM R. TAYLOR, :</p> <p>13 Defendants. :</p> <p>14 - - - - - x</p> <p>15</p> <p>16 REMOTE DEPOSITION of MICHAEL A. TRICARICHI</p> <p>17 Thursday, October 1, 2020</p> <p>18 9:01 a.m.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 323672</p> <p>24 Pages: 1 - 339</p> <p>25 Reported By: Michelle M. Yohler, CSR, RMR, CRR</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 MR. SCOTT HESSELL</p> <p>4 MR. BLAKE SERCYE</p> <p>5 SPERLING & SLATER</p> <p>6 55 West Monroe Street, Suite 3200</p> <p>7 Chicago, Illinois 60603</p> <p>8 312.641.3200</p> <p>9 shessell@sperling-law.com</p> <p>10 bsercye@sperling-law.com</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANTS:</p> <p>13 MR. CHRISTOPHER D. LANDGRAFF</p> <p>14 BARTLIT BECK LLP</p> <p>15 54 West Hubbard Street</p> <p>16 Chicago, Illinois 60654</p> <p>17 312.494.4400</p> <p>18 chris.landgraff@bartlikbeck.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 Mr. Dan Lohaus, Videographer</p> <p>23 Mr. Lawrence Wallace, Technician.</p> <p>24</p> <p>25</p>
<p>1 Deposition of MICHAEL A. TRICARICHI, held</p> <p>2 remotely pursuant to notice before Michelle M.</p> <p>3 Yohler, CSR, RMR, CRR, a certified shorthand</p> <p>4 reporter in and for the County of Will, State of</p> <p>5 Illinois.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 E X A M I N A T I O N S</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 MICHAEL TRICARICHI</p> <p>5 By Mr. Landgraff..... 9</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Transcript of Michael A. Tricarichi
Conducted on October 1, 2020

2 (5 to 8)

5	7
1 EXHIBITS	1 EXHIBITS
2 EXHIBITS PAGE	2 EXHIBITS PAGE
3 No. 223 Taxpayer Interview of Michael	3 No. 166 8/13/2013 M. Tricarichi Email(s)... 285
4 Tricarichi..... 14	4 No. 178 5/31/2014 M. Tricarichi Email(s)... 287
5 No. 309 Court Transcript..... 15	5 No. 190 9/03/2014 Tricarichi/Desmond
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12 No. 223 11/30/2007 IRS Transcript..... 120	12 No. 217 Real Estate Experience of Randy
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14 No. 111 10/15/2009 Levin & Associates	14 No. 221 Cleveland.com Article..... 304
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16 No. 91 Tolling and Standstill Agreement... 141	16 Liabilities..... 306
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21 No. 105 2/2008 Randy Hart Fax..... 163	21
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23 No. 108 4/29/2009 Glenn Miller Letter..... 174	23
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1 EXHIBITS	1 PROCEEDINGS
2 EXHIBITS PAGE	2 THE VIDEOGRAPHER: Here begins disk
3 No. 76 10/09/2009 Glenn Miller Letter.... 181	3 Number 1 in the remote video deposition of Michael
4 No. 295 10/08/2009 Memorandum..... 185	4 Tricarichi in the matter of Tricarichi versus
5 No. 314 10/28/2009 Sullivan & Cromwell	5 PricewaterhouseCoopers, LLP, et al., filed in the
6 Invoice..... 187	6 District Court, Clark County, Nevada. Case number
7 No. 296 11/16/2009 Richard Corn Memo..... 206	7 A-16-735-910-B.
8 No. 80 6/25/2012 IRS Notice of Liability.. 214	8 Today's date is October 1st, 2020, and the
9 No. 3 Notice 2008-111..... 225	9 time on the video monitor is 9:01 a.m.
10 No. 125 9/17/2010 Sullivan & Cromwell	10 The remote videographer today is Dan
11 Letter..... 246	11 Lohaus representing Planet Depos.
12 No. 123 Binder of Documents..... 248	12 All parties of this video deposition are
13 No. 129 10/27 Conference Slides..... 255	13 attending remotely.
14 No. 137 11/11/2010 Tricarichi Email(s).... 257	14 Would counsel please voice-identify
15 No. 140 12/06/2010 Email(s)..... 260	15 themselves and state whom they represent.
16 No. 139 12/06/2010 Email(s) and Decision	16 MR. LANDGRAFF: Good morning. Chris
17 Tree..... 260	17 Landgraff from Bartlit Beck on behalf of
18 No. 146 3/16/2011 Email(s)..... 270	18 PricewaterhouseCoopers LLP.
19 No. 157 3/02/2012 Glenn Miller Email..... 273	19 MR. HESSELL: Scott Hessel from
20 No. 159 7/05/2012 Glenn Miller Email(s).... 274	20 Spurling & Slater on behalf of Michael Tricarichi.
21 No. 177 5/29/2014 Michael Desmond	21 THE VIDEOGRAPHER: The court reporter
22 Email(s)..... 277	22 today is Michelle Yohler representing Planet
23 No. 151 8/29/2011 IRS Fax Transmission.... 279	23 Depos.
24 No. 153 9/01/2011 Don Korb Email(s)..... 282	24 Would the reporter please swear in the
25 (Continued)	25 witness and then we may proceed.

<p>9</p> <p>1 (WHEREUPON, the witness was duly sworn.) 2 MICHAEL TRICARICHI, 3 called as a witness herein, having been first duly 4 sworn, was examined and testified as follows: 5 EXAMINATION 6 BY MR. LANDGRAFF: 7 Q Good morning, Mr. Tricarichi. Would you 8 state your full name. 9 A Michael Tricarichi. 10 Q And, Mr. Tricarichi, we are taking your 11 deposition pursuant to an agreement that we 12 reached with your counsel called the notice of 13 parties' stipulation regarding protocol for remote 14 depositions. 15 Where are you for today's deposition? 16 A I'm in Beachwood, Ohio. 17 Q Are you at your home or in someone's 18 office? 19 A I'm at our office in Beachwood, Ohio. 20 Q And when you say "our office," who is 21 "our"? 22 A Mine, Randy Hart, and Carla Tricarichi. 23 Q Is anyone in the room with you today? 24 A No. 25 Q Would you agree not to text or -- or</p>	<p>11</p> <p>1 Okay. Got it. 2 Q Now, you mentioned that you're in an 3 office you share with Carla Tricarichi and Randy 4 Hart; is that right? 5 A Yeah, I'm not usually here, but I use it 6 for conference facilities. 7 Q Are you in business with Carla Tricarichi 8 and Randy Hart? 9 A Randy and -- Randy Hart used to have a 10 property -- we used to have a property in common. 11 We don't anymore, but he still represents me. 12 Q Are you in business with Mr. Hart? 13 A At the moment, no. 14 Q Are you in business with Carla Tricarichi? 15 A No. 16 Q You just -- so you just have office space 17 with them? 18 A Yeah. 19 Q Who is Carla Tricarichi? 20 A She's my cousin. 21 Q Do you have a job right now? 22 A I'm president of Telecom Acquisition 23 Corp. I, Inc. 24 Q Any other titles that you hold other than 25 president of Telecom Acquisition Corp. I, Inc.?</p>
<p>10</p> <p>1 communicate with others while we're on the record? 2 A Yes. 3 Q Did you -- did you receive some exhibits 4 from -- from my office in the mail? 5 A FedEx, yes. 6 Q Okay. And you have them with you today? 7 A I do. 8 Q Have you opened them? 9 A I opened the box. I haven't opened the 10 two large envelopes that were in the box. 11 Q Okay. Why don't you go ahead and -- and 12 do that now. 13 A Okay. 14 Q And while they're doing that, I'll just 15 state just for logistics, if you would prefer to 16 have an exhibit displayed on the screen, just let 17 us know and we'll have that done for you, okay, 18 sir? 19 A Okay. 20 Okay. Volume 1 I have in front of me. 21 Q Okay. Why don't you open the other volume 22 as well as just so we're ready to roll because 23 they may not be in order -- or they may -- we may 24 not go in numerical order. 25 A Okay.</p>	<p>12</p> <p>1 A I don't know. I may be the -- I may be 2 the managing partners of some LLCs, but I can't -- 3 can't give you those right off the top of my head. 4 Q Are the LLCs in -- in your name or owned 5 by Telecom Acquisition Corp.? 6 A I think a couple of them are in my name 7 and Telecom might own one or two. 8 Q What are the LLCs of which you may be the 9 managing partner of? 10 A Odeon Concert Club, LLC. 1330, LLC, might 11 be called 1330 Old River, LLC. East Bank South, 12 LLC. 13 And those are the ones I can think of off 14 the top of my head. 15 Q Other than your title -- and is it okay if 16 I call it Telecom Acquisition Corp. for short -- 17 A You can -- 18 Q -- if you -- 19 A -- Telecom if you want. 20 Q Okay. But if I say "Telecom Acquisition 21 Corp," you'll understand what I'm referring to? 22 A Yeah. 23 Q Okay. Other than your title with respect 24 to Telecom Acquisition Corp. and being the 25 managing partner of some LLCs, do you have any</p>

Transcript of Michael A. Tricarichi
Conducted on October 1, 2020

4 (13 to 16)

<p>13</p> <p>1 other job titles or positions?</p> <p>2 A No.</p> <p>3 Q Have you ever been arrested?</p> <p>4 A No.</p> <p>5 Q Are you currently married?</p> <p>6 A Yes.</p> <p>7 Q And to whom are you married?</p> <p>8 A Barbara.</p> <p>9 Q You have been deposed before, right?</p> <p>10 A Yes.</p> <p>11 Q If any of my questions aren't clear to</p> <p>12 you, just ask me to -- to clarify or repeat, and</p> <p>13 I'll do my best so that we're on the same page,</p> <p>14 okay?</p> <p>15 A Count on it.</p> <p>16 Q And if -- if there's any technical issue,</p> <p>17 we'll go off the record. Because this is remote,</p> <p>18 hopefully it will run smoothly, okay?</p> <p>19 A It's your show.</p> <p>20 Q You sat for an interview and testified at</p> <p>21 trial as -- as part of the tax court proceedings,</p> <p>22 right?</p> <p>23 A Yes.</p> <p>24 Q And if you would turn to Exhibit 223 in</p> <p>25 your book. Probably the --</p>	<p>15</p> <p>1 interview with the IRS in November 2007, correct?</p> <p>2 A Yes.</p> <p>3 Q I'll ask you probably in the same</p> <p>4 volume -- I'll just tell you I don't have the same</p> <p>5 notebooks you have, so I apologize if I give you</p> <p>6 the wrong volume number, but if you turn to</p> <p>7 Exhibit 309, which probably is in that same</p> <p>8 notebook.</p> <p>9 A Okay.</p> <p>10 Q And do you have that in front of you, sir?</p> <p>11 A Yeah.</p> <p>12 Q And Exhibit 309 is a -- a compilation of</p> <p>13 the different sessions at which you testified at</p> <p>14 the -- in your tax court proceeding.</p> <p>15 Do you recall testifying at your tax court</p> <p>16 proceeding?</p> <p>17 A Yes.</p> <p>18 Q And you were under oath at -- during your</p> <p>19 testimony at the tax court proceeding, right?</p> <p>20 A I'm sure I was.</p> <p>21 MR. LANDGRAFF: And I'd ask that</p> <p>22 Exhibit 309 be marked as PwC 309.</p> <p>23 (WHEREUPON, a certain document was marked</p> <p>24 PwC Deposition Exhibit No. 309, for</p> <p>25 identification.)</p>
<p>14</p> <p>1 A Which book would that be?</p> <p>2 Q Volume two probably.</p> <p>3 A Okay.</p> <p>4 Q And I'm going to -- I'm going to ask that</p> <p>5 Exhibit 223 be marked as PwC Exhibit 223.</p> <p>6 (WHEREUPON, a certain document was marked</p> <p>7 PwC Deposition Exhibit No. 223, for</p> <p>8 identification.)</p> <p>9 BY MR. LANDGRAFF:</p> <p>10 Q Do you have that in front of you, sir?</p> <p>11 A I do.</p> <p>12 Q And Exhibit 223 is entitled "Taxpayer</p> <p>13 Interview of Michael Tricarichi."</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q Do you recall sitting for an interview</p> <p>17 with the IRS around or about November 30th, 2007?</p> <p>18 A Yes.</p> <p>19 Q And you were under oath during that</p> <p>20 interview, right?</p> <p>21 A As far as I can recall, yeah.</p> <p>22 Q Do you -- you recall making any edits to</p> <p>23 the transcript of your interview with the IRS?</p> <p>24 A No.</p> <p>25 Q You were represented by counsel at that</p>	<p>16</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q Did you do anything to prepare for today's</p> <p>3 deposition?</p> <p>4 A Yes.</p> <p>5 Q What did you do?</p> <p>6 A I reviewed a bunch of documents, and I</p> <p>7 spoke to counsel.</p> <p>8 Q Who's representing you in your deposition</p> <p>9 today?</p> <p>10 A Scott Hessel.</p> <p>11 Q And who did you speak with when you say</p> <p>12 you spoke to counsel?</p> <p>13 A Scott Hessel.</p> <p>14 Q Anyone else?</p> <p>15 A Possibly Blake Sercye.</p> <p>16 Q Anyone else other than Mr. Hessel and</p> <p>17 possibly Mr. Sercye?</p> <p>18 A No.</p> <p>19 Q Did you speak to Jim Tricarichi as part of</p> <p>20 your deposition preparation?</p> <p>21 A No.</p> <p>22 Q Did you speak to Randy Hart?</p> <p>23 A No.</p> <p>24 Q Did you speak to Don Korb?</p> <p>25 A Korb, no.</p>

<p>17</p> <p>1 Q Did you speak to Mike Desmond?</p> <p>2 A No.</p> <p>3 Q Did you speak to Glenn Miller?</p> <p>4 A No.</p> <p>5 Q You've attended many depositions in this</p> <p>6 case, right?</p> <p>7 A Yes.</p> <p>8 Q Are -- are there any that you have not</p> <p>9 attended that you know of?</p> <p>10 A I don't know. The one today I'm not going</p> <p>11 to attend because it's simultaneous with this</p> <p>12 deposition.</p> <p>13 I attended one of the woman at PwC, but I</p> <p>14 was in the process of reviewing for this</p> <p>15 deposition, so I don't know that I caught the</p> <p>16 entire thing.</p> <p>17 Q And when you say you were in the process</p> <p>18 of reviewing, what were you doing?</p> <p>19 A I was speaking to counsel and reviewing</p> <p>20 documents.</p> <p>21 Q What documents did you review in</p> <p>22 preparation for today's deposition?</p> <p>23 A I reviewed these two documents that you</p> <p>24 are presenting in front of me and some exhibits.</p> <p>25 Q And when you say these two documents in</p>	<p>19</p> <p>1 Q Were you -- were you asked to collect</p> <p>2 documents for this case in particular?</p> <p>3 A All the documents that I have are on a</p> <p>4 laptop, and they were given to Mr. Hessel.</p> <p>5 Q Did you have -- so you didn't have any</p> <p>6 hard copy documents?</p> <p>7 A No.</p> <p>8 Q Did you --</p> <p>9 A Oh, actually, yes, I did. I'm sorry. I</p> <p>10 had the Schwab statements that were originally in</p> <p>11 hard copy that were scanned and sent to</p> <p>12 Mr. Hessel.</p> <p>13 Q Other than the Schwab statements that were</p> <p>14 scanned and sent to Mr. Hessel, did you have any</p> <p>15 hard copy documents relating to this litigation?</p> <p>16 A Not that I recall.</p> <p>17 Q So you didn't have a hard copy file of</p> <p>18 documents relating to the sale of Westside stock?</p> <p>19 A I have a basement storage in one of my</p> <p>20 buildings on Old River Road that contains several</p> <p>21 file cabinets full of documents, but those</p> <p>22 documents were not touched because they -- the</p> <p>23 relevant documents that were being asked for were</p> <p>24 all on the laptop.</p> <p>25 Q What's in the -- what documents are in the</p>
<p>18</p> <p>1 front of you, those are the transcripts from your</p> <p>2 interview and trial court testimony?</p> <p>3 A Yes.</p> <p>4 Q Did -- did your attendance at the</p> <p>5 depositions in this case affect or refresh your</p> <p>6 recollection in any way of the events relating to</p> <p>7 this litigation?</p> <p>8 MR. HESSELL: Object to the form of the</p> <p>9 question.</p> <p>10 BY THE WITNESS:</p> <p>11 A Yes.</p> <p>12 BY MR. LANDGRAFF:</p> <p>13 Q And can you explain how your attendance at</p> <p>14 the deposition -- or withdrawn.</p> <p>15 What -- what recollections were refreshed</p> <p>16 as a result of your attendance at the depositions</p> <p>17 in this case?</p> <p>18 A I can't tell you anything specific.</p> <p>19 Q What about generally?</p> <p>20 A There were a lot of things that were</p> <p>21 talked about that I had no knowledge of prior to</p> <p>22 them being talked about.</p> <p>23 Q And what -- what's an example of that?</p> <p>24 A I can't give you one off the top of my</p> <p>25 head. When you hit one, I'll let you know.</p>	<p>20</p> <p>1 file cabinets in one of your buildings on Old</p> <p>2 River Road?</p> <p>3 A They're primarily of the CellNet case.</p> <p>4 Q You say primarily of the CellNet case.</p> <p>5 Are there any documents relating to the sale of</p> <p>6 Westside stock or engagement of PwC or the</p> <p>7 engagement of Hahn Loeser in the file cabinets on</p> <p>8 Old River Road?</p> <p>9 MR. HESSELL: Objection to the form of the</p> <p>10 question.</p> <p>11 BY THE WITNESS:</p> <p>12 A Honestly, I don't know. I don't think so.</p> <p>13 BY MR. LANDGRAFF:</p> <p>14 Q So your document collection for this</p> <p>15 litigation consisted of providing counsel with</p> <p>16 electronic versions of documents that you had; is</p> <p>17 that correct?</p> <p>18 A Pretty much, yeah.</p> <p>19 Q Did you have a file on your computer that</p> <p>20 contained the documents relating to this</p> <p>21 litigation that you provided to counsel?</p> <p>22 A I had a whole bunch of files.</p> <p>23 Q How did you organize the materials that</p> <p>24 you provided to counsel for -- for production in</p> <p>25 this litigation?</p>

<p>21</p> <p>1 A The only thing -- the only thing I 2 remember organizing was legal bills. Everything 3 else was just given to them. 4 Q When you say "given to them," what do you 5 mean? 6 A I handed a laptop to Scott Hessel and 7 said, "Here. Go at it." 8 Q Did you tell him where the materials were 9 contained? 10 A If he asked me a specific question about 11 materials, where they were, I would try to point 12 them to where they were. 13 Q Were the -- were the documents on your 14 computer provided to you in electronic form, or 15 had you scanned documents to load onto your 16 computer? 17 A I would assume both. 18 Q Why do you assume both? 19 A Because I would assume both. Sometimes I 20 scan documents and sometimes documents are sent 21 electronically. What don't you understand? 22 Q If you scanned a document and put it on 23 your computer, what did you do with the hard copy? 24 A Most likely it was destroyed. 25 Q I want to talk to you about the 2003</p>	<p>23</p> <p>1 settle the litigation against the various cell 2 phone carriers approximately \$65 million? 3 A That would have been the total, yeah. 4 Q And how much did you personally anticipate 5 taking away after the -- after you had to pay all 6 of the participants out of the settlement funds? 7 A I had no idea at the time how much I was 8 going to personally get. 9 Q How much of the -- how much in 2003 did 10 you pay to Jim Tricarichi? 11 A I don't -- 12 MR. HESSELL: Object to the form of the 13 question. 14 BY THE WITNESS: 15 A I don't recall. 16 BY MR. LANDGRAFF: 17 Q Do you recall paying Jim Tricarichi 18 \$500,000 or about that much in 2003 after the 19 settlement of the litigation with the phone 20 carriers? 21 A It's possible. 22 Q Do you have any recollection of making any 23 payment to Jim Tricarichi in 2003? 24 A I know I gave him some money. I can't 25 tell you the exact amount.</p>
<p>22</p> <p>1 transaction in which you sold your stock in -- in 2 Westside Cellular. And you'll understand what I 3 mean when I talk about the sale of Westside stock, 4 right? 5 A Yes. 6 Q And so is it okay if I call the sale of 7 the Westside stock to Nob Hill that's -- that's 8 involved in this litigation as the Westside 9 transaction or the Westside sale? Is that okay 10 with you? 11 A Sure. 12 Q You owned Westside Cellular, right? 13 A That's right. 14 Q And Westside Cellular in the early 2000s 15 settled some long-time litigation that Westside 16 Cellular had brought against a number of cell 17 phone carriers; is that correct at a high level? 18 A Yeah, I think we settled in 2003. 19 Q And the settlement of that lawsuit in 2003 20 meant that Westside had a cash payout from the 21 defendants in that lawsuit, right? 22 A Yes. 23 Q And was the settlement around -- 24 withdrawn. 25 Was the payment to Westside Cellular to</p>	<p>24</p> <p>1 Q Did you -- 2 A If you have a document you want to put in 3 front of me, I can confirm it. 4 Q Why did you give him some money in 2003? 5 A Because he was an int- -- an integral part 6 of the case. 7 Q What role did Jim Tricarichi play in the 8 case against the cell phone carriers? 9 A I don't know. He was -- he was doing 10 analytics. We had -- there was -- there was a lot 11 of paper in that case, so any time there would be 12 financial documents, we would send them to them -- 13 to him. 14 I don't know, he just did a lot of things. 15 Q What is Jim Tricarichi's background that 16 would lead you to send him financial documents? 17 A He's an accountant. 18 Q Is he a certified public accountant? 19 A No. 20 Q Did you pay Carla Tricarichi any money 21 after the settlement of the litigation with the 22 phone carriers? 23 A I did. 24 Q How much did you pay her? 25 A I don't remember exactly how much I paid</p>

<p>25</p> <p>1 her because I did some other things for her 2 besides money. 3 Q Can you approximate how much you paid 4 Carla Tricarichi in 2003? 5 A A couple hundred grand. 6 Q And -- and why did you pay Carla 7 Tricarichi in 2003? 8 A Because she did a lot of legal work, 9 particularly in the -- the common pleas case and 10 at the Supreme Court of Ohio. 11 Q Did you pay Barbara Tricarichi anything 12 after the 2003 settlement? 13 A Did I pay her anything? No. 14 Q Did you pay any -- pay anyone, other than 15 the -- than the Westside employees, pay anyone 16 else any amount of proceeds after the settlement? 17 A Other than Hahn Loeser? 18 Q Other than Hahn Loeser. 19 A I paid attorney fees and I paid the 20 employees and I paid an expert. 21 Q Is it your recollection that Westside had 22 about \$40 million left after all the payments that 23 were made after the settlement? 24 A That sounds about right. 25 Q And after the -- the settlement, you were</p>	<p>27</p> <p>1 BY MR. LANDGRAFF: 2 Q And who from Hahn Loeser approached you 3 after the settlement with the phone carriers and 4 said that they wanted to help you with tax 5 planning? 6 A Jeff Folkman. 7 Q At the time Mr. Folkman approached you 8 stating that he and his firm wanted to help you 9 with tax planning, you hadn't retained PwC; is 10 that correct? 11 A Not yet, no. 12 Q And tax was an important consideration in 13 your mind in determining what approach to take 14 with Westside, right? 15 MR. HESSELL: Objection to the form of the 16 question. 17 BY THE WITNESS: 18 A It was one of the approaches, one -- 19 BY MR. LANDGRAFF: 20 Q That -- 21 A -- things we considered. 22 Q It was an important consideration in your 23 mind, right? 24 MR. HESSELL: Same objection. 25</p>
<p>26</p> <p>1 looking for -- you were looking at a number of 2 options with respect to how to handle the -- the 3 cash that Westside had received, right? 4 MR. HESSELL: Objection to the form of the 5 question. 6 BY THE WITNESS: 7 A Yeah, there were a few different options 8 that were discussed. 9 BY MR. LANDGRAFF: 10 Q And after -- or even as part of during the 11 settlement process with the phone carriers, 12 Hahn Loeser came to you and said they wanted to 13 help you with tax planning; is that correct? 14 A I don't know where -- whether we're 15 getting into a privileged area here. 16 THE WITNESS: Are we, Scott? 17 MR. HESSELL: Well, the -- I think the 18 underlying documents have been produced, already 19 were produced in the tax court case, so I think 20 you're fair to answer that -- the question that's 21 pending. 22 THE WITNESS: Okay. 23 BY THE WITNESS: 24 A Yes. 25</p>	<p>28</p> <p>1 BY THE WITNESS: 2 A Yeah, it was important. 3 BY MR. LANDGRAFF: 4 Q But you didn't go do tax research 5 yourself, right? 6 A I know nothing about tax. 7 Q The first thing you did was hire 8 Hahn Loeser to assess tax issues with respect to 9 the money that Westside was receiving as part of 10 the 2003 settlement, right? 11 A The first thing that I did? No. 12 Q So if you'd look at Exhibit 309 at 13 Pages 89 and 90. 14 MR. HESSELL: Do you want him to read the 15 whole thing, or do you want to direct him into 16 something particular? 17 BY THE WITNESS: 18 A Yeah, you want to point me to something? 19 BY MR. LANDGRAFF: 20 Q I'm just waiting until you're there. 21 A I'm there. 22 Q Okay. On Line 20 -- this is your 23 testimony in the tax court. 24 Line 20, "Okay. And did you personally 25 look into the tax issues or how did you -- how did</p>

<p>29</p> <p>1 you --</p> <p>2 "ANSWER: No, I hired -- first I hired</p> <p>3 Hahn Loeser to give me advice on the tax issues</p> <p>4 separate and apart from the litigation that they</p> <p>5 were doing with the carriers. And they came up</p> <p>6 with this entity called MidCoast, and they told me</p> <p>7 they had -- they had did -- they had done a couple</p> <p>8 of deals with MidCoast and they were good deals</p> <p>9 and I should look at that." And then you go on</p> <p>10 and describe some meetings.</p> <p>11 Were you asked that question and did you</p> <p>12 provide that answer in front of the tax court?</p> <p>13 A Yes.</p> <p>14 Q And Hahn Loeser suggested that you</p> <p>15 consider selling the stock of Westside, right?</p> <p>16 A Well, let me go back a second. Your</p> <p>17 question was one of the first things that I did,</p> <p>18 if I recall correctly, was to hire Hahn Loeser.</p> <p>19 And that wasn't one of the first things that I</p> <p>20 did.</p> <p>21 So eventually we did hire Hahn Loeser to</p> <p>22 look at tax issues, but that wasn't the first</p> <p>23 thing that I did.</p> <p>24 Q The -- do you recall that Hahn Loeser</p> <p>25 suggested that you consider a stock sale of</p>	<p>31</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q You pulled some assets out of Westside</p> <p>3 before selling the stock to Nob Hill in 2003,</p> <p>4 right?</p> <p>5 A That's my recollection, yeah.</p> <p>6 Q Why did you do that?</p> <p>7 A Well, Nob Hill was not in the cellular</p> <p>8 telephone business and we had about 15,000</p> <p>9 cellular subscribers at the time that were going</p> <p>10 to lose their service.</p> <p>11 So we decided that it would be prudent for</p> <p>12 us to continue to service them in some way, and we</p> <p>13 were contractually prohibited from providing</p> <p>14 cellular service to them ourselves as --</p> <p>15 as -- because of something that was contained in</p> <p>16 the settlement agreement.</p> <p>17 So we split the customer service base out</p> <p>18 of the -- out of the company in order to continue</p> <p>19 to provide cellular service to them. Our -- our</p> <p>20 goal was to try to find someone else to take that</p> <p>21 customer base and continue to provide service.</p> <p>22 There was no number portability at the</p> <p>23 time so these people, if they were shut off, they</p> <p>24 would have -- they would have lost their cell</p> <p>25 phone numbers.</p>
<p>30</p> <p>1 Westside stock?</p> <p>2 A Yes.</p> <p>3 Q Do you recall why Hahn Loeser suggested or</p> <p>4 said the sale of stock was a good idea as opposed</p> <p>5 to selling the whole company, assets and all?</p> <p>6 MR. HESSELL: Objection to the form of the</p> <p>7 question.</p> <p>8 BY THE WITNESS:</p> <p>9 A Yeah, I don't understand that question.</p> <p>10 When you sell the whole company, you -- when you</p> <p>11 sell the stocks, you sell the whole company,</p> <p>12 assets and all.</p> <p>13 BY MR. LANDGRAFF:</p> <p>14 Q Is it your testimony that -- that the sale</p> <p>15 of -- the sale of Westside to Nob Hill was -- was</p> <p>16 not a stock sale as opposed to stock and asset</p> <p>17 sale?</p> <p>18 MR. HESSELL: Objection to the form of the</p> <p>19 question.</p> <p>20 BY THE WITNESS:</p> <p>21 A Yeah, you're -- I don't know what you're</p> <p>22 talking about. When you sell the stock of a</p> <p>23 company, you sell whatever's in that company at</p> <p>24 the time you sold the stock. So I don't</p> <p>25 understand your question.</p>	<p>32</p> <p>1 Q One of the reasons Hahn Loeser suggested a</p> <p>2 stock sale to Nob Hill was to try to get capital</p> <p>3 gains treatment on the sale, correct?</p> <p>4 A Yes.</p> <p>5 Q And we just looked at testimony, but do</p> <p>6 you recall that Hahn Loeser introduced you to</p> <p>7 MidCoast?</p> <p>8 A Yes, they did.</p> <p>9 Q And do you recall anything about</p> <p>10 discussions with MidCoast?</p> <p>11 A They told us that they -- if they bought</p> <p>12 the stock, that the sale of the stock would be</p> <p>13 treated as a capital gain.</p> <p>14 Q They, MidCoast, told you that?</p> <p>15 A Yes.</p> <p>16 Q Do you recall anything else about your</p> <p>17 discussions with MidCoast?</p> <p>18 A Not really. Maybe some -- maybe some --</p> <p>19 some references.</p> <p>20 Q What do you mean by that, sir?</p> <p>21 A Deals that they had done with other</p> <p>22 people.</p> <p>23 Q Did PwC meet with you and MidCoast?</p> <p>24 A Not that I recall.</p> <p>25 Q And PwC didn't introduce you -- did not</p>

<p>33</p> <p>1 introduce you to MidCoast, correct?</p> <p>2 A No.</p> <p>3 Q And as part of your discussions with</p> <p>4 Hahn Loeser and your brother Jim, you also learned</p> <p>5 about another potential buyer called Fortrend; is</p> <p>6 that correct?</p> <p>7 A Yes.</p> <p>8 MR. HESSELL: Object to the form of the</p> <p>9 question.</p> <p>10 BY MR. LANDGRAFF:</p> <p>11 Q And PwC did not introduce you to Fortrend;</p> <p>12 is that correct?</p> <p>13 A I don't believe they did, no.</p> <p>14 Q PwC was not at your initial meeting with</p> <p>15 Fortrend; is that correct?</p> <p>16 A I don't think so, no.</p> <p>17 Q And what was Fortrend's proposed role in</p> <p>18 the Westside transaction?</p> <p>19 A I don't understand the question.</p> <p>20 Q What did you understand that Fortrend was</p> <p>21 going to do?</p> <p>22 A They were going to buy the stock of the</p> <p>23 company.</p> <p>24 Q You chose to do the deal with Fortrend</p> <p>25 instead of with MidCoast, right?</p>	<p>35</p> <p>1 Q And Mr. Folkman and Hahn Loeser negotiated</p> <p>2 the deal with Fortrend for you; is that correct?</p> <p>3 A They papered the deal. I don't know that</p> <p>4 they negotiated the deal. There were a lot of</p> <p>5 negotiations that were going on at the time with</p> <p>6 different people.</p> <p>7 Q You agree that -- that Jeff Folkman was</p> <p>8 your lead negotiator of the terms of the stock</p> <p>9 purchase agreement between Westside and Nob Hill?</p> <p>10 A Ultimately he wrote the agreement, but he</p> <p>11 got input from a number of sources including PwC.</p> <p>12 Q PwC was not at the meeting where the price</p> <p>13 was negotiated with Fortrend; is that correct?</p> <p>14 A I don't know. There were a couple of</p> <p>15 different prices from Pw- -- or, I'm sorry, from</p> <p>16 Fortrend over the time we were talking to them,</p> <p>17 and there were a number of meetings.</p> <p>18 So I don't think so, but I -- you know, I</p> <p>19 leave the possibility open.</p> <p>20 Q As you sit here today, you don't think --</p> <p>21 you're leaving the possibility open, but you don't</p> <p>22 think PwC was an attendant at a meeting where a</p> <p>23 price was negotiated with Fortrend; is that fair?</p> <p>24 A Yeah, I don't think they were, but I --</p> <p>25 like I said, I -- I leave the possibility open.</p>
<p>34</p> <p>1 A Yes.</p> <p>2 Q Why did you do that?</p> <p>3 A Because Fortrend was going to pay us more</p> <p>4 money than MidCoast. Little did we know that they</p> <p>5 were the same entity.</p> <p>6 Which is a brilliant strategy, I have to</p> <p>7 say.</p> <p>8 Q Why do you say that?</p> <p>9 A Because they could control the bids. It</p> <p>10 looked like there were two companies bidding for</p> <p>11 the stock, but they were in cahoots with one</p> <p>12 another, so you -- you thought you were doing well</p> <p>13 by negotiating and you really weren't.</p> <p>14 Q One of Hahn Loeser's roles in working on</p> <p>15 the Westside sale was to identify the legal</p> <p>16 ramifications of selling your stock in Westside,</p> <p>17 right?</p> <p>18 A Yeah, I think that's one of the things</p> <p>19 that they were -- they were doing.</p> <p>20 Q And you mentioned Jeff Folkman. Jeff</p> <p>21 Folkman was a tax practitioner at Hahn Loeser?</p> <p>22 A I believe so, yes.</p> <p>23 Q He was a partner at Hahn Loeser; is that</p> <p>24 right?</p> <p>25 A He was a partner, yeah.</p>	<p>36</p> <p>1 Q When were you first introduced to anyone</p> <p>2 at PwC?</p> <p>3 A When? Sometime in 2003, mid 2003. Maybe</p> <p>4 earlier than mid. Maybe April.</p> <p>5 Q Was Pw- -- did you ask PwC to find a buyer</p> <p>6 of Westside?</p> <p>7 A To find a buyer? No.</p> <p>8 Q What did you ask PwC to do?</p> <p>9 A To basically second-opinion Hahn Loeser.</p> <p>10 Q And can you explain what you mean by that,</p> <p>11 "second-opinion Hahn Loeser"?</p> <p>12 A I was not familiar with this type of deal.</p> <p>13 I'd never heard of it before. It sounded pretty</p> <p>14 good. And they were -- they came in recommending</p> <p>15 it.</p> <p>16 But it was a -- it was a big deal, and we</p> <p>17 felt that we needed a second opinion on the deal.</p> <p>18 So the first place I went was to my brother Tony.</p> <p>19 And Tony had told us -- told me that he was</p> <p>20 conflicted that -- he was with -- he's -- he was a</p> <p>21 partner at KPMG. And he told me that he was most</p> <p>22 likely -- they were most likely conflicted out</p> <p>23 because they had been doing work either for --</p> <p>24 for -- either for Fortrend or for clients of</p> <p>25 Fortrend.</p>

Conducted on October 1, 2020

<p style="text-align: right;">37</p> <p>1 So we were looking -- so we wanted another 2 big four, big six -- I don't remember how many 3 there were at the time -- accounting firms to look 4 at it. 5 So my other brother, Jim, had a 6 relationship with Rich Stovsky. I don't know what 7 their exact relationship was, whether they were 8 golfing buddies or whatever. But Jim suggested 9 that we have -- we talk to Rich and maybe we could 10 have PwC be the second opinion that we were 11 looking for. 12 Q And what was the opinion itself that you 13 were getting a second opinion on? 14 A Okay, what I was looking at at the time 15 was basically two possibilities. 16 Possibility number one was leaving -- 17 there was never a discussion of liquidating the 18 company. There was a discussion about leaving the 19 assets in the company and converting the company 20 to a real estate investment company. 21 And in the event that we did that, we 22 would have paid the tax that was owed -- the 23 corporate tax that was owed. And the money would 24 have remained in the company and the company would 25 have made investments in various types of things.</p>	<p style="text-align: right;">39</p> <p>1 two of them, and we finally got to the -- and I 2 think that we had talked to Rich while we were 3 bouncing back and forth. 4 So he came into the -- into the deal 5 before we decide -- and this is my recollection -- 6 before we decided specifically to go with 7 Fortrend -- he may have come after we decided, I 8 don't know. But we wanted a second opinion on the 9 deal. 10 It was basically the same deal. The 11 Fortrend deal and the MidCoast deal was the same 12 thing, it was a stock purchase agreement. The 13 only difference in my mind was the amount they 14 were willing to pay for the stock. 15 And, like I said, at the time, I didn't 16 realize that they were in cahoots with one 17 another. Not that I should have realized it 18 because they were separate companies. But -- you 19 know, so that was -- that was the situation. 20 So Pricewaterhouse was brought in from the 21 beginning to advise us on the transaction and 22 primarily advise us as a thumbs up or a thumbs 23 down. 24 Mainly speaking, what I -- what I told 25 Rich Stovsky when I met with Rich Stovsky was I</p>
<p style="text-align: right;">38</p> <p>1 That was one possibility. 2 The other possibility was this stock sale, 3 which we had never contemplated until Jeff Folkman 4 brought it up. And then once he brought it up, we 5 looked at it, but it was something that 6 just -- you know, it was a very complicated thing. 7 And I don't like do -- doing things that I don't 8 grasp. 9 So we decided that we would have someone 10 else look at it as well. And during that time, we 11 had an accountant -- I'm trying to remember what 12 his name was, Don something -- and he had a 13 relationship with a guy by the name of Gary Zwick. 14 And I think Gary Zwick had some sort of loose 15 association with Fortrend. 16 So Don Jesco (phonetic) -- Don Jesco. So 17 Don recommended that we talk to Gary Zwick and see 18 if there was a competitive aspect on this stock 19 purchase agreement. 20 So we talked to Gary Zwick, and there was 21 another guy, Block I think his name was, but I 22 don't remember what -- something Block. And we 23 had a meeting with them, and they said basically 24 that they were in the same business as MidCoast. 25 So we bounced back and forth between the</p>	<p style="text-align: right;">40</p> <p>1 don't want -- if we do this deal -- "this deal" 2 being with Fortrend or whoever we picked -- if I 3 do this deal, I do not want this to bounce back on 4 me, okay? There is no way that I'm going to do 5 this deal even if there's a minute chance that 6 it's going to bounce back on me. I said I'd 7 rather pay the tax. 8 And that was what Stovsky was told at the 9 time that we hired PwC. 10 Q Well, what -- 11 A He was told that by me. 12 Q Okay. I didn't mean to interrupt you. 13 Are you done with your answer? 14 A Yes. 15 Q What as -- and you said there was a -- you 16 were looking for a second opinion. What was the 17 opinion that Hahn Loeser gave you that you were 18 looking for a second opinion on? From -- 19 A Well, their -- 20 Q -- PwC -- 21 A -- opinion. I'm sorry. 22 Q I -- I -- 23 A Finish. 24 Q -- stopped for -- let me ask it again. 25 That was my fault.</p>

<p>41</p> <p>1 You mentioned that you were -- you were</p> <p>2 looking for a second opinion from PwC relating to</p> <p>3 an opinion that Hahn Loeser gave you. What was</p> <p>4 the opinion that Hahn Loeser gave you that you</p> <p>5 were looking for a second opinion on?</p> <p>6 A Well, Hahn Loeser brought in MidCoast and</p> <p>7 they said it was a good deal. So that would have</p> <p>8 been the opinion, was it a good deal and what was</p> <p>9 the likelihood that it was going to crater.</p> <p>10 Q And what do you mean by --</p> <p>11 A Hahn -- since Hahn -- since Hahn Loeser</p> <p>12 brought them in, we assumed Hahn Loeser was</p> <p>13 recommending them.</p> <p>14 We can't -- I can't imagine Hahn Loeser</p> <p>15 bringing in -- bringing in a potential buyer that</p> <p>16 they had reservations about.</p> <p>17 Q When you say it was a good deal and</p> <p>18 that -- and wasn't going to crater, what do you</p> <p>19 mean by that?</p> <p>20 A I mean it wasn't going to crater like it</p> <p>21 did.</p> <p>22 Q What does "crater" mean? Meaning not do</p> <p>23 the deal? I mean --</p> <p>24 A No, crater means after you do the deal</p> <p>25 there are negative ramifications.</p>	<p>43</p> <p>1 He was told I wanted assurance that this</p> <p>2 deal is going to be good and that nothing bad is</p> <p>3 going to happen if we do it. And that's what he</p> <p>4 was told.</p> <p>5 And more likely than not is a figment of</p> <p>6 PwC's imagination because those words were never,</p> <p>7 and I repeat, never discussed, papered, they don't</p> <p>8 show up in an email, there's nothing.</p> <p>9 Q Do you have -- do you have -- did you take</p> <p>10 any notes in what you claim today sitting here</p> <p>11 today that Rich Stovsky told you?</p> <p>12 A Did I take any notes? No, I didn't take</p> <p>13 any notes. Did you give me any paper?</p> <p>14 Q Did you write down at the time Rich</p> <p>15 Stovsky gave you the advice, did you write down</p> <p>16 what he told you?</p> <p>17 A I may have. I don't know. I don't have</p> <p>18 it.</p> <p>19 Q What happened to it if you may have?</p> <p>20 A I don't know.</p> <p>21 Q Did you send an email to anyone involved</p> <p>22 in the deal saying, "I just talked to Rich Stovsky</p> <p>23 and said the deal's not going to crater and it's a</p> <p>24 good deal and we can go ahead and do it"?</p> <p>25 A I might have.</p>
<p>42</p> <p>1 Q What did --</p> <p>2 A Which there were.</p> <p>3 Q What did Rich Stovsky tell you with</p> <p>4 respect to -- what was the second opinion that</p> <p>5 Rich Stovsky gave you?</p> <p>6 A That it wasn't going to crater.</p> <p>7 Q Rich Stovsky used those words with you?</p> <p>8 A No, he didn't use those words. He told me</p> <p>9 that it was a good deal, go ahead and do it.</p> <p>10 Q When did Rich Stovsky tell you it's a good</p> <p>11 deal, go ahead and do it?</p> <p>12 A I don't remember exactly. Sometime before</p> <p>13 we did the deal. We did the deal in September.</p> <p>14 Q And those are the words that you say Rich</p> <p>15 Stovsky used in telling you about the deal?</p> <p>16 A Oh, yeah. Both -- similar words. I don't</p> <p>17 know if those were the exact words, but words to</p> <p>18 that effect, yes.</p> <p>19 This more-likely-than-not crap that you --</p> <p>20 you guys have been talking about in all these</p> <p>21 depositions is BS, okay? It's total BS. That was</p> <p>22 never discussed, that was never stated, that was</p> <p>23 never part of the employment, that was never --</p> <p>24 never even mentioned by anyone including Rich</p> <p>25 Stovsky, okay?</p>	<p>44</p> <p>1 Q Well, where is that email?</p> <p>2 MR. HESSELL: Objection to the form of the</p> <p>3 question.</p> <p>4 BY THE WITNESS:</p> <p>5 A I can't tell you. Where is the -- where</p> <p>6 is the more likely than not? Show me that.</p> <p>7 BY MR. LANDGRAFF:</p> <p>8 Q You -- as you sit here today, is there a</p> <p>9 single piece of paper that you authored recounting</p> <p>10 your claimed conversation with Rich Stovsky about</p> <p>11 the deal?</p> <p>12 A Number one, it's not a claimed</p> <p>13 conversation, okay? It was an actual</p> <p>14 conversation.</p> <p>15 Number two, there were witnesses to the</p> <p>16 conversation. My brother Jim is one of them,</p> <p>17 okay? So I don't know what you're talking about.</p> <p>18 Q Can you answer my question?</p> <p>19 A I just answered it.</p> <p>20 Q Is there a single piece of paper that you</p> <p>21 authored recounting your claimed conversation with</p> <p>22 Rich Stovsky about the deal?</p> <p>23 A I don't think there's a single piece of</p> <p>24 paper either way.</p> <p>25 Q So the answer to my question is, no, you</p>

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<p>45</p> <p>1 can't identify a single piece of paper that you</p> <p>2 authored recounting your claimed conversation with</p> <p>3 Rich Stovsky about the deal; is that correct?</p> <p>4 A The answer to my question is -- to your</p> <p>5 question is what I said. I don't think there's a</p> <p>6 single piece of paper either way.</p> <p>7 Q You mentioned your brother Jim. Jim</p> <p>8 was -- Jim was your -- withdrawn.</p> <p>9 Jim was the main contact with PwC for --</p> <p>10 regarding your side of the Westside sale; is that</p> <p>11 fair?</p> <p>12 A Yes.</p> <p>13 Q And did Jim have your blessing to be the</p> <p>14 conduit between you and PwC?</p> <p>15 A He was the conduit between me and Rich</p> <p>16 Stovsky.</p> <p>17 Q And Rich Stovsky is who you communicated</p> <p>18 with at PwC, right?</p> <p>19 A Yes.</p> <p>20 Q Did Jim Tricarichi have your blessing to</p> <p>21 be the conduit between you and -- and Rich Stovsky</p> <p>22 relating to the Westside sale?</p> <p>23 A Yes, he was the conduit between me and --</p> <p>24 between Westside and Rich Stovsky.</p> <p>25 Q And you trusted him with that role?</p>	<p>47</p> <p>1 Q And can you tell us what other pages you</p> <p>2 did -- you claim you did not receive?</p> <p>3 A I don't -- I resent your using the words</p> <p>4 "you claim" and wish you wouldn't do that.</p> <p>5 PwC-002489 through 2491.</p> <p>6 Q So it's your testimony that you did not</p> <p>7 receive the terms and conditions that are part of</p> <p>8 Exhibit 9; is that correct?</p> <p>9 A It's my testimony that I didn't receive</p> <p>10 the pages that I just outlined.</p> <p>11 Q Now -- so you did receive -- and Exhibit 9</p> <p>12 has two copies of the first page because there's</p> <p>13 a -- there's a page that doesn't have any marking</p> <p>14 on it on Exhibit 9.</p> <p>15 But the -- the second page of Exhibit 9 is</p> <p>16 a -- is the first page of a letter to you from</p> <p>17 PwC. And that ends in the Bates number 485; is</p> <p>18 that correct?</p> <p>19 A The second page? Yeah, 485, that's the</p> <p>20 second page. That has my strikeout on it.</p> <p>21 Q Okay. So you received -- you received the</p> <p>22 page ending in 485; is that fair?</p> <p>23 A No, I made the page ending in 485. I</p> <p>24 received the page ending in 484.</p> <p>25 Q Okay. So you received 484 and you</p>
<p>46</p> <p>1 A Yeah.</p> <p>2 Q If you would turn -- it's probably in the</p> <p>3 first binder -- to Exhibit 9.</p> <p>4 MR. LANDGRAFF: And I'll ask that</p> <p>5 Exhibit 9 be marked as PwC Exhibit 9.</p> <p>6 MR. HESSELL: This one has already been</p> <p>7 marked, right?</p> <p>8 MR. LANDGRAFF: I believe so, Scott.</p> <p>9 That's right.</p> <p>10 (WHEREUPON, a certain document was marked</p> <p>11 PwC Deposition Exhibit No. 9, for identification.)</p> <p>12 BY THE WITNESS:</p> <p>13 A I got it.</p> <p>14 BY MR. LANDGRAFF:</p> <p>15 Q Do you have that in front of you, sir?</p> <p>16 A I do.</p> <p>17 Q Did you receive Exhibit 9?</p> <p>18 A No.</p> <p>19 Q What did you -- did you -- what didn't --</p> <p>20 what part of Exhibit 9 did you not receive?</p> <p>21 A I did not receive the page that's marked</p> <p>22 PwC-02 -- 002486.</p> <p>23 Q Any other part of Exhibit 9 that you did</p> <p>24 not receive?</p> <p>25 A Yes.</p>	<p>48</p> <p>1 marked -- your marking is shown on 485?</p> <p>2 A Correct.</p> <p>3 Q And then we'll talk about 486, but then</p> <p>4 you received -- or your marking shows up on</p> <p>5 Page 487; is that correct?</p> <p>6 A That's correct.</p> <p>7 Q And -- and then your signature appears on</p> <p>8 the Page 488; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q Okay. So let's go back to Page 485 of</p> <p>11 Exhibit 9 that you said contains your strikeout.</p> <p>12 A Yeah.</p> <p>13 Q So on Page 485 of Exhibit 9, you -- it's</p> <p>14 your strikeout, you crossed out the statement on</p> <p>15 the -- on this page saying, quote, "You agree to</p> <p>16 advise us if you determine that any other matter</p> <p>17 covered by this agreement is a reportable</p> <p>18 transaction that is required to be disclosed under</p> <p>19 Section 1.6011-4."</p> <p>20 Is that correct?</p> <p>21 A That's correct.</p> <p>22 Q Why did you strike that out?</p> <p>23 A Because I didn't want Pricewaterhouse to</p> <p>24 have an out.</p> <p>25 Q What do you mean by that?</p>

<p>49</p> <p>1 A Well, look at what you're doing now. 2 You're trying to get out of standing behind advice 3 that you gave. So I looked at this and said, oh, 4 that's a possible out for PwC. They could always 5 say that we should have advised them that this was 6 a reportable transaction. 7 The point of the matter was I had no idea 8 what a -- what a reportable transaction was. 9 That's one of the reasons why PwC was hired. So I 10 can't understand why there would be a paragraph in 11 their retention agreement that would ask me to 12 make the determination that there was a reportable 13 transaction. 14 That's why we hired PwC. That's one of 15 the things that PwC was charged with doing was 16 determining whether this was a reportable 17 transaction or not. 18 So to me that was a clear conflict in the 19 retention letter. And I don't like conflicts in 20 retention letters. 21 Q Hahn Loeser had told you the transaction 22 was not a reportable transaction, right? 23 A Yeah. 24 Q Did -- and who told you that from 25 Hahn Loeser?</p>	<p>51</p> <p>1 agreement was a reportable transaction? 2 MR. HESSELL: I'm going to object to the 3 form of the question. I think you -- 4 MR. LANDGRAFF: Okay. Is it -- sorry, did 5 I goof something? 6 MR. HESSELL: No, I think you want to 7 break up -- you have two questions there, so I -- 8 if you want to ask it that way, that's fine but... 9 MR. LANDGRAFF: Sure. Let me just -- 10 withdrawn. I'll ask a new question. 11 BY MR. LANDGRAFF: 12 Q Did you -- is it your contention that 13 Mr. Stov- -- Mr. Stovsky did not tell you that 14 your strikethrough on Page 485 of Exhibit 9 was 15 unacceptable to PwC? 16 A That's correct. 17 Q Do you remember having a discussion at all 18 with Mr. Stovsky about your strikeout on Page 485 19 of Exhibit 9? 20 A My recollection is that we had a 21 conversation and he asked me why I struck it out, 22 and I told him what I just told you. 23 Q What did he say in response to what you 24 just said? 25 A I don't recall, but -- but he didn't say</p>
<p>50</p> <p>1 A I don't know for sure. I'm guessing Jeff 2 Folkman, but he had some other people working on 3 it, too. 4 Q Did -- did Folkman or did -- sorry, did 5 Jeff Folkman or Hahn Loeser qualify at all the 6 opinion that the Westside stock sale was not a 7 reportable transaction? 8 A Define -- I don't know what you mean by 9 "qualify." 10 Q Did they say it's 100 percent not a 11 reportable transaction or did they say it's more 12 likely than not not a reportable transaction or 13 did they give you any qualification -- 14 A No, there was nothing like that. 15 Q Nothing like that at all? 16 A No qualification, no. 17 Q At the end of the day, did you discuss 18 your strikeout on Page 485 of Exhibit 9 with 19 Mr. Stovsky? 20 A I have no recollection of that. 21 Q As you sit here today, is it your 22 contention that Mr. Stovsky did not tell you that 23 that strikeout was not acceptable and that you 24 understood you had a duty to advise PwC if you 25 determined that any matter covered by the</p>	<p>52</p> <p>1 that that had to be in the agreement because if it 2 did, he would have sent me another agreement 3 without the strikeout in it, and I would have 4 signed that. 5 And if you -- if you have that and you can 6 produce that, I'd like to see it. 7 Q Did you take any notes of your 8 conversation with Mr. Stovsky about the Exhibit 9, 9 the retention agreement with PwC? 10 A Not that I recall. 11 Q On Page 487 of Exhibit 9, you also wrote 12 in, "Total cost of services is not to exceed 13 \$20,000 without prior written authorization." 14 Do you see that? 15 A Yes. 16 Q Did -- did you discuss that addition with 17 Mr. Stovsky? 18 A More likely than not, yes. 19 Q What do you mean by "more likely than 20 not"? 21 A I don't know, what do you mean by "more 22 likely than not"? 23 Q You used the phrase; what did you mean 24 when you said that? 25 A I'm sure I discussed that with</p>

<p>53</p> <p>1 Mr. Stovsky. I was making a joke, but apparently 2 you didn't get it. 3 Q What -- what's your understanding of what 4 more likely than not means? 5 A My -- my understanding is based on what 6 your -- you're saying in your depositions, which 7 is 51 to 49. 8 Which is -- which is -- which, by the way, 9 is an understanding that I got from watching 10 depositions of your people. 11 Q What did -- what did you discuss with 12 Mr. Stovsky about your attempt to impose a \$20,000 13 fee limit without prior written authorization? 14 MR. HESSELL: Objection to the form of the 15 question. 16 BY THE WITNESS: 17 A My intent was not to let costs get out of 18 control without me knowing about it. 19 BY MR. LANDGRAFF: 20 Q Did -- and what -- what did -- what 21 agreement did you reach with respect to the 22 \$20,000 limit that you wrote in with Mr. Stovsky? 23 A He agreed that if they were -- if he 24 thought they were going to exceed \$20,000 in fees, 25 he would come and tell me before the work was</p>	<p>55</p> <p>1 transaction? 2 A No. 3 Q Mr. Korb from Sullivan & Cromwell didn't 4 give you that opinion? 5 A No. 6 Q Mr. Desmond, Michael Desmond, did not give 7 you an opinion that the Westside stock sale was a 8 reportable transaction? 9 A No. 10 Q Did Glenn Miller ever tell you that the 11 Westside stock sale was a reportable transaction? 12 A Your -- let me back up a second. Your -- 13 what's -- what's the qualification on your end 14 when you're asking me that question? 15 Are you asking me 100 percent certainty? 16 Or are you asking me more likely than not? Or are 17 you asking me -- what are you -- give me -- give 18 me your qualification to your question -- 19 Q My question -- 20 A -- on my advice. 21 Q -- was -- my question was did Michael 22 Desmond ever tell you that the Westside stock sale 23 was a reportable transaction? 24 A 100 percent sure? No. 25 Q What did he tell you about the</p>
<p>54</p> <p>1 done. 2 And he did. On a couple of occasions, he 3 would come and tell me or he would write me an 4 email or write me a note and he would say, We need 5 to investigate A, B, C, or D and it's probably 6 going to cost X, Y, or Z. And he did that. And 7 we -- and we wound up spending considerably more 8 than -- than \$20,000. 9 And one thing I can tell you 100 percent 10 for sure is that he was never given any limitation 11 on dollars that could be spent. None. Zero. 12 So if he came to me and said, "I have to 13 get an expert and it's going to cost \$100,000," I 14 most likely would have given him the \$100,000 15 because this was too important a thing to not have 16 a hard and fast opinion on. 17 Q Did you ever tell PwC that you had learned 18 that the Westside stock sale was a reportable 19 transaction? 20 A No one had ever given me an opinion that 21 the Westside stock sale was a reportable 22 transaction, and I wouldn't know a reportable 23 transaction from a dead duck. 24 Q No one has ever given you an opinion that 25 the Westside stock sale was a reportable</p>	<p>56</p> <p>1 reportability of the Westside stock sale 2 transaction, what did Mr. Desmond tell you? 3 A I got the same opinion from everyone, that 4 we looked at this transaction and we don't believe 5 it's a reportable transaction, okay? 6 They -- and it -- and it -- as it turns 7 out, the whole reportable transaction concept 8 was -- was a red herring. We never lost a case 9 because the transaction wasn't reported. We never 10 got fined because the transaction wasn't reported. 11 So reportable transaction in this -- in 12 this context is meaningless because there was 13 never any negative implications on it. 14 So I don't know what you're -- what you're 15 going for here, but the reportability of the 16 transaction was not relevant to where we're 17 sitting today. 18 Q Did Glenn Miller ever tell you that the 19 Westside stock sale was a reportable transaction? 20 A Using the caveat that I just gave you, no. 21 Q Did he ever give you a qualified opinion 22 and said it may be or it's more likely than not 23 or any -- 24 A No. 25 Q -- other language?</p>

<p>57</p> <p>1 So after the Treasury Notice 2008-111 was 2 released, you didn't contact PwC and say the 3 Westside stock sale is a reportable transaction? 4 A I never saw that document. I don't know 5 what you're talking about. 6 Q You never saw what document? 7 A The 2008 document that you're talking 8 about. 9 Q But you knew of the notice. You knew of 10 2008-111? 11 A Yeah, the issue wasn't reportability. The 12 issue in that notice wasn't reportability. 13 Q What was the issue? 14 A The issue -- there were two issues in that 15 document as I recall. If you put it in front of 16 me, I can read it verbatim. 17 Q What was the issue? 18 A You don't want to put it in front of me? 19 Q I don't know what you're -- I'm asking you 20 a question. You said that wasn't the issue. What 21 was the issue? 22 A My recollection -- 23 MR. HESSELL: I'm going to -- I'm going to 24 object to the question since the witness asked for 25 the document in front of him.</p>	<p>59</p> <p>1 A That's my recollection, yes. 2 Q And you paid PwC's invoices, right? 3 A That's my recollection and your 4 documentation. 5 Q Did you ever ask for a price for a written 6 opinion from PwC? 7 A Again, this is a contrivance that you guys 8 have come up with in your depositions of your 9 people. There was never a discussion of whether 10 we were going to get a written opinion or an oral 11 opinion. 12 My understanding of this was that we were 13 going to get a written opinion. That was my 14 understanding. There was no checkbox in the -- in 15 the retention agreement that says written 16 agreement, oral agreement. That's something that 17 you guys came up with after the fact. 18 There was never a discussion as to whether 19 the opinion was going to be written or oral or a 20 price for an opinion that was going to be written 21 or oral or a difference in price between an 22 opinion that was going to be written or oral. 23 Q If it was your -- well, withdrawn. 24 Did you get a written opinion from PwC? 25 A I don't believe we did.</p>
<p>58</p> <p>1 BY MR. LANDGRAFF: 2 Q Okay. I stand by the question. You 3 said -- 4 A Well, I stand by -- 5 (Unintelligible - speaking at once.) 6 BY MR. LANDGRAFF: 7 Q Sorry. Let me just -- 8 A Put it in front of me and I'll answer your 9 question. 10 Q What -- what issue are you talking about? 11 A There -- the document -- the 2008 document 12 from the IRS that we're talking about had a lot 13 more things in it than -- than whether the -- than 14 whether it was listed or not listed. 15 Put the document in front of me and I will 16 read you them. 17 Q Back to Exhibit 9. You do agree you 18 discussed and came to an agreement with 19 Mr. Stovsky about your language about the \$20,000 20 limit, right? 21 A I just said that. 22 Q Is that a yes? 23 A It's another yes. 24 Q You were billed more than \$20,000 for 25 PwC's services, right?</p>	<p>60</p> <p>1 Q And if it was your understanding that you 2 would get one, why -- did you ever ask where's the 3 written opinion? 4 A Yes. 5 Q Who did you ask where the written opinion 6 was? 7 A Rich Stovsky. 8 Q When? 9 A After he came to us with an opinion. I 10 said, "Are you going to put that in writing?" And 11 he said, "No." 12 Q Did you say -- 13 A And I -- 14 Q -- why not? 15 A -- and I didn't get an answer to that. 16 Q And so you just left it hanging; you said, 17 "I want a written opinion. Where is it?" He 18 said, "We're not going to put it in writing." And 19 you said, "Okay, that's fine." Is that what 20 happened? 21 A Pretty much. I didn't say, "Oh, that's 22 fine," no. 23 Q What did you say when he said, "We're not 24 going to give you a written opinion?" 25 A I don't know what I said. I said, "I'm</p>

<p>61</p> <p>1 very disappointed. I was expecting a written 2 opinion." 3 Q What did he say? 4 A I don't have a specific recollection other 5 than he said they weren't going to give us a 6 written opinion. And that was after the fact. 7 That wasn't before the fact. 8 They did the work, they were paid for the 9 work, we were expecting a written opinion, we 10 didn't get it. What should I have done? Turned 11 around and sued you because you didn't give me a 12 written opinion? I took your advice. 13 Q When did Mr. Stovsky tell you, "We're not 14 going to give you a written opinion?" 15 A After he gave us the oral opinion. I 16 said, "Aren't you going to put it in writing?" 17 And he said, "No." 18 Q And what did you say? 19 A I said, "My understanding was that you 20 were going to give us a written opinion." 21 Q And what did he say? 22 A I don't recall the specific conversation. 23 The essence of the conversation is what I just 24 said. 25 Q Did you send him an email saying "I'd like</p>	<p>63</p> <p>1 transaction. 2 Q That's what Hahn Loeser told you in 3 writing? 4 A You're starting to get frustrating now, 5 and I'm not frustrated but I'm frustrated by the 6 questions that you're asking me because 7 Hahn Loeser papered the deal. Do you think that 8 if Hahn Loeser gave me a negative opinion that 9 they would have papered the deal anyway? Is that 10 what you think? 11 Q Your -- your -- is it your testimony that 12 Hahn Loeser told you in writing it's okay to do 13 the deal? 14 A They did the writing. 15 Q Did Hahn Loeser give you an opinion letter 16 on the deal saying it's okay to do the deal? 17 A They did the writing. They gave me the 18 opinion because they did the writing. 19 Q When you say they did the writing, you're 20 saying they papered the deal, right? 21 A How many times do I have to say that? 22 Yes. 23 Q My question is different. You're saying 24 they -- 25 A I understand --</p>
<p>62</p> <p>1 a written opinion?" 2 A I don't believe I did. 3 Q Is there any -- 4 A I didn't know there was a difference 5 honestly. This is the first time that I have ever 6 employed a big six, big four, whatever, accounting 7 firm. 8 Every time I've employed a law firm, I 9 have gotten whatever I ask for in writing, so my 10 assumptions -- pardon me for assuming, but my 11 assumption was that if I hired an accounting firm 12 to give me advice, that that advice would be in 13 writing. 14 I was never given the option of whether to 15 have it in writing or not have it in writing, and 16 I was very disappointed when I got it that it 17 wasn't in writing because that was what I was 18 expecting. 19 Q Did Hahn Loeser give you a written 20 opinion? 21 A Yes. 22 Q Have you produced that in this case? 23 A It's in the documents somewhere. 24 Q What did Hahn Loeser's opinion say? 25 A It said that it was okay to do the</p>	<p>64</p> <p>1 Q -- opinion -- 2 A -- your question. 3 Q Let me ask the question. 4 Did Hahn Loeser give you an opinion letter 5 saying it's okay to do the deal? 6 A If there -- if you're looking for a 7 stand-alone document that says it's okay to do the 8 deal that we're going to paper, I don't know that 9 one of those exists. 10 Q Well, Hahn Loeser did not give you a 11 written opinion on the deal? 12 A I'm not going to keep answering -- 13 answering the same question over and over again. 14 Ask me something else. 15 Q Did -- do you have a written opinion from 16 Hahn Loeser -- 17 A Ask me -- 18 Q -- regarding the deal? 19 A -- something else. 20 Q No, I want an answer to this question. 21 I'm -- 22 A You're not going to get an answer to this. 23 I've answered three times. 24 MR. HESSELL: Okay. Why don't -- 25</p>

<p>65</p> <p>1 BY MR. LANDGRAFF: 2 Q What's the answer? 3 MR. HESSELL: Why don't we -- 4 BY MR. LANDGRAFF: 5 Q What's the answer? 6 MR. HESSELL: -- take a break. 7 MR. LANDGRAFF: I'm entitled to an answer. 8 This is absurd. 9 MR. HESSELL: He -- you asked this 10 question and he gave you an answer, like, five -- 11 five, six questions ago. 12 BY MR. LANDGRAFF: 13 Q Where -- 14 A (Unintelligible.) 15 Q -- is it the -- is it -- is it your view 16 that the opinion that you claim Hahn Loeser gave 17 you is evidenced just by the fact that they 18 papered the deal; is that what your testimony is? 19 A Pretty much, yeah. 20 I'm saying there may have been a separate 21 document, but I can't lay my hands on it. I don't 22 know where it is. 23 Q So -- and you said you didn't know the 24 difference -- 25 MR. HESSELL: Hey, Chris --</p>	<p>67</p> <p>1 I gotta calm down a little. 2 Q But you said every other time you dealt 3 with a law firm, you did get a written opinion and 4 that's why you were excepting one from PwC; is 5 that right? 6 A Yes, that's what I said. 7 MR. LANDGRAFF: Okay. Why don't we take a 8 break. 9 THE VIDEOGRAPHER: We are going off the 10 record. The time is now 10:11 a.m. 11 (WHEREUPON, a recess was had.) 12 THE VIDEOGRAPHER: We are going back on 13 the record. The time is now 10:19 a.m. 14 BY MR. LANDGRAFF: 15 Q Mr. Tricarichi, did you talk to anybody 16 during the break? 17 A Yes. 18 Q Who did you talk to? 19 A Scott Hessel. 20 Q What did you talk about? 21 A I'm not going to tell you that. 22 Q What did you talk about? 23 A I'm not going to tell you that. 24 Q Are you refusing to answer my question? 25 THE WITNESS: Scott, do you want to jump</p>
<p>66</p> <p>1 BY MR. LANDGRAFF: 2 Q -- between -- 3 MR. HESSELL: Chris, before you move on to 4 a new topic, can we take a break now? 5 MR. LANDGRAFF: Yeah, but a couple more 6 minutes because I'm not moving on to a new topic. 7 BY MR. LANDGRAFF: 8 Q You say -- you say you didn't know what 9 the difference was between an oral and a written 10 opinion because you just never dealt with this 11 before. Why then did you ask for something in 12 writing -- or you claim you asked for something in 13 writing from Mr. Stovsky? 14 A I said I was expecting something in 15 writing. Don't mischaracterize my testimony. 16 Q But you said at the time you didn't know 17 the difference between written and oral, why did 18 you ask -- why did -- 19 A -- excuse me -- 20 Q -- in writing -- 21 A -- mischaracterize my testimony. I know 22 the difference between written and oral opinions. 23 I was expecting a written one. I didn't 24 get it. I reacted to it. 25 I'm sorry I'm yelling. I'm -- I gotta --</p>	<p>68</p> <p>1 in here? 2 MR. HESSELL: We did not talk about the 3 substance of the deposition. That's all I can 4 say. If you want to ask him that question, you 5 can ask him that question. 6 BY MR. LANDGRAFF: 7 Q What -- what did you talk about at the 8 break, sir? 9 A We did not talk about the substance of 10 this deposition. 11 Q What did you talk about at the break? 12 A We did not talk about the substance of 13 this deposition. Anything else that I talked 14 about with my counsel, I'm not going to tell you. 15 Q Are you refusing to answer my question 16 about what you did talk about? 17 A Yes, I am. 18 Q Back to Exhibit 9. Your strikethrough 19 appears on Page 485 of Exhibit 9, right? 20 A We covered that, but yeah. 21 Q And that's -- next to the -- the language 22 you struck through, is that your initial there? 23 A It is. 24 Q Is it fair to say you read Page 485 of 25 Exhibit 9?</p>

<p>69</p> <p>1 A I read it before I did the strikethrough,</p> <p>2 yeah.</p> <p>3 Q You see the second sentence of the</p> <p>4 engagement agreement on Page 485 of Exhibit 9, it</p> <p>5 says, "This engagement letter and the" --</p> <p>6 bold -- "attached terms of engagement to provide</p> <p>7 tax services (collectively this, quote, agreement,</p> <p>8 end quote) set forth an understanding of the</p> <p>9 nature and scope of the services to be performed</p> <p>10 and the fees we will charge (inaudible) and</p> <p>11 outline the responsibilities (inaudible) and you</p> <p>12 necessary to ensure PricewaterhouseCoopers'</p> <p>13 professional services are performed to achieve</p> <p>14 mutually-agreed-upon objectives."</p> <p>15 Do you see that?</p> <p>16 MR. HESSELL: You broke up a little bit</p> <p>17 there while reading it. I really don't want you</p> <p>18 to have to read it all --</p> <p>19 BY THE WITNESS:</p> <p>20 A You don't have to read it again. I got</p> <p>21 it.</p> <p>22 BY MR. LANDGRAFF:</p> <p>23 Q You see where the bold language of the</p> <p>24 second sentence on Page 485 that refers to the</p> <p>25 attached Terms of Engagement to Provide Tax</p>	<p>71</p> <p>1 A Well --</p> <p>2 MR. HESSELL: Objection, foundation.</p> <p>3 BY THE WITNESS:</p> <p>4 A I've never seen something signed by a</p> <p>5 corporation, so, yeah, that's what it says, but I</p> <p>6 don't believe that to be a valid contractual</p> <p>7 signature.</p> <p>8 BY MR. LANDGRAFF:</p> <p>9 Q The only other thing other than the</p> <p>10 signatures on Page 488 of Exhibit 9 that you</p> <p>11 signed says "Enclosure(s): Terms of Engagement to</p> <p>12 Provide Tax Services."</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 MR. HESSELL: Objection to the form of the</p> <p>16 question.</p> <p>17 BY MR. LANDGRAFF:</p> <p>18 Q Now, it's your claim that you did not get</p> <p>19 a version of the engagement agreement with the</p> <p>20 Terms of Engagement to Provide Tax Services,</p> <p>21 right?</p> <p>22 A I have never seen this document before</p> <p>23 these depositions.</p> <p>24 Q If, as you claim, you didn't get a copy of</p> <p>25 the Terms of Engagement to Provide Tax Services,</p>
<p>70</p> <p>1 Services?</p> <p>2 A Yeah.</p> <p>3 Q So if you'd flip to Page 489, the Bates</p> <p>4 number ending in 489 of Exhibit 9.</p> <p>5 A 489? Yeah, I got it.</p> <p>6 Q And the top of the page, it's -- it's a</p> <p>7 little -- there's like a hole punch that knocks</p> <p>8 out -- a little bit out, but do you see the title</p> <p>9 at the top of that page?</p> <p>10 A Yeah.</p> <p>11 Q "Terms of Engagement to Provide Tax</p> <p>12 Services"?</p> <p>13 A Yeah.</p> <p>14 MR. HESSELL: Objection.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q So the -- the title on Page 489 matches</p> <p>17 the bold language on Page 485 that you edited,</p> <p>18 correct?</p> <p>19 A It matches the page that I edited, yeah,</p> <p>20 the language on the page, sure.</p> <p>21 Q And your signature appears on Page 488 of</p> <p>22 Exhibit 9; is that right?</p> <p>23 A That's right.</p> <p>24 Q And so does Pricewaterhouse's signature,</p> <p>25 right?</p>	<p>72</p> <p>1 did you ask where they were when you saw them on</p> <p>2 Page 1 of Exhibit 9?</p> <p>3 A I don't believe so, no.</p> <p>4 Q If, as you claim, you didn't get a copy of</p> <p>5 the terms of engagement to provide tax services,</p> <p>6 did you ask where the enclosure was that's</p> <p>7 referred to right above your signature?</p> <p>8 A Well, there's an "S" on the end of</p> <p>9 "enclosure," so where's the other one?</p> <p>10 Q Did you ask where any enclosures were?</p> <p>11 A No, I don't believe that I did. I assumed</p> <p>12 that this was the agreement.</p> <p>13 Q And --</p> <p>14 A I've never -- let me put it this way:</p> <p>15 I've done plenty of -- of -- of engagement</p> <p>16 letters. This would be -- if -- if I saw this</p> <p>17 document attached to the engagement letter, this</p> <p>18 would have been the first one of its kind because</p> <p>19 I've never gotten an engagement letter that had a</p> <p>20 separate attached sheet that wasn't part of the --</p> <p>21 of the engagement letter itself that didn't have a</p> <p>22 signature line or initial line or something for me</p> <p>23 to acknowledge that I received it.</p> <p>24 And if I had received this particular</p> <p>25 document, I would have made changes to it.</p>

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<p>73</p> <p>1 Q What would you have made changes to?</p> <p>2 A I would have struck number seven,</p> <p>3 "Limitations of Liability" because that would</p> <p>4 defeat me -- that would defeat my purpose of</p> <p>5 hiring you in the first place.</p> <p>6 And I would have struck the part about</p> <p>7 New York law.</p> <p>8 Q Anything else you would have struck?</p> <p>9 MR. HESSELL: Objection --</p> <p>10 BY THE WITNESS:</p> <p>11 A No.</p> <p>12 MR. HESSELL: -- speculation.</p> <p>13 BY THE WITNESS:</p> <p>14 A I don't know.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q Why would the limitation of liability</p> <p>17 defeat your purpose of hiring PwC? Was your</p> <p>18 purpose to sue them?</p> <p>19 A You want me to answer that? No, my</p> <p>20 purpose was to get tax advice on a \$40 million</p> <p>21 deal.</p> <p>22 Q And why would a limitation of liability</p> <p>23 defeat the purpose of hiring PwC?</p> <p>24 A Because I'm not going to be limited in --</p> <p>25 if your advice goes bad, I'm not going to be</p>	<p>75</p> <p>1 Q Why do you assume he did?</p> <p>2 A Because Stovsky and him were the ones that</p> <p>3 were communicating.</p> <p>4 Q You -- Jim Tricarichi didn't sign the</p> <p>5 letter, right?</p> <p>6 A No, I signed it. I didn't say I didn't</p> <p>7 review it. You asked me if I had anyone else</p> <p>8 review it.</p> <p>9 And you asked me specifically about Randy</p> <p>10 Hart, and I said I didn't recall. Now you're</p> <p>11 asking me about Jim, and I'm saying it's more</p> <p>12 likely than not that Jim reviewed this letter but</p> <p>13 I can't say for certain.</p> <p>14 Q And why is it more likely than not that</p> <p>15 Jim reviewed the letter?</p> <p>16 A Because Jim was involved in the</p> <p>17 transaction.</p> <p>18 Q Did you ask Mr. Folkman to review the</p> <p>19 letter?</p> <p>20 A I don't have any recollection of that.</p> <p>21 Q Did you ask Carla Tricarichi to review the</p> <p>22 letter?</p> <p>23 A I don't have any recollection of that</p> <p>24 either.</p> <p>25 Q Page 1 of Exhibit 9 or the -- you could</p>
<p>74</p> <p>1 limited to what I paid you for your advice.</p> <p>2 I'm going to want -- I'm going to --</p> <p>3 if -- if there's punitives, I'm going to want</p> <p>4 punitives. If there's penalties, I'm going to</p> <p>5 want penalties.</p> <p>6 I would never have signed that. Ever.</p> <p>7 Q Did you ask anyone to review the</p> <p>8 engagement agreement between you and PwC to give</p> <p>9 you feedback?</p> <p>10 A No.</p> <p>11 Q Did you run it by Randy Hart?</p> <p>12 A I may have.</p> <p>13 Q Well, which is it, did you --</p> <p>14 A I don't know. I don't recall.</p> <p>15 Q Okay. You don't -- do you have any</p> <p>16 recollection of asking anyone to review the</p> <p>17 engagement agreement between you and PwC?</p> <p>18 A I may have. I don't recall.</p> <p>19 Q Do you recall asking your brother, Jim</p> <p>20 Tricarichi, to look at the engagement agreement?</p> <p>21 A Oh, I'm sure Jim looked at the engagement</p> <p>22 agreement.</p> <p>23 Q Why --</p> <p>24 A I'm not sure, but I'm assuming that he</p> <p>25 did.</p>	<p>76</p> <p>1 look at either page, the page that you -- the page</p> <p>2 ending in 485 is what I mean by the first page of</p> <p>3 it.</p> <p>4 A Got it.</p> <p>5 Q Was it your understanding that what you</p> <p>6 asked PwC was to perform tax research and</p> <p>7 evaluation services relating to the sale of -- of</p> <p>8 Westside stock?</p> <p>9 A That's what it says.</p> <p>10 Q Is that what your understanding of the PwC</p> <p>11 engagement was?</p> <p>12 A Yeah.</p> <p>13 Q And if you look at the page ending in 487</p> <p>14 where you wrote in the -- the portion about the</p> <p>15 \$20,000; do you see that, sir?</p> <p>16 A I do.</p> <p>17 Q And right underneath where your</p> <p>18 handwriting is, there's a sentence that says, "We</p> <p>19 look forward to working with you and your staff</p> <p>20 during the completion of this important project."</p> <p>21 Do you see that?</p> <p>22 A That's what it says.</p> <p>23 Q What was the project?</p> <p>24 A Didn't you just ask me that?</p> <p>25 Q I just asked you that, what was the</p>

<p>77</p> <p>1 project?</p> <p>2 A It's what you just read.</p> <p>3 Q The sale of the Westside stock?</p> <p>4 A Yeah.</p> <p>5 Q And the sale of the Westside stock closed</p> <p>6 on September 9, 2003, right?</p> <p>7 A If you say so. I have no -- no -- nothing</p> <p>8 in front of me that gives me that date.</p> <p>9 Somewhere --</p> <p>10 Q You remember -- roughly September 2003, do</p> <p>11 you recall that --</p> <p>12 A Somewhere in there.</p> <p>13 Q And after the closing, is it fair to say</p> <p>14 that Nob Hill owned the stock of the Westside?</p> <p>15 A Probably.</p> <p>16 Q That was the -- that was the point of the</p> <p>17 transaction, right, was to sell the -- your stock</p> <p>18 in Westside to Nob Hill and they were going to pay</p> <p>19 you for that?</p> <p>20 A Yeah.</p> <p>21 Q And that's what happened; they paid you</p> <p>22 and you transferred the stock to Nob Hill, right?</p> <p>23 A As far as I recollect.</p> <p>24 Q And after the closing, did you believe</p> <p>25 that PwC was going to be advising Nob Hill about</p>	<p>79</p> <p>1 MR. LANDGRAFF: Hold on one second.</p> <p>2 I'm asking this be marked as PwC</p> <p>3 Exhibit 28.</p> <p>4 (WHEREUPON, a certain document was marked</p> <p>5 PwC Deposition Exhibit No. 28, for</p> <p>6 identification.)</p> <p>7 BY THE WITNESS:</p> <p>8 A I see it.</p> <p>9 BY MR. LANDGRAFF:</p> <p>10 Q And it is -- it is more than one page,</p> <p>11 Mr. Tricarichi. If you want to flip through</p> <p>12 Exhibit 28, I'm just going to ask you some</p> <p>13 high-level questions. They're the invoices you</p> <p>14 received from PwC.</p> <p>15 THE TECHNICIAN: You now have control,</p> <p>16 sir.</p> <p>17 THE WITNESS: How do I flip through it?</p> <p>18 MR. HESSELL: Go to the top where there's</p> <p>19 that arrow. You see where it says 1 through 6?</p> <p>20 And then there's a --</p> <p>21 THE WITNESS: I'm looking, looking,</p> <p>22 looking. Wait.</p> <p>23 MR. HESSELL: There's a down arrow.</p> <p>24 THE WITNESS: I don't see that. On the</p> <p>25 top -- oh, okay. Got it.</p>
<p>78</p> <p>1 tax issues relating to Nob Hill's ownership of</p> <p>2 Westside stock?</p> <p>3 A Honestly, I have no idea.</p> <p>4 Q If you would turn to Exhibit 28.</p> <p>5 A I don't have a 28 in this binder.</p> <p>6 MR. HESSELL: It's the next document.</p> <p>7 THE WITNESS: Oh, the next document?</p> <p>8 I have a 32.</p> <p>9 MR. HESSELL: You don't have anything in</p> <p>10 between 9 and 32?</p> <p>11 THE WITNESS: No, I go from 9 to 32.</p> <p>12 MR. LANDGRAFF: Okay. That's a mistake.</p> <p>13 Can we -- Lawrence, can you please -- do you have</p> <p>14 Exhibit 28, Lawrence?</p> <p>15 THE TECHNICIAN: Yes, I do.</p> <p>16 MR. LANDGRAFF: Would you mind just</p> <p>17 putting on the screen -- and I apologize,</p> <p>18 Mr. Tricarichi, that's an error, but I don't think</p> <p>19 it will be too complicated, but you can take your</p> <p>20 time to look at it on the screen.</p> <p>21 THE TECHNICIAN: It's on the screen now.</p> <p>22 Would you like me to give control of the mouse to</p> <p>23 the witness?</p> <p>24 MR. LANDGRAFF: Sure. And I'll --</p> <p>25 THE WITNESS: Is it more than one page?</p>	<p>80</p> <p>1 BY THE WITNESS:</p> <p>2 A Got it.</p> <p>3 BY MR. LANDGRAFF:</p> <p>4 Q So do you recognize Exhibit 28 as a</p> <p>5 compilation of the invoices that PwC sent to you</p> <p>6 for work on the Westside sale project that is</p> <p>7 discussed in the engagement letter?</p> <p>8 A That's what it appears to be.</p> <p>9 Q And if you look at the -- each page is a</p> <p>10 different time period for which PwC was billing</p> <p>11 you; is that fair?</p> <p>12 A That's fair.</p> <p>13 Q And the final page, if you flip to that</p> <p>14 page, the sixth page of Exhibit 28, is a bill for</p> <p>15 September 2003 work that appears to have been sent</p> <p>16 to you on October 29th; is that right?</p> <p>17 A That's what it says.</p> <p>18 Q And you paid these invoices, right?</p> <p>19 A Like I said, you acknowledged that I paid</p> <p>20 for them, yeah.</p> <p>21 Q Did you receive any invoices from PwC in</p> <p>22 2004?</p> <p>23 A I don't recall.</p> <p>24 Q Did you receive any invoices from PwC in</p> <p>25 2005?</p>

<p>81</p> <p>1 A I don't recall that either.</p> <p>2 Q Did you receive invoices from PwC any time</p> <p>3 after this invoice that you received sometime in</p> <p>4 October of 2003?</p> <p>5 A I don't recall.</p> <p>6 Q Do you think it's possible you received</p> <p>7 invoices from PwC after 2003?</p> <p>8 A It's possible. I wasn't paying the</p> <p>9 invoices.</p> <p>10 Q You did -- did you ever pay PwC after</p> <p>11 2003?</p> <p>12 A I don't recall.</p> <p>13 Q What do you mean you weren't paying the</p> <p>14 invoices?</p> <p>15 A I wasn't the person who paid the invoices.</p> <p>16 Q Who was the person who paid the invoices?</p> <p>17 A Well, it would have been Jimmy, or it</p> <p>18 would have been my -- it could have been Scott</p> <p>19 Ginsburg, or it could have been Nemic, my</p> <p>20 accounting person.</p> <p>21 Q Did Scott Ginsburg or --</p> <p>22 A Steve Nemic.</p> <p>23 Q I'm sorry. Go ahead.</p> <p>24 A Steve Nemic.</p> <p>25 Q Did Scott Ginsburg or Steve Nemic work for</p>	<p>83</p> <p>1 Q Exhibit 309, Page 164 --</p> <p>2 A Wait a minute. Wait a minute. Wait a</p> <p>3 minute. Is that in this book or the other book?</p> <p>4 MR. HESSELL: The other -- the second</p> <p>5 binder, volume two.</p> <p>6 THE WITNESS: Oh, I'm in the wrong book.</p> <p>7 I'm sorry.</p> <p>8 MR. LANDGRAFF: And, Lawrence, you can</p> <p>9 take the --</p> <p>10 THE WITNESS: My bad.</p> <p>11 MR. LANDGRAFF: -- down.</p> <p>12 BY THE WITNESS:</p> <p>13 A 309. Got it.</p> <p>14 BY MR. LANDGRAFF:</p> <p>15 Q Exhibit 309, Page 164.</p> <p>16 A Got it.</p> <p>17 Q Line 14, "QUESTION: And have you had any</p> <p>18 ongoing relationship with PricewaterhouseCoopers</p> <p>19 after the sale of your stock?</p> <p>20 "ANSWER: I don't think so."</p> <p>21 Were you asked that question and did you</p> <p>22 give that answer?</p> <p>23 A Yeah, I said the same thing I just said,</p> <p>24 "I don't think so."</p> <p>25 Q Now, you know --</p>
<p>82</p> <p>1 you after the sale of the Westside stock?</p> <p>2 A Scott Ginsburg did.</p> <p>3 Q Did --</p> <p>4 A He didn't work for me, he worked with me.</p> <p>5 Q Did he ever tell you we received an</p> <p>6 invoice from PwC in 2004 or 2005 or after the</p> <p>7 Westside sale?</p> <p>8 A I have no recollection either way.</p> <p>9 Q Now, you -- you did not have an ongoing</p> <p>10 relationship with PwC after the sale of the</p> <p>11 Westside stock in September 2003, correct?</p> <p>12 MR. HESSELL: Objection to the form of the</p> <p>13 question.</p> <p>14 BY THE WITNESS:</p> <p>15 A Define ongoing relationship.</p> <p>16 BY MR. LANDGRAFF:</p> <p>17 Q If you'd turn to Exhibit 309.</p> <p>18 MR. HESSELL: Is that in the other binder?</p> <p>19 MR. LANDGRAFF: He's already looked at it,</p> <p>20 but, yes. It should be in the second binder.</p> <p>21 BY THE WITNESS:</p> <p>22 A 309. What is that?</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q It's your trial testimony.</p> <p>25 A Okay. Go ahead.</p>	<p>84</p> <p>1 A (Unintelligible.)</p> <p>2 Q You knew PwC received a summons from the</p> <p>3 IRS in 2008 relating to PwC's work on the Westside</p> <p>4 sale, right?</p> <p>5 A I don't know that I -- I -- I don't know</p> <p>6 that I knew that in 2008. I knew that at some</p> <p>7 point before the trial, but I can't tell you when.</p> <p>8 Q Do you -- do you recall PwC inviting you</p> <p>9 and your counsel to review or look at documents</p> <p>10 that PwC was planning on sending the IRS in</p> <p>11 response to a summons that PwC had received?</p> <p>12 A I think -- I think there was some</p> <p>13 coordination between Hahn Loeser and PwC at that</p> <p>14 time. But I can't tell you for sure what year</p> <p>15 that was or when that was.</p> <p>16 Q Did -- was there any coordination with you</p> <p>17 personally in reviewing the materials that PwC was</p> <p>18 intending to send to the IRS?</p> <p>19 A I may have. I don't have a specific</p> <p>20 recollection of that.</p> <p>21 Q Do you recall going to PwC's office to</p> <p>22 review materials that PwC had said it's going to</p> <p>23 send to the IRS in response to a summons that PwC</p> <p>24 had received?</p> <p>25 A Where would that office have been?</p>

<p>85</p> <p>1 Q Do you recall going to a -- any PwC office 2 to review materials that PwC said it was going to 3 send the IRS -- to the IRS in response to a 4 summons that PwC had received? 5 A I asked you a question. I'm going to -- 6 I'm going to tell you that I'm not sure and I'm 7 going to tell -- I'm asking you to define which 8 PwC office that would have been. 9 Q And I'm asking you do you recall going to 10 any PwC office? 11 A There was a PwC office in the same 12 building as Hahn Loeser, in the BP building, 13 downtown Cleveland, and I would go there from time 14 to time. 15 You are asking me a specific question 16 about reviewing specific documents during a 17 specific time frame. If you told me that I -- I 18 did that in New York, I would be questioning it 19 because I don't recall going to PwC's office in 20 New York, okay? Or Chicago or any other office. 21 If you're asking me did I -- do I have a 22 specific recollection of going to PwC's office in 23 the BP building to review specific documents, I 24 can tell you that I don't have a specific 25 recollection of that.</p>	<p>87</p> <p>1 A Do you want me to speculate? 2 Q I'd like you to answer my question. 3 A Well, I can tell you that if I did go and 4 see documents in 2008 at PwC, that I would have 5 requested that Stovsky be there and I would have 6 talked to Stovsky. 7 Q Do you have any recollection -- 8 A That's the best I'm going to do. 9 Q Okay. That -- so let me just -- I'd like 10 you to answer my question. 11 Do you have any recollection of talking 12 with anyone at PwC about PwC's response to a 13 summons that PwC received from the IRS relating to 14 the Westside stock sale? 15 A I'm going to say it one more time. If I 16 went to PwC to look at documents, I'm sure that I 17 would have talked to people at PwC. And since my 18 contact at PwC was Rich Stovsky, that I would have 19 talked to Rich Stovsky. 20 Q Do you have any recollection of talking to 21 Rich Stovsky about PwC's response to an IRS -- 22 A I'm not going to answer that again. 23 That's twice now. 24 Q No, you -- you're saying if, if, if. I'm 25 asking you as you sit --</p>
<p>86</p> <p>1 Q Do you -- do you recall talking with 2 anyone at PwC in the 2008 time frame about PwC's 3 response to an IRS summons that PwC had received 4 relating to the Westside stock sale? 5 A Well, I already -- if you take the 2008 6 out of that question, I'll answer it. Because I 7 already answered 2008. 8 Q I'd like an answer to my question. 9 A Well, I can't answer that question because 10 I -- you have to give me a time frame. If you say 11 2008, I told you I wasn't sure of the time frame. 12 So I'm going to give you the same answer that I 13 just gave you, which is I'm not sure of the time 14 frame. 15 Q Do you -- so regardless of any time 16 frame -- or can you put it in time -- let me ask 17 you that, do you recall going to PwC's office to 18 look at documents that PwC had told you that PwC 19 planned to send to the IRS in response to a 20 summons that PwC had received? 21 A I don't have a specific recollection of 22 that, but that's not to say I didn't do it. 23 Q Do you have any recollection of talking 24 with anyone at PwC about PwC's response to a 25 summons that PwC received from the IRS?</p>	<p>88</p> <p>1 A I'm telling -- 2 Q -- today -- 3 A -- I don't have a specific recollection. 4 You're telling me I did. And if you're telling me 5 I did, then I'm going to tell you that I wouldn't 6 have done that without talking to someone at PwC. 7 Q I'm asking you questions; I'm not telling 8 you anything, sir. So see if you can focus on my 9 question. 10 MR. HESSELL: He answered it. He just 11 answered it. 12 BY MR. LANDGRAFF: 13 Q You -- you have no recollection of talking 14 to Rich Stovsky about PwC's response to an IRS 15 summons; is that fair? 16 A No, that's not fair because that's not 17 what I told you. 18 Q Well, okay, so let me ask the question and 19 let's see if you can answer it. 20 Do you have any recollection of talking 21 with Rich Stovsky or anyone at PwC about PwC's 22 response to an IRS summons that it received 23 relating to the Westside stock sale? 24 MR. HESSELL: Objection -- 25</p>

<p>89</p> <p>1 BY THE WITNESS:</p> <p>2 A I had conversations with PwC people at</p> <p>3 some point, okay? I don't recall if it was in</p> <p>4 2008. And that's the last time I'm going to say</p> <p>5 that.</p> <p>6 BY MR. LANDGRAFF:</p> <p>7 Q Do you -- did you ask PwC to perform any</p> <p>8 tax research relating to the Westside stock sale</p> <p>9 in 2008 or 2009 or 2010?</p> <p>10 MR. HESSELL: Objection to the form of the</p> <p>11 question.</p> <p>12 BY THE WITNESS:</p> <p>13 A Tax research, no.</p> <p>14 BY MR. LANDGRAFF:</p> <p>15 Q Did you ask PwC to conduct any tax</p> <p>16 evaluation services as -- in 2008 or 2009 or 2010?</p> <p>17 MR. HESSELL: Objection to the form of the</p> <p>18 question.</p> <p>19 BY THE WITNESS:</p> <p>20 A I think what I asked PwC was if they had</p> <p>21 anything that they were holding back or that they</p> <p>22 had knowledge of, anything that they didn't tell</p> <p>23 us that would be helpful to us in the event that</p> <p>24 the IRS decided to crater this transaction, that I</p> <p>25 needed to know that.</p>	<p>91</p> <p>1 the IRS summons?</p> <p>2 MR. HESSELL: Objection to the --</p> <p>3 BY THE WITNESS:</p> <p>4 A I think I already answered that question</p> <p>5 but I'll answer it again.</p> <p>6 I did not ask PwC for any tax advice other</p> <p>7 than the advice that they gave me in 2003.</p> <p>8 BY MR. LANDGRAFF:</p> <p>9 Q You agree that PwC's delivery of documents</p> <p>10 to the IRS in response to the summons that PwC</p> <p>11 received was required by the IRS, right?</p> <p>12 MR. HESSELL: Objection, calls for a legal</p> <p>13 conclusion.</p> <p>14 BY THE WITNESS:</p> <p>15 A I'm not a lawyer. I can't tell you that.</p> <p>16 BY MR. LANDGRAFF:</p> <p>17 Q Did you ask PwC to send in the documents</p> <p>18 to the IRS that the IRS had requested?</p> <p>19 A Did I ask PwC to send the IRS documents?</p> <p>20 If the IRS wanted documents, PwC should have sent</p> <p>21 them documents. They didn't need my permission.</p> <p>22 Q Do you -- setting aside any conversations</p> <p>23 you may have had or may not have had, do you -- do</p> <p>24 you personally remember actually reviewing</p> <p>25 documents that PwC said it was going to send the</p>
<p>90</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q When did you ask PwC if they were holding</p> <p>3 anything back?</p> <p>4 A I told you, when I had the conversation</p> <p>5 with them whenever that was, 2008, 2009, sometime</p> <p>6 in that time frame. I can't tell you specifically</p> <p>7 when it was.</p> <p>8 But I can tell you that if they had</p> <p>9 specific knowledge of stuff that they should have</p> <p>10 told us, they needed to tell us.</p> <p>11 Q Who did you ask if they were holding --</p> <p>12 PwC was holding anything back?</p> <p>13 A Whoever I was talking to. Most likely</p> <p>14 PW -- most likely Stovsky, but I can't tell you</p> <p>15 that for 100 percent certainty.</p> <p>16 Q Did you ask for the -- did you ask for</p> <p>17 this -- withdrawn.</p> <p>18 Did you make this request about whether</p> <p>19 PwC was holding anything back, did you make that</p> <p>20 in writing?</p> <p>21 A No, I didn't make it in writing.</p> <p>22 Q Did you ask --</p> <p>23 A Did you give me advice in writing?</p> <p>24 Q Did you ask PwC to conduct any tax</p> <p>25 evaluation services as part of the PwC response to</p>	<p>92</p> <p>1 IRS?</p> <p>2 A I don't remember specific documents --</p> <p>3 reviewing specific documents, no.</p> <p>4 Q Do you remember reviewing any documents;</p> <p>5 you know, just the event of it, going to a room at</p> <p>6 PwC --</p> <p>7 A There was a time when I did that, and I</p> <p>8 can't tell you when it was.</p> <p>9 Q Who -- do you -- can you tell us who you</p> <p>10 were with when you did that?</p> <p>11 A I've already asked -- I've already</p> <p>12 answered that question, I can't tell you</p> <p>13 specifically who was there.</p> <p>14 I could tell you that I would have wanted</p> <p>15 Rich Stovsky there. Whether he was there or not,</p> <p>16 I don't know.</p> <p>17 Q Can -- can you tell us how long you were</p> <p>18 at PwC to review the documents?</p> <p>19 A No.</p> <p>20 Q Can you tell us was it -- was it one visit</p> <p>21 or more than one visit?</p> <p>22 A I don't know.</p> <p>23 Q Do you recall telling anyone at PwC to --</p> <p>24 to withhold documents from the IRS?</p> <p>25 A No.</p>

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<p>93</p> <p>1 Q Were you invoiced or billed for the time</p> <p>2 PwC spent gathering documents that PwC was going</p> <p>3 to send to the IRS?</p> <p>4 A I think that's the same question you asked</p> <p>5 me about did I get any more bills from PwC, and</p> <p>6 I -- I told you that I may have but I'm not sure.</p> <p>7 Q Now, PwC did not interact with the IRS on</p> <p>8 your behalf after the transferee liability report</p> <p>9 was issued, right?</p> <p>10 MR. HESSELL: Objection, calls for</p> <p>11 speculation. Foundation.</p> <p>12 BY THE WITNESS:</p> <p>13 A No, clue.</p> <p>14 BY MR. LANDGRAFF:</p> <p>15 Q I mean, you didn't -- you didn't hire PwC</p> <p>16 to participate in -- in your interactions with the</p> <p>17 IRS in 2008 and going forward, right?</p> <p>18 A Specifically? No, I expected them to</p> <p>19 stand behind their advice. Whether that entailed</p> <p>20 them talking to the IRS or not, I don't know.</p> <p>21 But that -- I expected them to stand</p> <p>22 behind their advice.</p> <p>23 Q But you didn't separately engage PwC to</p> <p>24 participate in the IRS proceedings that began in</p> <p>25 2008, right?</p>	<p>95</p> <p>1 Q And what did you hire Bingham to do?</p> <p>2 A To respond to a letter that I got from the</p> <p>3 IRS.</p> <p>4 Q And you didn't hire PwC to respond to that</p> <p>5 letter from the IRS, right?</p> <p>6 A No. I don't know how PwC would have</p> <p>7 responded to that letter; they were legal</p> <p>8 questions.</p> <p>9 Q And PwC didn't prepare you for settlement</p> <p>10 discussions with the IRS, right?</p> <p>11 A I don't understand your question.</p> <p>12 Q You had law firms helping you prepare for</p> <p>13 settlement discussions with the IRS, right?</p> <p>14 A I had engaged a law firm to do settlement</p> <p>15 negotiations with the IRS. Does that answer your</p> <p>16 question?</p> <p>17 Q My question was PwC didn't do settlement</p> <p>18 discussions with the IRS on your behalf, right?</p> <p>19 A Not that --</p> <p>20 MR. HESSELL: Objection --</p> <p>21 BY THE WITNESS:</p> <p>22 A -- I'm aware of.</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q And PwC didn't attend settlement meetings</p> <p>25 with the IRS with you or your lawyers, right?</p>
<p>94</p> <p>1 MR. HESSELL: Objection to the form of the</p> <p>2 question.</p> <p>3 BY THE WITNESS:</p> <p>4 A Specifically? No.</p> <p>5 BY MR. LANDGRAFF:</p> <p>6 Q You had your own team; you had Glenn</p> <p>7 Miller and Sullivan & Cromwell and Mike Desmond,</p> <p>8 right?</p> <p>9 MR. HESSELL: Objection to the form of the</p> <p>10 question.</p> <p>11 BY THE WITNESS:</p> <p>12 A Well, I didn't have them until 2009 I</p> <p>13 think. So I don't -- again, you're very nebulous</p> <p>14 on time frames. So if you would give me specific</p> <p>15 time frames, if I have a recollection of a</p> <p>16 specific time frame, I'll tell you. If I don't,</p> <p>17 I'll ask you. So if you give me a specific time</p> <p>18 frame on that, I'll tell you.</p> <p>19 BY MR. LANDGRAFF:</p> <p>20 Q In 2009, you had -- you had a legal team</p> <p>21 helping you with your interactions with the IRS,</p> <p>22 right?</p> <p>23 A I believe I hired Bingham in 2009.</p> <p>24 Q And Bingham's a law firm, right?</p> <p>25 A Yes.</p>	<p>96</p> <p>1 A I have no knowledge of that. I didn't</p> <p>2 attend any settlement negotiation meetings with</p> <p>3 the IRS.</p> <p>4 Q When you -- do you remember when you first</p> <p>5 retained Bingham?</p> <p>6 A Yeah, sometime in 2009.</p> <p>7 Q When did you first retain Sullivan &</p> <p>8 Cromwell?</p> <p>9 A It was after that.</p> <p>10 Q Was it also in 2009?</p> <p>11 A I don't have a specific recollection.</p> <p>12 Q Do you recall asking Rich Stovsky in 2009</p> <p>13 for -- for him to send you documents?</p> <p>14 A Send me documents? Why would he send me</p> <p>15 documents?</p> <p>16 Q Do you recall -- my question is do you</p> <p>17 recall asking Rich Stovsky in 2009 to send you</p> <p>18 PwC's file?</p> <p>19 A Personally, no. The lawyers may have done</p> <p>20 it. I don't know.</p> <p>21 Q Do you have -- and I apologize, I don't</p> <p>22 know if it's in your binder. Do you have an</p> <p>23 Exhibit 224 in your binder?</p> <p>24 A I do.</p> <p>25 MR. LANDGRAFF: And I'd ask that --</p>

<p>97</p> <p>1 THE WITNESS: Hold on.</p> <p>2 MR. LANDGRAFF: I'm just asking for the</p> <p>3 record --</p> <p>4 THE WITNESS: I have a 223 -- yes, I have</p> <p>5 224.</p> <p>6 MR. LANDGRAFF: Okay. Let's have</p> <p>7 Exhibit 224 marked as PwC Exhibit 224.</p> <p>8 (WHEREUPON, a certain document was marked</p> <p>9 PwC Deposition Exhibit No. 224, for</p> <p>10 identification.)</p> <p>11 BY MR. LANDGRAFF:</p> <p>12 Q And this is -- 224 is a September 17th,</p> <p>13 2009 letter to you from Rich Stovsky; is that</p> <p>14 correct?</p> <p>15 A That's what it purports to be.</p> <p>16 Q And -- well, did you receive it?</p> <p>17 A I don't have a specific recollection of</p> <p>18 receiving it.</p> <p>19 Q Were you --</p> <p>20 A It's addressed to my house in Nevada.</p> <p>21 Q Is that the correct address where you</p> <p>22 lived in 2009?</p> <p>23 A I believe so, yes.</p> <p>24 Q And Mr. --</p> <p>25 A That's not where --</p>	<p>99</p> <p>1 have -- do you remember receiving documents from</p> <p>2 Mr. Stovsky around this time in 2009?</p> <p>3 A I'm sorry I'm not answering your questions</p> <p>4 the way you want me to answer them, but I am</p> <p>5 answering them. And I'm going to answer it again.</p> <p>6 And that is, there are no documents attached to</p> <p>7 this letter. I can't tell you if I received</p> <p>8 specific documents or any documents.</p> <p>9 And if you want to show me documents, I'll</p> <p>10 be happy to tell you whether I have a recollection</p> <p>11 of receiving those documents or not. But short of</p> <p>12 that, giving me a three-line letter doesn't</p> <p>13 strike -- doesn't ring any bells.</p> <p>14 Q Do you -- do you know if you were billed</p> <p>15 for the time PwC spent gathering documents in</p> <p>16 2009?</p> <p>17 A I don't know --</p> <p>18 MR. HESSELL: Objection --</p> <p>19 BY THE WITNESS:</p> <p>20 A -- that would be a question to ask Jim.</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q I'm asking you.</p> <p>23 A Do I have a specific recollection of that?</p> <p>24 No. Is it possible that I was? Yes. Is it</p> <p>25 possible that I was and Jimmy paid it? Yes.</p>
<p>98</p> <p>1 Q -- Stovsky --</p> <p>2 A -- got documents, but yeah.</p> <p>3 Q I'm sorry, I cut -- say that again.</p> <p>4 A I said that's not where I typically</p> <p>5 received documents, but I see the address is a</p> <p>6 good address.</p> <p>7 Q And Mr. Stovsky said on September 17th,</p> <p>8 2009, "Dear, Mike. Per my discussion with Jim</p> <p>9 Tricarichi, enclosed are copies of the relevant --</p> <p>10 relevant materials you requested. I believe these</p> <p>11 are essentially the same materials provided to the</p> <p>12 IRS in February 2008 after review by you and your</p> <p>13 counsel. Sincerely, Rich."</p> <p>14 Do you see that?</p> <p>15 A Yeah.</p> <p>16 Q So do you remember asking -- or, sorry, do</p> <p>17 you remember receiving documents from Mr. Stovsky</p> <p>18 around this time in 2009?</p> <p>19 A Well, since you don't have any documents</p> <p>20 attached to this letter, I can't tell you for sure</p> <p>21 what -- what the documents were, if I did receive</p> <p>22 any. I could tell you that the letter says</p> <p>23 "Enclosures" and there are no enclosures attached</p> <p>24 to it.</p> <p>25 Q Do you have -- my question was do you</p>	<p>100</p> <p>1 Q Did -- did you ask PwC to conduct any</p> <p>2 research relating to the Westside sale as part of</p> <p>3 receiving these documents in 2009?</p> <p>4 A I'm -- I'm going to tell you that I can't</p> <p>5 tell you what documents received, so I can't</p> <p>6 answer your question.</p> <p>7 Q Did you ask PwC to conduct any research</p> <p>8 relating to the Westside stock sale in 2009?</p> <p>9 MR. HESSELL: Objection, asked and</p> <p>10 answered.</p> <p>11 BY THE WITNESS:</p> <p>12 A I don't know. I -- I think I just said</p> <p>13 what I said.</p> <p>14 BY MR. LANDGRAFF:</p> <p>15 Q I'm separating it from the documents. My</p> <p>16 question is did you ask PwC to conduct any</p> <p>17 research relating to the Westside stock sale in</p> <p>18 2009?</p> <p>19 A Define --</p> <p>20 MR. HESSELL: Objection --</p> <p>21 BY THE WITNESS:</p> <p>22 A -- "you."</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q You. Do you --</p> <p>25 A Me personally?</p>

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<p>101</p> <p>1 Q Do you know not -- do you not know what</p> <p>2 "you" means?</p> <p>3 A I'm sorry, sir, but if you're going to</p> <p>4 debase me in this deposition, I'm going to stop it</p> <p>5 and we're going to take the video to the Court and</p> <p>6 we're going to see what the judge thinks of it,</p> <p>7 okay?</p> <p>8 Q You -- you asked me what -- what "you" is.</p> <p>9 Do you not know what "you" is? Do you --</p> <p>10 A "You" is --</p> <p>11 Q -- explain that?</p> <p>12 A -- could be -- "you" could be you as me,</p> <p>13 you, it could be you as my representatives.</p> <p>14 Jimmy asked for the documents, I didn't.</p> <p>15 Q Okay. I'm not --</p> <p>16 A You can see that in the letter, right?</p> <p>17 Q I'm not -- I'm not asking you about the</p> <p>18 exhibit. I'm --</p> <p>19 A I'm saying that --</p> <p>20 (Unintelligible - speaking at once.)</p> <p>21 MS. REPORTER: Hang on. Stop. Hold on</p> <p>22 one second.</p> <p>23 I can't get two and three people talking</p> <p>24 at one time --</p> <p>25 THE WITNESS: Well, if he'd let me finish</p>	<p>103</p> <p>1 Stovsky. Jimmy saw Stovsky all the time. They</p> <p>2 were friends. They exchanged leads. They were</p> <p>3 business -- they were -- they weren't in business</p> <p>4 together but they did business together.</p> <p>5 So don't -- if you're asking me did Jim</p> <p>6 ask for this, I can tell you that I don't know.</p> <p>7 Q So for the --</p> <p>8 A If you're asking me did I ask for it, I</p> <p>9 can tell you I didn't.</p> <p>10 Q So for the rest of the deposition, when I</p> <p>11 say "you," unless I tell you otherwise, I mean</p> <p>12 you, Michael Tricarichi. Understand?</p> <p>13 A I understand, but if there's more than me,</p> <p>14 I'm going to say there's more than me.</p> <p>15 Q I -- you asked me to explain what "you"</p> <p>16 means, and I'm telling you, when I use "you," I</p> <p>17 mean you, Michael Tricarichi.</p> <p>18 Do you understand?</p> <p>19 A I understand that. And I also understand</p> <p>20 that you're not -- I -- listen, we can have a</p> <p>21 caveat and the caveat will be if you ask me did I</p> <p>22 specifically do something, I will tell you.</p> <p>23 But if I also say it's possible that</p> <p>24 someone else did it on my behalf, I will tell you</p> <p>25 that as well.</p>
<p>102</p> <p>1 my answer --</p> <p>2 MS. REPORTER: -- I need --</p> <p>3 THE WITNESS: -- you wouldn't have that</p> <p>4 problem.</p> <p>5 MR. HESSELL: Mike.</p> <p>6 MS. REPORTER: I need the question and</p> <p>7 answer one at a time because I can't get anything</p> <p>8 you're saying otherwise.</p> <p>9 So the last thing I got was the question,</p> <p>10 "I'm not asking you about the exhibits. I'm -- "</p> <p>11 and then there was an interruption.</p> <p>12 BY MR. LANDGRAFF:</p> <p>13 Q Okay. I'm not asking you about</p> <p>14 these -- these documents. What I'm asking you is,</p> <p>15 in 2009, did you ask PwC to perform any tax</p> <p>16 research relating to the Westside stock sale?</p> <p>17 A Okay, I'm going to answer this again. I</p> <p>18 don't know what you mean by "you." If you mean me</p> <p>19 or my representatives, I'm going to tell you it's</p> <p>20 possible.</p> <p>21 If you ask me did I, I'm going to tell you</p> <p>22 no. If you're going to ask me did Jimmy ask</p> <p>23 Stovsky to do any work -- any research, I don't</p> <p>24 know.</p> <p>25 Jimmy had an ongoing relationship with</p>	<p>104</p> <p>1 Q Did you personally ask anyone from PwC to</p> <p>2 perform any tax research relating to the Westside</p> <p>3 stock sale in 2009?</p> <p>4 A Personally, no. Possibly through someone</p> <p>5 else, yes.</p> <p>6 Q Did you personally ask PwC to do any tax</p> <p>7 evaluation relating to anything relating to the</p> <p>8 Westside stock sale in 2009?</p> <p>9 A Same --</p> <p>10 MR. HESSELL: Objection --</p> <p>11 BY THE WITNESS:</p> <p>12 A -- answer.</p> <p>13 MR. HESSELL: -- to the form of the</p> <p>14 question.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q "Same answer" meaning not you personally,</p> <p>17 right?</p> <p>18 A Not me personally, but it's possible that</p> <p>19 Jimmy or someone else did. Particularly Jimmy, he</p> <p>20 would have been the person who did it.</p> <p>21 Q So the Fortrend entity that agreed to</p> <p>22 purchase the Westside stock was Nob Hill, right?</p> <p>23 We talked about that a little bit earlier.</p> <p>24 A Yeah.</p> <p>25 Q And who from your team was the main point</p>

<p>105</p> <p>1 of contact with Nob Hill?</p> <p>2 A Depend on time frame.</p> <p>3 Q In the summer of 2003.</p> <p>4 A Okay, I don't know when they formed</p> <p>5 Nob Hill, and I don't even know if Nob Hill was</p> <p>6 formed by the summer of 2003.</p> <p>7 We were talking to Fortrend, okay? They</p> <p>8 incorporated an entity called Nob Hill to be the</p> <p>9 buyer of stock, which is not unusual because I do</p> <p>10 that when I purchase large things. I don't</p> <p>11 purchase them personally or I don't purchase them</p> <p>12 through another corporation that's currently doing</p> <p>13 business; I'll form a nice, new corporation or a</p> <p>14 nice, new LLC that will be the sole entity that</p> <p>15 will take possession of whatever it is, okay?</p> <p>16 So I don't know when Nob Hill was formed.</p> <p>17 I know that it was formed by Fortrend. And I hope</p> <p>18 that answers your question.</p> <p>19 Q So between -- and whether it was -- well,</p> <p>20 let me just ask it this way and see if it helps:</p> <p>21 Who was your main point of contact with Fortrend</p> <p>22 with respect to the Westside stock sale?</p> <p>23 A The main contact with Fortrend was</p> <p>24 Folkman.</p> <p>25 Q Jeff Folkman from Hahn Loeser?</p>	<p>107</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q Exhibit 32 is addressed to you, right?</p> <p>3 A Yeah.</p> <p>4 MR. LANDGRAFF: And if I need to say it,</p> <p>5 we'll -- we'll mark this as PwC Exhibit 32.</p> <p>6 BY MR. LANDGRAFF:</p> <p>7 Q Did you review the term sheet when you</p> <p>8 received it from Nob Hill Holdings?</p> <p>9 A I'm sure I looked at it and I'm sure I</p> <p>10 would have had Folkman look at it.</p> <p>11 Q Do you know whether you had changes that</p> <p>12 you wanted to propose to the term sheet?</p> <p>13 A Specifically, no, that was up to Folkman.</p> <p>14 That's one of the things we hired Folkman to do.</p> <p>15 And we also had -- we had also hired PwC to advise</p> <p>16 Folkman as to terms that he needed to include in</p> <p>17 the -- in the agreement.</p> <p>18 Q Do you know if -- if Folkman or PwC made</p> <p>19 edits or proposed changes to the term sheet?</p> <p>20 MR. HESSELL: Objection, foundation.</p> <p>21 BY THE WITNESS:</p> <p>22 A I have no idea. I'm sure they did.</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q Why are you sure they did?</p> <p>25 A Because I've never done a deal where I got</p>
<p>106</p> <p>1 A Yeah, he's the only Folkman in this</p> <p>2 conversation.</p> <p>3 Q If you would turn to Exhibit 32.</p> <p>4 A That's in the other book.</p> <p>5 Got it.</p> <p>6 (WHEREUPON, a certain document was marked</p> <p>7 PwC Deposition Exhibit No. 32, for</p> <p>8 identification.)</p> <p>9 BY MR. LANDGRAFF:</p> <p>10 Q And Exhibit 32, I'm not representing that</p> <p>11 you -- well, let me ask you, did you receive a</p> <p>12 copy of a term sheet from Nob Hill in July</p> <p>13 of 2003?</p> <p>14 A I may have.</p> <p>15 Q Do you have any recollection of</p> <p>16 receiving --</p> <p>17 A I'm sure I got a term sheet. I don't know</p> <p>18 if it was in July of 2003 or not.</p> <p>19 MR. HESSELL: Mike, you've got to stop --</p> <p>20 you've got to let him finish his answer for --</p> <p>21 THE WITNESS: Oh, sorry. My bad.</p> <p>22 MR. HESSELL: -- question for the benefit</p> <p>23 of the court reporter. I know you know where he's</p> <p>24 going but it's --</p> <p>25 THE WITNESS: My bad.</p>	<p>108</p> <p>1 a contract from another entity and didn't make</p> <p>2 changes to it.</p> <p>3 Q But you personally don't remember any</p> <p>4 changes you may have proposed with respect to the</p> <p>5 term sheet that's Exhibit 32?</p> <p>6 A I don't know. I -- I -- don't have a</p> <p>7 specific recollection of that.</p> <p>8 Q What about draft stock purchase</p> <p>9 agreements; did you -- do you recall reviewing</p> <p>10 draft stock purchase agreements?</p> <p>11 A I may have. I'm sure I did.</p> <p>12 Q Do you recall making comments to them or</p> <p>13 proposing changes to them?</p> <p>14 A I may have.</p> <p>15 Q Do you recall any changes you would have</p> <p>16 proposed?</p> <p>17 MR. HESSELL: Objection to the form of the</p> <p>18 question.</p> <p>19 BY THE WITNESS:</p> <p>20 A Not specifically, no. If you have</p> <p>21 something particular, let me know.</p> <p>22 BY MR. LANDGRAFF:</p> <p>23 Q Did you send -- or do you know whether PwC</p> <p>24 was sent draft stock purchase agreements?</p> <p>25 A I'm sure they were.</p>

<p>109</p> <p>1 Q Who would have sent -- who from your team 2 would have been the person to send PwC draft 3 purchase agreements? 4 A That would have been Folkman. 5 Q Do you know if PwC -- were you personally 6 made aware of whether PwC made comments or 7 suggested changes to draft stock purchase 8 agreements? 9 A I believe they did. 10 Q Do you -- did you discuss PwC's view of 11 the stock purchase agreement with PwC 12 representatives? 13 A Did I? No. But my representatives did. 14 Q And was that acceptable to you that your 15 representatives were the communicators with PwC 16 with respect to the stock purchase agreement? 17 A Well, I told you at the onset of this 18 deposition that I had no specific tax knowledge. 19 So I hired people that I assumed had tax 20 knowledge, which would have been PwC and 21 Hahn Loeser. 22 So if they're going to show me something 23 that has a red flag in it, I'll be happy to say, 24 hey, that's a red flag. But not having specific 25 knowledge of tax transactions, I would have relied</p>	<p>111</p> <p>1 of Exhibit 36, but if you look at the -- the 2 typeface and everything else -- now, it could have 3 been an attachment, but it -- the email doesn't 4 tell me that this is -- it says -- the email has a 5 thing in it that says, Closing checklist, buyer's 6 SE, dot, dot, dot. 7 So I don't know that this necessarily was 8 attached to that email, so don't hold me to it. 9 Q Do you see where it says "Attachments" and 10 it says, "Closing Checklist - Buyer's/Seller's 11 Stock"? 12 A Yeah, I see that. 13 Q And so with that note, the attachment is 14 there on Exhibit 36, you're still not sure that 15 this closing document checklist was attached? 16 A Possible. 17 Q Possible -- 18 A Possible, sure. 19 Q Because it says it, right, that's why it's 20 possible? 21 A It says that something's attached and this 22 is attached. I mean, this is -- I -- I don't 23 have a -- I don't have any reason to believe it 24 wasn't attached and I don't have any reason to 25 believe that it was other than it has the same</p>
<p>110</p> <p>1 on PwC and Hahn Loeser to give me the advice that 2 I paid them for. 3 Q Was it acceptable to you that your 4 representatives were the communicators with PwC 5 with respect to the stock purchase agreement and 6 PwC's views of the stock purchase agreement? 7 A Yeah, I am not going to micromanage that. 8 That's not me. 9 Q If you would turn to Exhibit 36. 10 MR. LANDGRAFF: And we'll mark that as 11 PwC 36. 12 (WHEREUPON, a certain document was marked 13 PwC Deposition Exhibit No. 36, for 14 identification.) 15 BY THE WITNESS: 16 A I see it. 17 BY MR. LANDGRAFF: 18 Q And Exhibit 36 is an August 13th, 2003 19 email from Jim Tricarichi to you with a copy to 20 Jeff Folkman and Randy Hart; do you see that? 21 A I do. 22 Q And there's a closing checklist that -- 23 attachment, right? 24 A Yeah, I don't -- I don't see this as being 25 part of this email. I see it -- I see it as part</p>	<p>112</p> <p>1 title that's what's written in the cover email. 2 Q Well, that -- that's pretty good reason to 3 believe it was attached; would you agree with 4 that? 5 A That's what you said. I didn't say it. I 6 said -- 7 Q I'm asking -- 8 A -- I don't know. 9 Q I'm asking you -- 10 A I said I don't know. 11 Q -- seriously sitting there today -- are 12 you seriously sitting here under oath saying 13 you're -- it's just as likely that it wasn't 14 attached when there's an attachment reference as 15 it was attached? Is that what you're sitting here 16 saying? 17 MR. HESSELL: Objection to the form of the 18 question. Argumentative. 19 BY THE WITNESS: 20 A What I have seen is you guys attaching 21 stuff after the fact that was never attached to 22 the original document. 23 So with that caveat in mind, I will tell 24 you that I am not certain that this document was 25 attached to the email. And I have no reason to be</p>

<p>113</p> <p>1 certain that it was attached to the email.</p> <p>2 BY MR. LANDGRAFF:</p> <p>3 Q The email is -- do you see anybody from</p> <p>4 PwC on this email?</p> <p>5 A No.</p> <p>6 Q So this document was produced from your</p> <p>7 files, right? And by "your" I mean your, Michael</p> <p>8 Tricarichi. Do you understand that?</p> <p>9 MR. HESSELL: Objection, foundation.</p> <p>10 Calls for speculation.</p> <p>11 BY THE WITNESS:</p> <p>12 A I have no idea where it was produced from.</p> <p>13 It doesn't say where it was produced from on</p> <p>14 there.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q But your speech about PwC supposedly</p> <p>17 attaching things that weren't attached has nothing</p> <p>18 to do with this document, right? Because this</p> <p>19 didn't come from PwC.</p> <p>20 A Well, this didn't come from me either</p> <p>21 because it was sent from Margaret Johnson, who is,</p> <p>22 I believe, somebody that was handling documents</p> <p>23 from Hahn Loeser.</p> <p>24 Q So as you sit here today, is it your</p> <p>25 testimony that your -- your -- you can't say</p>	<p>115</p> <p>1 Rich to discuss his comments on the stock purchase</p> <p>2 agreement?</p> <p>3 A I did several comments -- several</p> <p>4 conference calls with Rich --</p> <p>5 Q What do you recall?</p> <p>6 A -- and various things were discussed.</p> <p>7 You're asking me for something specific. I can</p> <p>8 tell you I don't have a specific recollection</p> <p>9 based on this email.</p> <p>10 Q And setting aside the email, do you recall</p> <p>11 any -- anything Mr. Stovsky had to say about the</p> <p>12 stock purchase agreement?</p> <p>13 A I think there were a couple of things that</p> <p>14 you guys told Folkman. You wanted the company to</p> <p>15 stay in business for a certain length of the time,</p> <p>16 which wasn't contemplated, I don't think, by</p> <p>17 Folkman. And you wanted it to have a specific</p> <p>18 minimum net value, which I don't think that was</p> <p>19 contemplated by Folkman.</p> <p>20 Those are the two things that I remember.</p> <p>21 There might have been more.</p> <p>22 Q Anything else you can remember as you sit</p> <p>23 here today that -- that came from PwC with respect</p> <p>24 to the stock purchase agreement?</p> <p>25 A Those are the two things that I remember</p>
<p>114</p> <p>1 whether it's more likely than not that the</p> <p>2 attachment is part of Exhibit 36 --</p> <p>3 A I'll give you -- I'll give you the</p> <p>4 50 percent, sure.</p> <p>5 Q Okay. Good. Then why --</p> <p>6 A I'll give you --</p> <p>7 Q Why'd you say 50 percent?</p> <p>8 A 51 percent, I'm sorry. More likely than</p> <p>9 not. My bad.</p> <p>10 Q Okay. So --</p> <p>11 A Or --</p> <p>12 Q -- the email --</p> <p>13 A (Unintelligible) 999 or whatever you guys</p> <p>14 used.</p> <p>15 Go ahead.</p> <p>16 Q The email to you from Jim says, "Rich</p> <p>17 Stovsky of PwC has -- has reviewed the stock</p> <p>18 purchase agreement. I would like to discuss the</p> <p>19 tax issues as it relates to Mike."</p> <p>20 Do you see that?</p> <p>21 A That's what it says.</p> <p>22 Q Do you recall what Stovsky's comments</p> <p>23 were?</p> <p>24 A No.</p> <p>25 Q Do you recall doing a conference call with</p>	<p>116</p> <p>1 specifically. I have no other specific</p> <p>2 recollections.</p> <p>3 Q If you would turn to Exhibit 43.</p> <p>4 Do you have that in front of you?</p> <p>5 A I do.</p> <p>6 Q And we'll have this marked -- Pw -- we'll</p> <p>7 have this marked as PwC Exhibit 43.</p> <p>8 (WHEREUPON, a certain document was marked</p> <p>9 PwC Deposition Exhibit No. 43, for</p> <p>10 identification.)</p> <p>11 BY MR. LANDGRAFF:</p> <p>12 Q And it looks like an email from Jeff</p> <p>13 Folkman dated August 21st, 2003, with the subject</p> <p>14 "Stock purchase agreement for Westside Cellular by</p> <p>15 Nob Hill Holdings."</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q And Mr. Folkman says, "Mike, the red-line</p> <p>19 version of the stock purchase agreement that Klink</p> <p>20 circulated earlier this afternoon compared" -- and</p> <p>21 he says "the his" -- "revised version of the</p> <p>22 agreement with his original version.</p> <p>23 Do you know who Klink is?</p> <p>24 A I think he was the lawyer for Fortrend,</p> <p>25 Charles Klink.</p>

<p>117</p> <p>1 Q And did you -- do you know if you received 2 this Exhibit 43 with the red line attached to it? 3 A I don't know. 4 Q Do you have any reason to think you 5 didn't? 6 A I have no specific recollection of 7 receiving it or not receiving it. 8 Q And if you look at Section 5.2 of this 9 draft -- and I'll tell you it appears -- 10 A Can you give me a page number. 11 Q Yes. Sure. That's what I was just going 12 to tell you. It appears on -- with the Bates 13 number ending in 741 of Exhibit 43. It's also 14 Page 17 of the document itself. 15 A Got it. 16 Q Are you on that page, sir? 17 A I am. 18 Q And Section 5.2, which are the buyer's 19 covenants, this provision made it into the final 20 version of the stock purchase agreement, right? 21 A I don't know. 22 Q Well, you know that Jeff Folkman from 23 Hahn Loeser put in these representations and 24 warranties relating to the indemnification for 25 Westside with respect to tax liability, don't you?</p>	<p>119</p> <p>1 that he did, but I don't know for sure. It could 2 have come from either side. I don't -- they're 3 not -- nothing's struck out here and nothing's 4 highlighted here so... 5 I don't -- when he's telling me he's 6 giving me a red line, I don't know which way the 7 red line is going. I don't know -- like, for 8 example, on Page 17, if you look at I and you look 9 at II -- I'm sorry, I and J, are those things that 10 Folkman added, or are those things that Folkman 11 took out or are those things that Nob Hill added 12 and -- I don't know. 13 I don't know who added -- somebody added I 14 and J on this page, and I don't know who did that. 15 I don't know if it was Folkman that added it or if 16 Nob Hill added it because I don't know which -- 17 Q You -- 18 A -- way the red line's going. 19 Q You agree on your side of the transaction 20 that tax indemnification was Jeff Folkman's issue? 21 MR. HESSELL: Objection, foundation. 22 Calls for speculation. 23 BY THE WITNESS: 24 A Yeah, I don't know. I think it could have 25 been PwC's issue, too.</p>
<p>118</p> <p>1 MR. HESSELL: Objection, foundation. 2 Calls for speculation. 3 BY THE WITNESS: 4 A I'm looking specifically at Paragraph I 5 and Paragraph J, and they both pertain to LXV. 6 BY MR. LANDGRAFF: 7 Q I'm asking you about Section 5.2. 8 A 5.2. Well, I'm on the page that you gave 9 me, and that's all that's there. Where is 5.2 -- 10 oh, I see. On the bottom. Okay. Got it. 11 Tax returns, discharge of liability, got 12 it. 13 Q And 5.2(a) and 5.2(b) were included -- or 14 a version of that was included in the final stock 15 purchase agreement, right? 16 A I don't have the final stock purchase 17 agreement here to tell you whether that's true or 18 not. 19 Q You agree that it was Jeff Folkman who put 20 in to the stock purchase agreement the 21 indemnification provisions that indemnified 22 Westside for tax liabilities, right? 23 MR. HESSELL: Objection, foundation. 24 BY THE WITNESS: 25 A Yeah, I have no idea. I -- I can assume</p>	<p>120</p> <p>1 BY MR. LANDGRAFF: 2 Q Okay. Let's turn to Exhibit 223. 3 A That's in the other binder. 4 (WHEREUPON, a certain document was marked 5 PwC Deposition Exhibit No. 223, for 6 identification.) 7 THE VIDEOGRAPHER: I'm sorry to interrupt. 8 Mr. Tricarichi, I'm losing you over to that side 9 of the frame. So when you find that one if it's 10 possible just to bring yourself back over -- 11 THE WITNESS: Well, I have to read the 12 document, and the document's on a chair. 13 THE TECHNICIAN: Okay. 14 THE WITNESS: So I can't help that. 15 THE VIDEOGRAPHER: Gotcha. And you can't 16 pull the chair any closer or you -- 17 THE WITNESS: The chair is up against my 18 knee right now. 19 THE TECHNICIAN: Thank you, sir. And 20 there's no room on the table in front of you 21 yet -- 22 THE WITNESS: No, there's another binder 23 on the table. 24 THE VIDEOGRAPHER: Okay. 25 THE WITNESS: And my laptop.</p>

<p>121</p> <p>1 THE VIDEOGRAPHER: Okay. Then -- got</p> <p>2 you --</p> <p>3 BY THE WITNESS:</p> <p>4 A Where do you want me to turn to?</p> <p>5 MR. HESSELL: Why don't you move the other</p> <p>6 binder so that you can put the binder that you're</p> <p>7 actually looking at right in front of you or put</p> <p>8 it on top of it so that you're not turning to the</p> <p>9 side.</p> <p>10 BY THE WITNESS:</p> <p>11 A Are we going back to this binder, like,</p> <p>12 right now, number one?</p> <p>13 BY MR. LANDGRAFF:</p> <p>14 Q We're on Exhibit 223.</p> <p>15 A Okay. 223.</p> <p>16 Okay. 223. Got it.</p> <p>17 Q This is marked as PwC 223, and this is</p> <p>18 your -- this is the transcript of your interview</p> <p>19 with the IRS from November 30th, 2007.</p> <p>20 Do you see that?</p> <p>21 A Yeah.</p> <p>22 Q And Page 70, if you turn to that.</p> <p>23 A 70. Got it.</p> <p>24 Q Page 70, Line 14, "Why were you or your</p> <p>25 representative interested in getting tax</p>	<p>123</p> <p>1 A Well, I'm not a lawyer, but I -- it should</p> <p>2 have done that.</p> <p>3 Q And Hahn Loeser took the lead in drafting</p> <p>4 the stock purchase agreement, correct?</p> <p>5 A With comments by other people, but, yeah,</p> <p>6 they -- they were the -- they were the writer, the</p> <p>7 scribe, or whatever you call it.</p> <p>8 I think if you read further down this page</p> <p>9 that I'm reading further down on, it</p> <p>10 says -- there's another -- the next -- the very</p> <p>11 next question on -- is Line 19 and it said, "Was</p> <p>12 anyone ever concerned that Westside's taxes would</p> <p>13 not be paid by its new owners?"</p> <p>14 And the answer that I gave was, "I don't</p> <p>15 think that was ever a concern, no."</p> <p>16 If that helps you.</p> <p>17 Q What do you -- did you discuss with anyone</p> <p>18 at PwC whether the Westside stock sale was a</p> <p>19 reportable transaction?</p> <p>20 A I'm sure I did.</p> <p>21 Q And when did you discuss with anyone at</p> <p>22 PwC the issue of whether the Westside stock sale</p> <p>23 was a reportable transaction?</p> <p>24 A I have no idea. Could have been -- could</p> <p>25 have been sometime during the engagement. Could</p>
<p>122</p> <p>1 indemnification" --</p> <p>2 A Where --</p> <p>3 Q -- "answer" --</p> <p>4 A Where you at? Where you at? Where you</p> <p>5 at?</p> <p>6 Q Page 70, Line 14.</p> <p>7 A 14. Got it. Okay.</p> <p>8 Q "QUESTION: Why were you or your</p> <p>9 representative interested in getting tax --</p> <p>10 getting a tax indemnification?</p> <p>11 "ANSWER: Well, because we didn't want</p> <p>12 somebody coming back on us -- I mean, I -- you</p> <p>13 know, this -- again, this was Jeff's issue."</p> <p>14 So were you asked that question and did</p> <p>15 you give that answer?</p> <p>16 A Yeah.</p> <p>17 Q And Jeff is Jeff Folkman, right?</p> <p>18 A Yeah.</p> <p>19 Q And Jeff Folkman wanted the tax</p> <p>20 indemnifications in the stock purchase agreement</p> <p>21 to protect you, right?</p> <p>22 A Yeah.</p> <p>23 Q And the deal documents indemnified you for</p> <p>24 any taxes that Westside or Nob Hill might owe</p> <p>25 after the deal was closed, right?</p>	<p>124</p> <p>1 have been sometime after the notice went out in</p> <p>2 2008.</p> <p>3 Q In the 2003 time frame, did you discuss</p> <p>4 with anyone at PwC whether or not the Westside</p> <p>5 stock sale was report -- was a reportable</p> <p>6 transaction?</p> <p>7 A That was one of the things that PwC was --</p> <p>8 was charged with determining. I told you that</p> <p>9 when we talked about my striking out the line on</p> <p>10 the retention agreement.</p> <p>11 Q Did you discuss in the 2003 time frame</p> <p>12 whether or not the Westside stock sale was a</p> <p>13 reportable transaction with anyone at PwC?</p> <p>14 A I'm sure that I did.</p> <p>15 Q Who did you --</p> <p>16 A I told you -- wait. Let me finish my</p> <p>17 answer.</p> <p>18 What I told you was when I struck that</p> <p>19 line out of the retention agreement, which was</p> <p>20 done with Rich Stovsky, I told him that one of the</p> <p>21 things we were charging PwC with doing was</p> <p>22 determining whether or not the transaction was a</p> <p>23 reportable transaction.</p> <p>24 That's why I told you before that's why I</p> <p>25 struck it out. So I'm 100 percent certain that I</p>

<p>125</p> <p>1 had that conversation at Stovsky -- with Stovsky 2 when I struck that line out. 3 Q Did anyone at PwC ever give you an opinion 4 in 2003 as to whether or not the Westside stock 5 sale was a reportable transaction? 6 A Was or wasn't? 7 Q Did anyone at PwC ever give you an opinion 8 in 2003 as to whether or not the Westside stock 9 sale was a reportable transaction? 10 A They gave us an opinion that it was not a 11 reportable transaction. 12 Q Who gave you that opinion? 13 A The person who gave me all the opinions 14 was Rich Stovsky. 15 Q When did Mr. Stovsky tell you that the 16 Westside stock sale was not a reportable 17 transaction? 18 A Sometime before we did the deal. 19 Q That would be in 2003 then? 20 A Yes. And it may have been again in 2008 21 or 2009 when we had the post discussion, when you 22 were turning documents over. 23 Q When did you -- sorry, what did 24 Mr. Stovsky tell you in 2003 with respect to 25 whether or not the Westside stock sale was a</p>	<p>127</p> <p>1 and over and over again. The first time you asked 2 me, you asked it backwards. You asked me if he 3 said it was a reportable transaction. Now you're 4 asking me if he said it wasn't a reportable 5 transaction. 6 Q You done? I don't want to -- 7 A Yeah, I'm done. 8 Q -- with your speech -- 9 A No, I'm done. You can ask me another 10 question. 11 Q Okay. Did you discuss with Mr. Stovsky 12 whether or not the IRS might challenge the 13 Westside stock sale, did you discuss in 2003 with 14 Mr. Stovsky that -- that issue? 15 MR. HESSELL: Objection to the form of the 16 question. 17 BY THE WITNESS: 18 A This was asked before as well. I'm going 19 to tell you what I -- what my specific charge was 20 to Mr. Stovsky and that's to make sure that this 21 transaction didn't crater, okay? 22 And I use the term "crater" now. I may 23 not have used that term at the time, but that was 24 the gist of the conversation, the initial 25 conversation that I had with Rich Stovsky.</p>
<p>126</p> <p>1 reportable transaction? 2 A He told me it wasn't a reportable 3 transaction again. 4 Q What were the words he used? 5 A I don't remember the specific words that 6 he used. He said it wasn't a reportable 7 transaction. Period. 8 Q Did you write down what Mr. Stovsky told 9 you? 10 A No. 11 Q Did you tell Mr. Stovsky you didn't 12 understand what he said? 13 A Well, what he said was a negative, so I 14 can't not understand a negative. 15 Q Did you ask for any clarification of what 16 Mr. Stovsky told you with respect to whether or 17 not in 2003 the Westside stock sale was a 18 reportable transaction? 19 A If somebody tells me that something is not 20 something, there's no reason for clarification, 21 it's not. If he tells me it's not a reportable 22 transaction, then it's not a reportable 23 transaction. 24 You wonder why I get frustrated. You ask 25 me things and you ask me the same question over</p>	<p>128</p> <p>1 Q In 2003 at any time, did you discuss with 2 Mr. Stovsky or anyone else at PwC whether or not 3 the IRS might challenge the Westside stock sale 4 transaction? 5 A Of course. 6 Q When did you discuss that? 7 A I don't know. It was before we did the 8 transaction. That was part and parcel to the 9 advice that we were getting from PwC. 10 Q And what did Mr. Stovsky or anyone else 11 from PwC tell you with respect to whether or not 12 the IRS might challenge the Westside stock sale? 13 A What they -- what he told me specifically 14 was he told me "That there's -- this is not going 15 to come back on you." He says, "They might 16 challenge the transaction between Fortrend -- or 17 between Westside and Fortrend," he says, "But this 18 is not going to come back on you." 19 Specifically. Pretty much in those words. 20 Q When did he say what you just claim he 21 said? 22 A Sometime before we did the transaction. 23 Sometime before -- between the time when we hired 24 PwC and in September of 2003 when we did the 25 transaction. That's as close as I'm going to get.</p>

<p>129</p> <p>1 Q Did you record and --</p> <p>2 A Did I write it down? Is that what you're</p> <p>3 going to ask me?</p> <p>4 Q Why don't you let me ask you the question?</p> <p>5 MR. HESSELL: Let him ask the question so</p> <p>6 the court reporter can write it down and then you</p> <p>7 can give the answer. I know you think you know</p> <p>8 where he's going to go, but this will go a lot</p> <p>9 smoother if you just let him --</p> <p>10 THE WITNESS: I'm sorry. I'm trying.</p> <p>11 Believe me, I'm trying.</p> <p>12 MR. HESSELL: You can't ask yourself a</p> <p>13 question. You have to let Chris ask the</p> <p>14 question --</p> <p>15 THE WITNESS: It's tough. It's tough.</p> <p>16 BY THE WITNESS:</p> <p>17 A Go ahead.</p> <p>18 BY MR. LANDGRAFF:</p> <p>19 Q Did you write down what Mr. Stovsky told</p> <p>20 you about whether or not the IRS might challenge</p> <p>21 the transaction?</p> <p>22 A Did I write it down? No. Did he write it</p> <p>23 down? No. Neither of us wrote it down.</p> <p>24 Q How do you know he didn't write it down?</p> <p>25 A He didn't write it down for me.</p>	<p>131</p> <p>1 What was talked about was could the IRS</p> <p>2 come looking to me for anything. And they -- and,</p> <p>3 in fact, that is transferee liability. In fact,</p> <p>4 that is what happened. And, in fact, that is the</p> <p>5 opinion that I got from PwC was that there was no</p> <p>6 transferee liability.</p> <p>7 Q When did you get that opinion from PwC?</p> <p>8 A Same time as I got the rest of the</p> <p>9 opinions. Sometime between the time I hired them</p> <p>10 and the time that I made the deal with Fortrend.</p> <p>11 That's not a very wide area.</p> <p>12 Q Did you discuss the indemnification</p> <p>13 provisions of the stock purchase agreement with</p> <p>14 anyone at PwC?</p> <p>15 A Personally, no. That -- I think that was</p> <p>16 Folkman.</p> <p>17 Q Do you recall any discussion about</p> <p>18 indemnity insurance with anyone at PwC?</p> <p>19 A Indemnity insurance. I'm not familiar</p> <p>20 with the term.</p> <p>21 Q You've never heard the term</p> <p>22 "indemnification insurance" or "indemnity</p> <p>23 insurance"?</p> <p>24 A I am not familiar with that term.</p> <p>25 Q Do you have any recollection of discussing</p>
<p>130</p> <p>1 Q Did you --</p> <p>2 A He testified to that effect.</p> <p>3 Q Did you talk further about what he meant</p> <p>4 that the IRS might challenge whatever happens with</p> <p>5 Fortrend and Nob Hill?</p> <p>6 A No.</p> <p>7 Q Did that concern you at all?</p> <p>8 A It didn't concern me in the -- but for the</p> <p>9 fact that he told me that this transaction is not</p> <p>10 going to come back on you.</p> <p>11 Q Did you ask Mr. Stovsky any questions</p> <p>12 about what he meant?</p> <p>13 A No, I don't think I did.</p> <p>14 Q In 2003 did you discuss the issue of</p> <p>15 transferee liability with anyone at PwC?</p> <p>16 A Well, coming back on me, that would have</p> <p>17 been the way that it would have -- would have come</p> <p>18 back on me. So, yeah, we discussed that.</p> <p>19 Q And is it -- is it -- is your testimony</p> <p>20 that there -- well, what did you discuss about</p> <p>21 transferee liability? Is it different from what</p> <p>22 you've already told us?</p> <p>23 A Well, the -- the term "transferee</p> <p>24 liability" I -- I don't think was specifically</p> <p>25 used.</p>	<p>132</p> <p>1 the idea of purchasing an insurance policy that</p> <p>2 would insure the -- the indemnification provisions</p> <p>3 that protected you in the stock purchase</p> <p>4 agreement?</p> <p>5 A Well, if I'm not familiar with the term,</p> <p>6 I'm pretty sure that I didn't discuss it with</p> <p>7 anybody.</p> <p>8 Q But setting aside the term, just the</p> <p>9 concept, did you discuss the concept of securing</p> <p>10 insurance that would have backed up the</p> <p>11 representations and warranties that the Fortrend</p> <p>12 entities were making in the stock purchase</p> <p>13 agreement?</p> <p>14 A I don't believe that was ever discussed.</p> <p>15 It may have been, but I don't believe that it was.</p> <p>16 Q Did you discuss transferee liability with</p> <p>17 Hahn Loeser?</p> <p>18 A Same thing, I don't think we called it</p> <p>19 that, but we called it the IRS coming after me.</p> <p>20 Q And what did -- and did you -- who from</p> <p>21 Hahn Loeser did you talk about whether or not the</p> <p>22 IRS would come after you?</p> <p>23 A Well, it was either Folkman or somebody in</p> <p>24 Folkman's group.</p> <p>25 Q And what did Mr. Folkman or someone in</p>

<p>133</p> <p>1 Mr. Folkman's group say about whether or not the 2 IRS would come after you with respect to the 3 Westside stock sale? 4 A They said they wouldn't. 5 Q Now, you agree that Hahn Loeser is a 6 prominent firm with considerable expertise in 7 telecommunications and tax law? 8 MR. HESSELL: Objection to the form of the 9 question. 10 BY THE WITNESS: 11 A I don't know what kind of expertise they 12 have. I know they have some expertise. 13 The prominence of the firm, they're no 14 Jones Day, I can tell you that. I don't know. I 15 mean, they're a good-sized regional firm. I don't 16 know what the prominence is. 17 BY MR. LANDGRAFF: 18 Q If you turn to Exhibit 97. 19 MR. LANDGRAFF: We'll mark this as PwC 20 Exhibit 97. 21 (WHEREUPON, a certain document was marked 22 PwC Deposition Exhibit No. 97, for 23 identification.) 24 BY THE WITNESS: 25 A The one that says 89 on the front?</p>	<p>135</p> <p>1 statements are to the best of my knowledge and 2 belief true, correct, and complete." 3 Did you sign that under penalty of perjury 4 in 2004? 5 A I think you read that correctly, yes. I 6 signed this document. This is my signature. 7 Q So if you turn to the second page of the 8 letter with the Bates number ending in 9 TRICAR-NV497. 10 A Right. 11 Q At the -- under that statement of facts on 12 that page, the first paragraph, the last sentence 13 says, "Hahn Loeser, a prominent firm with 14 considerable expertise in telecommunications and 15 tax law, advised the taxpayer that the tax 16 probably did not apply because Westside Cellular 17 was a rebiller rather than a reseller of telephone 18 services." 19 Do you see that? 20 A I see it. 21 Q And what's so funny? 22 A It's funny that you're going to impeach me 23 with something that -- who wrote this -- Glenn 24 Miller wrote in 2004. I think it's funny. 25 Q You think signing things under the penalty</p>
<p>134</p> <p>1 BY MR. LANDGRAFF: 2 Q It's got a Bates number ending in 495 and 3 there's a stamp at the bottom that says 97. 4 Do you see that? 5 A Yeah, I see it. 6 Q And it's a letter on Swidler, 7 S-w-i-d-l-e-r, Berlin -- and some other 8 names -- letterhead from September 30th, 2004, to 9 the service center penalty appeals coordinator. 10 Do you see that? 11 A Right. 12 Q Have you seen this document before? 13 A I believe so. 14 Q If you look at the Bates number ending in 15 the TRICAR-NV Bates number ending in 505 of 16 Exhibit 97 -- do you see -- 17 A 505. Hold on. Hold on. 18 505. Got it. 19 Q And is that your signature under the 20 statement under penalty of perjury? 21 A It is. 22 Q And you said, "Under penalties of perjury, 23 I declare the facts presented in my written 24 protest which are set out in the accompanying 25 statement of facts, schedules, and other</p>	<p>136</p> <p>1 of perjury is funny? 2 A I think that you're using this document to 3 impeach what I said about Hahn Loeser, which I 4 told you was a good-size regional firm, is funny. 5 Yes, I think it's funny. 6 Q You agree that Hahn Loeser was a prominent 7 firm with considerable expertise in 8 telecommunications and tax law? 9 MR. HESSELL: Objection to the form of the 10 question and foundation, I guess, as to that's a 11 statement of fact that he affirms. 12 BY THE WITNESS: 13 A Here's the thing: When -- when we're 14 talking about tax law here, we're talking about -- 15 this letter was written as a protest to penalties 16 that I was assigned when I paid excise tax in 17 the -- in the excess of \$3 million with interest, 18 okay? 19 Hahn Loeser at that time did a 20 determination as far as excise tax goes and said 21 that it was unlikely that I had to charge or pay 22 excise tax on cellular telephone service. 23 So when you use the word "tax," I'm 24 assuming because this letter is written as to 25 excise tax, that, yeah, I relied on them to give</p>

<p>137</p> <p>1 me advice about excise tax.</p> <p>2 I didn't rely on them in -- in September</p> <p>3 of -- 30th of 2004 to give me -- well, actually I</p> <p>4 did before the -- before the thing, but as far as</p> <p>5 them being a prominent tax firm, they were</p> <p>6 prominent in the field of telecommunication and</p> <p>7 excise tax.</p> <p>8 So I -- so this -- this is correct.</p> <p>9 BY MR. LANDGRAFF:</p> <p>10 Q After you got the transferee report from</p> <p>11 the IRS in February of 2009 finding you liable as</p> <p>12 a transferee of Westside, you considered suing</p> <p>13 Hahn Loeser, right?</p> <p>14 A What -- what time frame?</p> <p>15 Q After you received the transferee report</p> <p>16 from the IRS in February 2009 finding you liable</p> <p>17 as a transferee of Westside, you considered suing</p> <p>18 Hahn Loeser?</p> <p>19 MR. HESSELL: Objection --</p> <p>20 BY THE WITNESS:</p> <p>21 A I considered suing both of you.</p> <p>22 BY MR. LANDGRAFF:</p> <p>23 Q In 2009?</p> <p>24 A Yeah. And I was told that it wasn't right</p> <p>25 yet because I hadn't -- the -- the appeal hadn't</p>	<p>139</p> <p>1 with Hahn Loeser in October of 2009 if there was</p> <p>2 nothing to sue over?</p> <p>3 A My recollection is that Hahn Loeser came</p> <p>4 to us. They had done a number of these deals, and</p> <p>5 they were starting to have negative ramifications</p> <p>6 of these deals.</p> <p>7 And they came to us and they asked us to</p> <p>8 hold off until there was more law or until there</p> <p>9 was more settlement or whatever on these</p> <p>10 particular cases.</p> <p>11 But they came to us. They told us about</p> <p>12 this. And I think the settlement agreement I</p> <p>13 think we both thought was -- or not the settlement</p> <p>14 agreement -- the tolling agreement I thought --</p> <p>15 both of us thought that it was a good idea.</p> <p>16 Q Who is Joel Levin?</p> <p>17 A Joel Levin is the attorney that I hired to</p> <p>18 do this work.</p> <p>19 Q What do you mean "this work"?</p> <p>20 A Well, getting the tolling agreements,</p> <p>21 number one.</p> <p>22 Q Did you authorize Joel Levin to</p> <p>23 communicate with Hahn Loeser on your behalf?</p> <p>24 A Yes.</p> <p>25 Q Did you review materials he sent to</p>
<p>138</p> <p>1 been exhausted and I was -- I did not receive a</p> <p>2 stat notice.</p> <p>3 Q You thought in 2009 that Hahn Loeser had</p> <p>4 not provided you with competent advice on the</p> <p>5 deal, right?</p> <p>6 A I thought that neither of you --</p> <p>7 MR. HESSELL: Hold on. Mike --</p> <p>8 THE WITNESS: I'm sorry.</p> <p>9 MR. HESSELL: -- you've got to let me</p> <p>10 object.</p> <p>11 THE WITNESS: Go ahead. Object.</p> <p>12 MR. HESSELL: Objection, calls for</p> <p>13 speculation and form.</p> <p>14 THE WITNESS: Okay. Thank you.</p> <p>15 BY THE WITNESS:</p> <p>16 A There was no -- there was nothing to sue</p> <p>17 over. There was no negative -- negativity toward</p> <p>18 me. I wasn't required to pay anything, and I had</p> <p>19 lots of avenues open to me before I had to pay</p> <p>20 anything.</p> <p>21 I hadn't received the stat notice. I</p> <p>22 hadn't been -- been levied in any way. There was</p> <p>23 nothing for me to sue over, either of you.</p> <p>24 BY MR. LANDGRAFF:</p> <p>25 Q Then why did you seek a tolling agreement</p>	<p>140</p> <p>1 Hahn Loeser?</p> <p>2 A I'm sure I did.</p> <p>3 Q Did you make sure he had his facts</p> <p>4 straight?</p> <p>5 A I don't know. You want to show me</p> <p>6 something and I'll be happy to comment on it?</p> <p>7 Q Well, if you reviewed materials he sent to</p> <p>8 Hahn Loeser, do you want to -- did you want to</p> <p>9 make sure he had his facts straight?</p> <p>10 MR. HESSELL: Objection, form and</p> <p>11 foundation. The witness asked if there's a</p> <p>12 document --</p> <p>13 BY THE WITNESS:</p> <p>14 A Yeah, honestly I don't know what was</p> <p>15 communicated between Joel Levin and Hahn Loeser,</p> <p>16 so I can't -- without knowing specifically, I</p> <p>17 can't tell you if they were factual as far as I</p> <p>18 knew.</p> <p>19 Did I review every document that went</p> <p>20 between Joel Levin and Hahn Loeser? Probably not.</p> <p>21 Did I review some of them? Probably. If you have</p> <p>22 something specific in mind, I'd be happy to tell</p> <p>23 you.</p> <p>24 BY MR. LANDGRAFF:</p> <p>25 Q Turn to Exhibit 111, please.</p>

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<p style="text-align: right;">141</p> <p>1 A 111. 2 (WHEREUPON, a certain document was marked 3 PwC Deposition Exhibit No. 111, for 4 identification.) 5 BY THE WITNESS: 6 A Got it -- I think I got -- yeah, I got it. 7 BY MR. LANDGRAFF: 8 Q Exhibit 111 is an October 15th, 2009 9 letter to Lawrence Oscar at Hahn Loeser from Joel 10 Levin. 11 Do you see that? 12 A I do. 13 Q It's regarding Michael Tricarichi, right? 14 A That's what it says. 15 Q And he, Mr. Levin, the first sentence of 16 Exhibit 111 is, "I write on behalf of my client, 17 Michael Tricarichi," right? 18 A That's what he says. 19 Q Was he -- well, was he authorized to say 20 that? 21 A Yeah. 22 Q If you turn to Exhibit 91. 23 (WHEREUPON, a certain document was marked 24 PwC Deposition Exhibit No. 91, for 25 identification.)</p>	<p style="text-align: right;">143</p> <p>1 A Well, they were made aware, just like PwC 2 was made aware, that the IRS was looking at this 3 transaction. 4 Both of you, Hahn Loeser and PwC, may have 5 had potential liability in this transaction. That 6 liability was not yet established as far as 7 whether there was some adverse thing toward me 8 that could be sued upon, I guess for lack of a 9 better term. 10 So without -- without any other things, 11 Hahn Loeser came to us and said, hey, we're -- we 12 want to deal with this and we want to get this out 13 of the way, and -- and that's when we hired Joel 14 Levin because we couldn't use Hahn Loeser to 15 represent us and we couldn't use Randy to 16 represent us. 17 And that's where we are. But this -- this 18 was all -- a lot of this was all -- was actually 19 started by Hahn Loeser. 20 Q And this version of the tolling agreement 21 you see the first recital on -- on the first page 22 of Exhibit 91? 23 A Yeah. 24 Q And in the -- in your dealings with 25 Hahn Loeser after you received the transferee</p>
<p style="text-align: right;">142</p> <p>1 BY THE WITNESS: 2 A Got it. 3 BY MR. LANDGRAFF: 4 Q And Exhibit 91 we'll mark as PwC 5 Exhibit 91 is a -- is a document that was produced 6 to us. It's entitled "Tolling and Standstill 7 Agreement." 8 Do you see that? 9 A I do. 10 Q And do you know whether or not you ever 11 signed a tolling agreement with Hahn Loeser? 12 A I don't know if we ever did or not. This 13 one -- 14 Q Did you -- 15 A (Unintelligible.) 16 Q I'm sorry. Go ahead. I didn't mean to -- 17 A This one's not signed. 18 Q You don't know if you ever signed one or 19 not? 20 A No, I don't. I told you, Hahn Loeser 21 was -- was friendly to us in this whole process. 22 It was their -- they were the ones who suggested 23 that we do something about this problem. 24 Q Can you explain what you mean by that, "do 25 something about this problem"?</p>	<p style="text-align: right;">144</p> <p>1 liability report from the IRS, did you believe 2 that you -- that you had or may have had certain 3 claims against Hahn Loeser with respect to 4 Hahn Loeser's engagement, including but not 5 limited to tax consequences of selling or 6 retaining the stock or other issues arising from 7 the decision to, process of, protections attendant 8 to, toward the fact of selling or retaining that 9 stock? 10 MR. HESSELL: Objection to the form of the 11 question. Calls for speculation. 12 BY THE WITNESS: 13 A Yeah, I -- what this says is very clear. 14 It says have or may have. So certainly we may 15 have. 16 BY MR. LANDGRAFF: 17 Q And you believed that, right? 18 MR. HESSELL: Objection to the form of the 19 question. 20 BY THE WITNESS: 21 A Did I believe that we may have potential 22 litigation against Hahn Loeser? Yes, I -- I 23 believe that we may have at some point in time. 24 BY MR. LANDGRAFF: 25 Q And you mediated with Hahn Loeser about</p>

<p>145</p> <p>1 the amount of money you were going to seek from 2 them, right? 3 A No, we mediated about the amount of money 4 they were willing to pay us. 5 Q Mr. Levin represents you in the mediation? 6 A He did. 7 Q Was he authorized to communicate with the 8 mediator on your behalf? 9 A That's a tough question. I guess in 10 certain things he was authorized. He wasn't 11 authorized to agree to anything substantive on my 12 behalf without me agreeing to it as well. 13 Q Was -- 14 A Was he -- 15 Q Go ahead. I'm sorry. I thought you were 16 done. 17 A He agreed to do whatever background work 18 needed to be done in order to do the mediation. 19 Q Was Mr. Levin authorized to communicate 20 with the mediator about your position with respect 21 to Hahn Loeser's potential liability? 22 A I think he wrote a mediation statement 23 that -- that he submitted to the mediator, I'm 24 pretty sure. 25 Q Did you review that mediation statement</p>	<p>147</p> <p>1 A I've seen it before, yeah. I assume I 2 received it. 3 Q And Mr. Landgraff was authorized to write 4 this on your behalf, right? 5 A I'm sure we consulted before he wrote it, 6 but yeah. 7 Q And you eventually settled with 8 Hahn Loeser? 9 A We did. 10 Q And Hahn Loeser paid you \$4 million? 11 A They sent \$4 million to Levine. I got 12 3 million of the 4 million, but yeah. 13 Q Hahn Loeser paid 4 million to get a 14 release from you, right? 15 A That's correct. 16 Q And what was that payment for? 17 A That was in lieu of us suing them for 18 malpractice. 19 Q Malpractice relating to what? 20 A Relating to the -- to the Westside deal. 21 Q What had Hahn Loeser done wrong? 22 A I don't know. Obviously they thought they 23 did something wrong. What did they do 24 specifically wrong? We never sued them. We never 25 got to the point of suing them, I don't believe.</p>
<p>146</p> <p>1 before he sent it to the mediator? 2 A I'm sure I did. 3 Q Well, let's look at Exhibit 161. 4 (WHEREUPON, a certain document was marked 5 PwC Deposition Exhibit No. 161, for 6 identification.) 7 BY THE WITNESS: 8 A 161. Got it. 9 BY MR. LANDGRAFF: 10 Q We'll mark this is a PwC Exhibit 161, 11 which is a September 10th, 2012 email from Joel 12 Levin to Niki Schwartz, N-i-k-i. 13 Do you see that? 14 A I do. 15 MR. HESSELL: An email? 16 MR. LANDGRAFF: Letter -- 17 THE WITNESS: (Unintelligible.) 18 MR. LANDGRAFF: -- sorry. I'll restate 19 it. Thank you, Scott. Excuse me. 20 BY MR. LANDGRAFF: 21 Q Exhibit -- PwC Exhibit 161 is a 22 September 10th, 2012 letter from Joel Levin to 23 Nikki Schwartz; is that correct? 24 A That's what it is. That's what it says. 25 Q And you received this, right?</p>	<p>148</p> <p>1 I don't believe there was ever a lawsuit filed 2 against Hahn Loeser. 3 I believe that was one of the reasons why 4 Hahn Loeser came to us and said, hey, we want to 5 talk about this. 6 Q Well, what did -- did you believe 7 Hahn Loeser had done something wrong in 2003 with 8 respect to their advice on the Westside stock 9 sale? 10 MR. HESSELL: Objection to the form of the 11 question. Indefinite as to time. 12 BY THE WITNESS: 13 A Yeah, I believe that at some point we 14 believed that. I can't tell you when I did. I 15 don't think I -- if I believed it in 2003, I 16 wouldn't have done the transaction. 17 BY MR. LANDGRAFF: 18 Q Fair enough. In the time period that you 19 were mediating with Hahn Loeser, did you believe 20 that they had made a mistake in the advice that 21 they gave you in 2003? 22 A We believed that there was probably -- 23 assuming that the IRS actually hit me with 24 something, that there was probably reason to 25 believe that they could be sued for malpractice.</p>

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<p>149</p> <p>1 Q And why did you think there was reason to 2 sue them for malpractice?</p> <p>3 A Based on the advice that they gave us.</p> <p>4 Q What advice did -- did Hahn Loeser give 5 you in 2003 that you thought that may have been 6 suit for malpractice?</p> <p>7 A Same advice that PwC gave us, that the 8 transaction would be good.</p> <p>9 MR. LANDGRAFF: Do you want to take a 10 break and talk about -- Mr. Tricarichi, you're on 11 Eastern time, right?</p> <p>12 THE WITNESS: Yeah, it's 12:51 my time.</p> <p>13 MR. LANDGRAFF: Let's go off the record 14 and just talk for a second.</p> <p>15 THE VIDEOGRAPHER: We are going off the 16 record. The time is now 11:51 a.m.</p> <p>17 (WHEREUPON, a recess was had.)</p> <p>18 THE VIDEOGRAPHER: We are now going back 19 on the record. The time is 12:06 p.m.</p> <p>20 BY MR. LANDGRAFF:</p> <p>21 Q Mr. Tricarichi, did you sue Hahn Loeser 22 over advice that they provided to you relating to 23 excise taxes that you paid?</p> <p>24 A Did I sue Hahn Loeser over excise -- no, 25 Hahn Loeser told me I shouldn't pay the excise</p>	<p>151</p> <p>1 at excise tax at some point and say that Westside 2 owed Westside -- owed excise tax.</p> <p>3 And since I would no longer have 4 controlled Westside, it would have been a problem 5 in the deal. And I wanted the deal to be 6 100 percent clean as far as my end is concerned. 7 I went over and above.</p> <p>8 Q So you paid the excise tax and then sued 9 to -- or sued for a refund; is that right?</p> <p>10 A Not immediately. I paid the excise tax in 11 2003. I didn't try to get a refund, I don't 12 think, until 2004 or 2005, 2007 -- I think we 13 filed the lawsuit in 2006, so -- but it wasn't -- 14 if you're trying to relate the two, the two are 15 unrelated.</p> <p>16 The idea of me paying the excise tax today 17 and then suing to get it back later, that's not 18 what happened. What happened was the law -- I 19 paid the tax when the law was still unsettled.</p> <p>20 At some point after I paid the excise tax, 21 the law became settled that there was no way to -- 22 you couldn't charge excise tax on cellular phone 23 calls, okay?</p> <p>24 So when that happened, I said let's 25 revisit this and see if we can get the money back.</p>
<p>150</p> <p>1 tax; why would I sue them?</p> <p>2 Q Did the settlement with Hahn Loeser 3 reflect any amount or -- withdrawn.</p> <p>4 Did the settlement you reached with 5 Hahn Loeser for \$4 million include any amounts for 6 losses you incurred as a result of paying excise 7 taxes?</p> <p>8 MR. HESSELL: Objection, calls for 9 speculation and --</p> <p>10 BY THE WITNESS:</p> <p>11 A I don't know how that would be possible.</p> <p>12 BY MR. LANDGRAFF:</p> <p>13 Q Why -- why do you say that?</p> <p>14 A Because the advice they gave me was not to 15 pay the -- not to pay the -- the tax, which I did 16 on my own.</p> <p>17 Q Why did you pay --</p> <p>18 A How would I sue them over -- how would I 19 sue them over something that they told me not to 20 do that I did anyway?</p> <p>21 Q Why did you do it anyway when they told 22 you not to?</p> <p>23 A Because I didn't want any problems with 24 the Fortrend deal. Like a dummy, I thought maybe 25 one possibility would be the IRS would be looking</p>	<p>152</p> <p>1 So we filed for a refund and -- and when they 2 refused the refund, then we -- then we filed the 3 suit.</p> <p>4 But that was with Westside. That was 5 Westside filing the suit. But since the money 6 would have been pre-two-thousand -- or 7 pre-agreement, technically speaking it would have 8 been my money, not theirs.</p> <p>9 Q When the law was unsettled with respect to 10 excise taxes in your mind, you paid the excise tax 11 and then waited until, in your view, the law was 12 settled; is that correct?</p> <p>13 A I didn't know if the law was ever going to 14 be settled. When it was finally settled, then 15 we -- then we asked for a refund.</p> <p>16 Q But at the time you paid the excise tax -- 17 and -- withdrawn.</p> <p>18 You paid the excise tax before the closing 19 of the Westside stock sale, right?</p> <p>20 A Right.</p> <p>21 Q And in -- and in your view at that time, 22 the law relating to whether or not the excise tax 23 was legitimate was unsettled?</p> <p>24 A Correct. There were cases that were being 25 decided against the excise tax being collected,</p>

<p>153</p> <p>1 but the -- the IRS wouldn't take it up. So there 2 was no -- there were a couple of District Court 3 decisions and there were a couple of appeals court 4 decisions, but it wasn't a national basis. 5 And then the IRS at some point capitulated 6 and they said, okay, we're not going to tell you 7 to charge excise tax anymore. 8 Q Once -- 9 A It was a poorly written law. 10 Q Once the IRS made that announcement, 11 that's when you sought the refund? 12 A Yes. 13 Q After the closing of the Westside stock 14 sale in 2003, when is the next time you heard 15 anything about the Westside transaction from the 16 IRS? 17 A When I got the subpoena for the interview 18 in 2007 -- the end of 2007. 19 Q So is it correct that you didn't hear of 20 the IRS indicating in 2005 that it intended to 21 audit Westside's 2003 return? 22 A Not to my recollection, no. They may 23 have, but it didn't involve me. 24 Q So the first time -- 25 A I wasn't communicating -- I wasn't</p>	<p>155</p> <p>1 Q And is this the subpoena you're thinking 2 of that you mentioned the next time you heard from 3 the IRS relating to Westside was in 2007? 4 A Yeah, we got a subpoena from the IRS to 5 sit for an interview, and then I also got a 6 subpoena for documents. 7 Q What is your understanding of what the IRS 8 was looking into in 2007? 9 A They were looking into a tax obligation 10 that Westside had. 11 Q Did you know what tax liability -- sorry, 12 what tax obligation -- let me withdraw and try it 13 again. 14 Did you understand what tax obligation 15 that the IRS was looking into? 16 MR. HESSELL: Objection to the form of the 17 question. 18 BY THE WITNESS: 19 A I'm not sure. I think there was some 20 deduction that Westside took that the IRS 21 disallowed. 22 Q Did you know at the time in 2007 what 23 deduction that the IRS had disallowed? 24 A No. 25 Q Were you concerned about your own</p>
<p>154</p> <p>1 communicating with them at the time. 2 Q The first time you recall hearing from the 3 IRS about the Westside transaction after the 4 closing in September 2003 is when you received a 5 subpoena in 2007; is that correct? 6 A That's what I just said. 7 Q The -- if you turn to Exhibit 102. 8 MR. LANDGRAFF: And we'll mark it as PwC 9 Exhibit 102. 10 (WHEREUPON, a certain document was marked 11 PwC Deposition Exhibit No. 102, for 12 identification.) 13 BY MR. LANDGRAFF: 14 Q Just tell me when you have it in front of 15 you. 16 A I've got to switch these binders. I don't 17 have enough space. 18 102. Got it. 19 Q PwC Exhibit 102 is the June 21st, 2007 20 letter to Denise McCaskill at the IRS from Randy 21 Hart, correct? 22 A Yeah. 23 Q And Mr. Hart apparently is sending the IRS 24 documents responsive to the IRS's subpoena, right? 25 A That's -- yeah, he did that.</p>	<p>156</p> <p>1 liability in 2007? 2 A Not at all. 3 Q Why not? 4 A Because the examiner that took my 5 interview was asked specifically a question by 6 Randy Hart and said am I a target -- is Mike 7 Tricarichi a target of this proceeding, and she 8 said no. 9 Q Were -- were you present for that 10 conversation between the IRS person and Randy 11 Hart? 12 A I was. 13 Q And -- and so she said you're not a 14 target? 15 A Correct. That was the word, too, 16 "target." 17 Q And -- and as part of this subpoena 18 process, this is what led to your interview with 19 the IRS that we've looked at as Exhibit 223; is 20 that right? 21 A Yes. 22 Q And after your interview, were you worried 23 about liability? 24 A No, not at all. 25 Q Did the -- did the IRS tell you why they</p>

<p>157</p> <p>1 wanted to interview you?</p> <p>2 A No.</p> <p>3 Q Did you contact Rich Stovsky or anybody at</p> <p>4 PwC and tell them that you were being interviewed</p> <p>5 by the IRS in 2007?</p> <p>6 A I don't think I did. I think they already</p> <p>7 knew that the IRS was asking for documents.</p> <p>8 Hahn Loeser was asked to produce documents. I</p> <p>9 don't know exactly when PwC was asked to produce</p> <p>10 documents, but they would have had knowledge of</p> <p>11 what was going on. PwC, that is.</p> <p>12 Q Do you recall receiving another summons in</p> <p>13 2008 from the IRS relating to Westside?</p> <p>14 A Not off the top of my head. I think I</p> <p>15 only got one. I only sat one time. They may have</p> <p>16 asked for more documents, I don't know.</p> <p>17 Q So if you turn to Exhibit 104, which we'll</p> <p>18 mark as Exhibit 104.</p> <p>19 (WHEREUPON, a certain document was marked</p> <p>20 PwC Deposition Exhibit No. 104, for</p> <p>21 identification.)</p> <p>22 BY THE WITNESS:</p> <p>23 A I see it.</p> <p>24 BY MR. LANDGRAFF:</p> <p>25 Q 104 is a letter to you from Denise</p>	<p>159</p> <p>1 there.</p> <p>2 Q And did you reach out to PwC when</p> <p>3 Ms. McCaskill wrote to you in 2008 to say, hey, I</p> <p>4 just got a letter from the IRS saying that I may</p> <p>5 be liable as a transferee of Westside?</p> <p>6 A Again, we -- we'll have this conversation</p> <p>7 as many times as you want, but my brother Jim was</p> <p>8 aware of this. He was completely aware of</p> <p>9 everything that was going on from this point</p> <p>10 forward.</p> <p>11 So it would have behooved him to have a</p> <p>12 conversation with Stovsky. Whether that</p> <p>13 conversation actually took place or not, I don't</p> <p>14 have 100 percent certainty of, but I can tell you</p> <p>15 it's more likely than not.</p> <p>16 Q Did you -- did you tell Jim Tricarichi to</p> <p>17 contact Rich Stovsky about the summons that's</p> <p>18 exhibit one-oh --</p> <p>19 A Jim and I -- I'm sorry. I didn't mean to</p> <p>20 interrupt you. Go ahead and finish your question.</p> <p>21 Q Give me -- I'll start over. Give me a</p> <p>22 chance to finish.</p> <p>23 Did you ask Jim Tricarichi to contact Rich</p> <p>24 Stovsky or anyone at PwC about Exhibit 104 when</p> <p>25 you received it?</p>
<p>158</p> <p>1 McCaskill dated January 22nd, 2008.</p> <p>2 Do you see that?</p> <p>3 A I do.</p> <p>4 Q Did you receive Exhibit 104?</p> <p>5 A I think I did.</p> <p>6 Q Do you recall what you did when you</p> <p>7 received Exhibit 104?</p> <p>8 A I probably started looking at attorneys.</p> <p>9 Q Why do you say that?</p> <p>10 A Well, this says I may be liable as</p> <p>11 transferee of Westside. I may be liable as</p> <p>12 transferee of Westside. Which is really shitty --</p> <p>13 sorry, pardon my language -- that she did that</p> <p>14 because in November of 2007, just two months prior</p> <p>15 to this, she told me that I wasn't a target.</p> <p>16 So I have to believe that I was a target</p> <p>17 at the time I was sitting even though I didn't</p> <p>18 know that I was a target.</p> <p>19 Q So in January of 2008, the same person who</p> <p>20 you say said you weren't a target wrote to you and</p> <p>21 said you may be liable as a transferee of</p> <p>22 Westside?</p> <p>23 A Yeah, you can see that from the documents.</p> <p>24 Look at the -- look at the transcript of the</p> <p>25 interview, she's right -- she was sitting right</p>	<p>160</p> <p>1 A My recollection is that I asked Jim to</p> <p>2 communicate the fact to Rich Stovsky that the IRS</p> <p>3 was looking at this transaction.</p> <p>4 What I was told back was that you guys had</p> <p>5 received the subpoena to produce documents.</p> <p>6 Q And when you say "you guys," you mean PwC?</p> <p>7 A PwC.</p> <p>8 Q Did you ask Jim Tricarichi to engage PwC</p> <p>9 to relook at the advice it gave you in 2003?</p> <p>10 A To engage them to? You mean to pay them</p> <p>11 to relook at the advice? No.</p> <p>12 They should have relooked at the advice</p> <p>13 that they gave me because now they're on notice</p> <p>14 that the IRS was looking at this transaction that</p> <p>15 they gave advice on.</p> <p>16 Q But you didn't ask Jim to ask Rich Stovsky</p> <p>17 to -- to relook at it, did you?</p> <p>18 A If I -- if I tell someone, hey, you gave</p> <p>19 me advice in a transaction and the IRS is looking</p> <p>20 at it, what would that say to you if you were the</p> <p>21 one who gave the advice? What would that say to</p> <p>22 you?</p> <p>23 Q Did you have --</p> <p>24 A Would it cause you to re-examine -- would</p> <p>25 it cause you to re-examine the advice that you</p>

<p>161</p> <p>1 gave.</p> <p>2 Q Did you ask --</p> <p>3 A It obviously did -- well, it didn't at</p> <p>4 that time but it did in 2008.</p> <p>5 Q Are you done?</p> <p>6 A Yeah, I'm done now.</p> <p>7 Q Did you ask Jim Tricarichi to ask Rich</p> <p>8 Stovsky to relook at the advice that PwC had</p> <p>9 provided you in 2003 when you received</p> <p>10 Exhibit 104?</p> <p>11 A Specifically? No.</p> <p>12 Q Did you --</p> <p>13 A Did I expect it? Yeah. Could I -- could</p> <p>14 you -- could we get a little space between us just</p> <p>15 so that I can finish an answer?</p> <p>16 Did I expect that they would do that?</p> <p>17 Yes.</p> <p>18 Q Did you ask Rich Stovsky to relook at the</p> <p>19 advice that PwC provided you in 2003 when you</p> <p>20 received Exhibit 104?</p> <p>21 MR. HESSELL: Objection, asked and</p> <p>22 answered.</p> <p>23 BY THE WITNESS:</p> <p>24 A Yeah, I didn't have any specific</p> <p>25 conversations with Rich Stovsky. That was Jim. I</p>	<p>163</p> <p>1 them, and she was looking at me at the same time</p> <p>2 even though -- even though she didn't say it to</p> <p>3 me.</p> <p>4 Q So when you say "them," you mean the</p> <p>5 current owners of Westside in --</p> <p>6 A They were looking at Westside, correct.</p> <p>7 This -- this document didn't -- doesn't</p> <p>8 concern me. It's not -- it's a stat notice to</p> <p>9 them.</p> <p>10 Q And by "them," you mean Westside at the</p> <p>11 time?</p> <p>12 A Westside.</p> <p>13 As you yourself noted, I was no longer the</p> <p>14 owner of Westside.</p> <p>15 Q So if you would turn to Exhibit 105.</p> <p>16 MR. LANDGRAFF: And we'll mark that as PwC</p> <p>17 Exhibit 105.</p> <p>18 (WHEREUPON, a certain document was marked</p> <p>19 PwC Deposition Exhibit No. 105, for</p> <p>20 identification.)</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q And just tell me when you have that open,</p> <p>23 sir.</p> <p>24 A Why don't you stay in the same notebook, I</p> <p>25 can get it pretty quick.</p>
<p>162</p> <p>1 told you, they were friends. They hung out</p> <p>2 together. They -- they -- they knew each other's</p> <p>3 business.</p> <p>4 BY MR. LANDGRAFF:</p> <p>5 Q If you turn to Exhibit 65, which may be in</p> <p>6 the same binder there.</p> <p>7 (WHEREUPON, a certain document was marked</p> <p>8 PwC Deposition Exhibit No. 65, for</p> <p>9 identification.)</p> <p>10 BY THE WITNESS:</p> <p>11 A I got it.</p> <p>12 BY MR. LANDGRAFF:</p> <p>13 Q And we'll mark this as PwC Exhibit 65,</p> <p>14 which is a January 29th, 2008 document. It looks</p> <p>15 like it was sent to Westside Cellular at a Reno,</p> <p>16 Nevada address relating to the tax period ending</p> <p>17 in 12/31/2003.</p> <p>18 Did you -- did you receive Exhibit 65?</p> <p>19 A No.</p> <p>20 Q Have you ever seen it before?</p> <p>21 A I've seen it in depositions here, but I've</p> <p>22 never seen it before.</p> <p>23 Q So you didn't see it at -- around the time</p> <p>24 of 2008?</p> <p>25 A 2008? No. She was looking in 2008 at</p>	<p>164</p> <p>1 Q Okay. Go ahead.</p> <p>2 THE VIDEOGRAPHER: If it's possible to put</p> <p>3 it in front of you again --</p> <p>4 THE WITNESS: Yeah. Yeah. All right.</p> <p>5 I'm sorry.</p> <p>6 THE VIDEOGRAPHER: Thank you.</p> <p>7 THE WITNESS: My bad.</p> <p>8 THE VIDEOGRAPHER: Thank you very much.</p> <p>9 BY MR. LANDGRAFF:</p> <p>10 Q Mr. Tricarichi, do you have Exhibit 105 in</p> <p>11 front of you?</p> <p>12 A I do.</p> <p>13 Q And Exhibit 105 is a -- looks like a fax</p> <p>14 transmission Randy Hart to Denise McCaskill in</p> <p>15 February 2008; do you see that?</p> <p>16 A I do.</p> <p>17 Q And if you look at after the initial fax</p> <p>18 transmission page of Exhibit 105, it looks like</p> <p>19 Mr. Hart is responding to the summons you received</p> <p>20 in January 2008; is that fair?</p> <p>21 MR. HESSELL: Objection, calls for</p> <p>22 speculation.</p> <p>23 BY THE WITNESS:</p> <p>24 A That's what it purports to say. It's not</p> <p>25 addressed to me.</p>

<p>165</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q Was Mr. Hart authorized to communicate</p> <p>3 with the IRS on your behalf in February of 2008?</p> <p>4 A He was.</p> <p>5 Q And Mr. Hart encloses a -- if you look at</p> <p>6 the page ending in -- I'm looking for a -- I don't</p> <p>7 see a Bates number on this, but do you see the</p> <p>8 Pershing statement?</p> <p>9 A It's got an MT-3 in the bottom right-hand</p> <p>10 corner?</p> <p>11 Q I do see that, thank you.</p> <p>12 So on Page MT-3, do you see this Pershing</p> <p>13 statement that was sent to the IRS?</p> <p>14 A Yep.</p> <p>15 Q The Pershing statement is from -- the</p> <p>16 statement period, it looks like, May 5th -- sorry,</p> <p>17 May 2nd, 2003, through September 30th, 2003; is</p> <p>18 that right?</p> <p>19 A That's what it says.</p> <p>20 Q And there's a deposit amount of</p> <p>21 approximately \$34.6 million; do you see that?</p> <p>22 A I don't see that. Where is that at?</p> <p>23 Q That's on the Page MT-3, under the section</p> <p>24 "Evaluation at a Glance."</p> <p>25 A Okay. I see it.</p>	<p>167</p> <p>1 business with Schwab, and that's where my</p> <p>2 recollection is the bulk of the money was.</p> <p>3 Q Who is Marshall Plan Advisors?</p> <p>4 A Harvey Salkin.</p> <p>5 Q Can you spell that last name.</p> <p>6 A S-a-l-k-i-n.</p> <p>7 Q Who is Mr. Salkin?</p> <p>8 A He's Marshall Plan Advisors.</p> <p>9 Q And did he advise -- provide investment</p> <p>10 advice to you?</p> <p>11 A Yes.</p> <p>12 Q How long -- withdrawn.</p> <p>13 When did Mr. Salkin begin providing you</p> <p>14 with investment advice?</p> <p>15 A Probably when we got the money from the</p> <p>16 settlement because that money was in a Pershing</p> <p>17 account initially.</p> <p>18 Q And in 2003; is that fair?</p> <p>19 A Yeah, 2003.</p> <p>20 Q How long did Mr. Salkin provide investment</p> <p>21 advice to you?</p> <p>22 A 2015, '16, something along that line.</p> <p>23 Q And what did Mr. Salkin advise you do with</p> <p>24 the money that you received after the sale of the</p> <p>25 Westside stock?</p>
<p>166</p> <p>1 Q Do you see the cash deposits during that</p> <p>2 time period of the Pershing statement attached to</p> <p>3 Exhibit 105 as about \$34.6 million?</p> <p>4 A I see it.</p> <p>5 Q And then there's withdrawals of</p> <p>6 approximately \$24.6 million?</p> <p>7 A I see that as well.</p> <p>8 Q Do you recall why \$24.6 million was -- was</p> <p>9 withdrawn from the Pershing account in 2003?</p> <p>10 A I can make an educated guess.</p> <p>11 Q What's your educated guess?</p> <p>12 A At this time I had a money manager that</p> <p>13 was managing my account. Do you see where it</p> <p>14 says, "Your investment advisor Marshall Plan</p> <p>15 Advisors, Inc."?</p> <p>16 Q Yes.</p> <p>17 A Okay, well, they were -- I don't know if</p> <p>18 they were trying out Schwab or they were doing</p> <p>19 something with Schwab, but what it looks like he</p> <p>20 did is it looks like he moved 24 million out of</p> <p>21 this account to a Schwab account.</p> <p>22 That's my educated guess.</p> <p>23 Q And why do you say he moved it to a Schwab</p> <p>24 account?</p> <p>25 A Because he was just starting to do</p>	<p>168</p> <p>1 A Managed it. He invested it. He had some</p> <p>2 in stocks, some in bonds. He was a money manager,</p> <p>3 that's just his -- that's why I hired him.</p> <p>4 Q How much did he have in stocks and bonds?</p> <p>5 A I don't know.</p> <p>6 Q Well, do you know what stocks and bonds he</p> <p>7 had you invested in?</p> <p>8 A Various ones at various times.</p> <p>9 Q Do you know what an index fund is?</p> <p>10 A Yeah, we didn't do very much with index</p> <p>11 funds.</p> <p>12 Q Do you know what the S&P 500 is?</p> <p>13 A Yeah.</p> <p>14 Q Did you invest in the S&P 500?</p> <p>15 A My recollection, S&P 500 is SPDR, correct?</p> <p>16 Q Well, let -- let me ask you, what did --</p> <p>17 what do you understand the S&P 500 to be?</p> <p>18 A It's a stock average of certain stocks.</p> <p>19 Q Did you invest in the S&P 500 after you</p> <p>20 received the proceeds from the sale of the</p> <p>21 Westside stock?</p> <p>22 A My understanding of the way you invest in</p> <p>23 the S&P 500 is you buy SPDRs, just like the way</p> <p>24 you invest in NASDAQ is you buy QQQ.</p> <p>25 My understanding is that we had some of</p>

<p>169</p> <p>1 both, we had some SPDRs and we had some QQQ. Was</p> <p>2 that the bulk of the -- of the investment? No.</p> <p>3 We had -- we held a lot of discrete stocks and we</p> <p>4 held a lot of bonds.</p> <p>5 Q And did Mr. Salkin advise you on -- as to</p> <p>6 what stocks and bonds to purchase?</p> <p>7 A Yes.</p> <p>8 Q Did Mr. Salkin advise you to diversify</p> <p>9 your investment portfolio?</p> <p>10 A That was his job.</p> <p>11 Q Did Mr. Salkin advise you to invest in</p> <p>12 real estate?</p> <p>13 A He knew that we had -- that I had done</p> <p>14 some real estate investing. He included that in</p> <p>15 the portfolio.</p> <p>16 Q Did Mr. Salkin provide you with investment</p> <p>17 advice with respect to the real estate investments</p> <p>18 you made?</p> <p>19 A No.</p> <p>20 Q Who, if anyone, gave you advice on the</p> <p>21 real estate investments that you made?</p> <p>22 A No one.</p> <p>23 Q The real estate investments that you made</p> <p>24 were your own decision?</p> <p>25 A Yes.</p>	<p>171</p> <p>1 Q And Telephone Acquisition Corp. --</p> <p>2 A Telecom.</p> <p>3 Q Excuse me. Thank you.</p> <p>4 Telecom Acquisition Corp. is the vehicle</p> <p>5 through which you purchased real estate?</p> <p>6 A Generally, yes.</p> <p>7 Q And so when you withdrew funds over time</p> <p>8 from the Schwab account to move it to Tele --</p> <p>9 Telecom Acquisition Corp., you were doing that to</p> <p>10 make the real estate investments that you were</p> <p>11 deciding to make?</p> <p>12 A Generally, yes. There were other times</p> <p>13 when we did it a different way.</p> <p>14 Q So if you would turn to Exhibit 71.</p> <p>15 (WHEREUPON, a certain document was marked</p> <p>16 PwC Deposition Exhibit No. 71, for</p> <p>17 identification.)</p> <p>18 BY THE WITNESS:</p> <p>19 A Okay -- oh, sorry. I got to put it up on</p> <p>20 the table. Hold on.</p> <p>21 Got it.</p> <p>22 BY MR. LANDGRAFF:</p> <p>23 Q Exhibit 71, which we'll mark as PwC</p> <p>24 Exhibit 71, is a letter to you dated February 3rd,</p> <p>25 2009, from Denise McCaskill at the IRS, right?</p>
<p>170</p> <p>1 Q Do you know what a REIT is or a Real</p> <p>2 Estate Investment Trust?</p> <p>3 A Yeah.</p> <p>4 Q Did you -- did Mr. Salkin advise you to</p> <p>5 invest in REITs?</p> <p>6 A No.</p> <p>7 Q Did you at some point in time between 2003</p> <p>8 and the present withdraw cash from either the</p> <p>9 Pershing or -- or Schwab accounts to purchase real</p> <p>10 estate and make the investments that you</p> <p>11 personally decided to make?</p> <p>12 A What was the time frame?</p> <p>13 Q Between the date of this statement that's</p> <p>14 attached to Exhibit 105 and the present.</p> <p>15 A Well, I transferred money out of the</p> <p>16 Schwab account to Telecom Acquisition and Telecom</p> <p>17 Acquisition made the purchases.</p> <p>18 Q And Telecom Acquisition, we talked about</p> <p>19 earlier, you're the -- the owner and manager of</p> <p>20 Telecom Acquisition?</p> <p>21 A I'm the president.</p> <p>22 Q And you're the owner of it as well, right?</p> <p>23 A Well, I own the stock. My wife owns some</p> <p>24 of it and I own some of it. Stock's in a trust I</p> <p>25 think right now.</p>	<p>172</p> <p>1 A That's what it says, yep.</p> <p>2 Q And it's -- it's CC'd at the bottom to</p> <p>3 Mr. Folkman and Mr. Hart, right?</p> <p>4 A Again, that's what it says.</p> <p>5 Q Well, did you receive Exhibit 71?</p> <p>6 A I did, yeah. I don't know whether Folkman</p> <p>7 or Hart did.</p> <p>8 Q Did you read it when you received it?</p> <p>9 A Yeah.</p> <p>10 Q What did you do after reading it?</p> <p>11 MR. HESSELL: Objection --</p> <p>12 BY THE WITNESS:</p> <p>13 A I hired Glenn Miller.</p> <p>14 BY MR. LANDGRAFF:</p> <p>15 Q Why did you hire Glenn Miller?</p> <p>16 A Because there was an opportunity to</p> <p>17 respond to this before it became final, and he had</p> <p>18 done previous tax work for me, i.e. the excise tax</p> <p>19 case, so -- and he was successful in that, so we</p> <p>20 hired him to do this.</p> <p>21 Q Did you reach out to PwC in February</p> <p>22 of 2009 about the advice that PwC had provided you</p> <p>23 in 2003?</p> <p>24 A Again, it's -- it was communicated to</p> <p>25 Jim -- all this stuff was communicated to Jim.</p>

<p>173</p> <p>1 I'm assuming -- I assume that Jim communicated 2 with Stovsky. 3 I don't know that 100 percent, but I'm 4 going to make that assumption for the sake of this 5 discussion. 6 Q But you don't know 100 percent whether Jim 7 called Rich Stovsky about Exhibit 71? 8 A No, I don't know specifically. 9 Q And Exhibit 71 told you that the IRS had 10 determined that you were liable for a deficiency 11 in Westside Cellular's 2003 tax return, right? 12 MR. HESSELL: Objection, calls for 13 speculation. Form. 14 BY THE WITNESS: 15 A I'm reading the words. That's what the 16 words say, "You are liable as transferee of 17 Westside." 18 And then this said -- the next paragraph 19 says this is a draft report. It's being reviewed 20 by counsel. That they'll mail me the final 21 report. And it says, "It is not necessary for you 22 to formally respond to this letter. It's a draft 23 report for you to be -- for you to begin reviewing 24 and considering," which we did. 25</p>	<p>175</p> <p>1 Exhibit 108, is an April 29th, 2009 letter from 2 Glenn Miller to Ms. McCaskill; is that correct? 3 A That's what it says. 4 Q And did -- and if you look at the first 5 sentence of Mr. Miller's letter in Exhibit 108, he 6 says the letter's written in response to that -- 7 A To the draft. Yeah, I see it. 8 Q Let me just get the question out. 9 The first -- the first line of Exhibit 108 10 from Mr. Miller to Ms. McCaskill says that he's 11 writing the letter in response to the draft 12 transferee report sent to you that we just looked 13 at as Exhibit 71; is that correct? 14 A Yes, that's what it says. 15 Q And you mentioned Mr. Miller had worked 16 with you on the excise tax matter, correct? 17 A Correct. 18 Q Did you review a draft of Exhibit 108 19 before it was sent to the IRS? 20 A I'm sure there were several drafts of this 21 before it was sent to the IRS. 22 Q Did you review -- 23 A Probably. 24 Q Was Mr. Miller authorized to send the IRS 25 this letter, Exhibit 108, on your behalf?</p>
<p>174</p> <p>1 BY MR. LANDGRAFF: 2 Q And Mr. Miller then filed a protest on 3 your behalf, right? 4 A Yeah, I don't know whether he did it now 5 or he did it after he got it -- the one that was 6 approved by counsel. 7 Q What -- what do you mean by that? 8 A I'm reading the document. I assume you're 9 reading it with me. "Upon approval by counsel, I 10 will mail you a final transferee report." 11 Paragraph 2. 12 Q So you're saying you're not sure 13 whether -- you're not sure the timing of 14 Mr. Miller's protest that he filed on your behalf, 15 whether it was after that -- something else came 16 after approval by counsel or in response to this 17 February 3rd, 2009 letter? 18 A That's what I just said. 19 Q So if you turn to Exhibit 28 -- I'm sorry, 20 excuse me, 108. 108. 21 (WHEREUPON, a certain document was marked 22 PwC Deposition Exhibit No. 108, for 23 identification.) 24 BY MR. LANDGRAFF: 25 Q And Exhibit 108, which we'll mark as PwC</p>	<p>176</p> <p>1 A If I approved it, yeah. 2 Q Do you know if Mr. Miller consulted with 3 PwC before sending Exhibit 108 to the IRS? 4 A I don't know the answer to that. 5 Q Did you talk with PwC before 108 was sent 6 to the IRS in April of 2009? 7 A Well, that's basically the same question 8 you asked me earlier. I said I specifically did 9 not. I said I assume that Jim did, but I have no 10 proof of that. 11 Q And did you -- did you, in fact, approve 12 of Exhibit 108 being sent to the IRS? 13 A Well, we sent it, so I'm assuming I did. 14 Q If you turn to Page 8 of Exhibit 108, and 15 that ends in the Bates number 738. 16 A Okay. 17 Q And if you look at the bottom of that 18 page, 738, Exhibit 108, the letter says, "The 19 Notice" -- and that's -- that's referring to 20 Notice 2001-16 and Notice 2008-111 -- "both 21 require that an intermediary transaction has four 22 parties" -- and then it identifies the parties. 23 And then the last sentence -- full 24 sentence on that page says, "The sale did not meet 25 the requirement there be four participants because</p>

<p>177</p> <p>1 there was no intermediary." 2 Do you see that? 3 A I do. 4 Q And did you agree with that statement? 5 MR. HESSELL: Objection, foundation. 6 BY THE WITNESS: 7 A Did I -- did I -- yeah, did I agree that 8 there was no intermediary? I agree that there was 9 no intermediary, yes. 10 Whether it satisfied the requirement or 11 not, I don't know if -- I don't have a -- a reason 12 to believe either way. 13 BY MR. LANDGRAFF: 14 Q Did you think Mr. Miller's contention that 15 the sale of the Westside stock did not constitute 16 an intermediary transaction as defined by 17 Notices 2001-16 and 2008-111 was a reasonable 18 contention? 19 MR. HESSELL: Objection, foundation. 20 Calls for speculation. 21 BY THE WITNESS: 22 A Yeah, I don't know what was in 23 Mr. Miller's mind. I -- I know that Mr. Miller 24 was advocating my position in the IRS. 25 So whether that was, in fact, the case or</p>	<p>179</p> <p>1 Q Do you recall that the government's 2 position remained the same as it did in February; 3 in other words, that -- that you were liable as a 4 transferee for Westside's tax liability? 5 A That's what this document says, yeah. 6 Q And if you look at Page 22 of Exhibit 110, 7 which ends Bates number 775, it -- it contains a 8 conclusion and a summary of your position, right? 9 A 775, yeah, taxpayer position. Got it. 10 Q And on -- on Page 775 of Exhibit 110, the 11 government says that it -- they've reviewed and 12 considered the arguments against the IRS notice in 13 various court cases and the DR -- (garbled audio). 14 (Technological issues were resolved off 15 the record.) 16 BY MR. LANDGRAFF: 17 Q So on Page 775 of Exhibit 110, is it fair 18 to say that the government basically said our 19 position remains the same as it did in February, 20 that your -- that you, Mr. Tricarichi, are the -- 21 subject to transferee liability? 22 MR. HESSELL: Objection, foundation. 23 Calls for speculation. 24 BY THE WITNESS: 25 A Yeah, I -- it's fair to say that the</p>
<p>178</p> <p>1 whether he was doing it as an advocate and he 2 didn't believe it was the case or what, I don't 3 know. 4 This was our argument to the IRS, so 5 that's what we argued. 6 BY MR. LANDGRAFF: 7 Q So Exhibit 108 was your argument to the 8 IRS, right? 9 A Yeah. 10 Q And then if you turn to Exhibit 110. 11 (WHEREUPON, a certain document was marked 12 PwC Deposition Exhibit No. 110, for 13 identification.) 14 BY THE WITNESS: 15 A Got it. 16 BY MR. LANDGRAFF: 17 Q And Exhibit 110, which we'll mark as PwC 18 Exhibit 110, is an August 11th, 2009 letter to 19 you. And this one is signed by Maria, it looks 20 like, Hwang, H-w-a-n-g; is that correct? 21 A You can read the same thing I'm reading. 22 That's what it looks like it says. 23 Q Did you receive Exhibit 110? 24 A Probably. I don't have, again, a specific 25 recollection of this.</p>	<p>180</p> <p>1 government didn't buy Glenn Miller's argument, 2 that the -- that the notices didn't apply. 3 BY MR. LANDGRAFF: 4 Q Right. And -- and they wrote at the very 5 end there, "Our position remains as discussed in 6 the above narrative. Our response to taxpayer's 7 arguments in his letter will be addressed in 8 response to any future protests submitted by 9 taxpayer," right? 10 A That's what it says. 11 Q And did you contact PwC after receiving 12 Exhibit 110? 13 A Personally, no. 14 Q Are you aware of any communication with 15 PwC with respect to 110 on your behalf? 16 A Same caveat. 17 Q Which is what? 18 A Which is Jimmy was in constant touch with 19 Stovsky on various issues, and I'm sure -- I'm not 20 sure, but I'm pretty sure that Jimmy would have 21 communicated this to Stovsky. 22 Q Did Jim Tricarichi tell you what 23 Mr. Stovsky -- whether Mr. Stovsky had any 24 reaction to Exhibit 110? 25 A No.</p>

<p>181</p> <p>1 Q Did Jim Tricarichi tell you that</p> <p>2 Mr. Stovsky had any reaction in 2009 with respect</p> <p>3 to the imposition of transferee liability on you?</p> <p>4 A It went against advice. Did Stovsky say</p> <p>5 that? I don't know. It went against PwC's</p> <p>6 advice.</p> <p>7 Q No, my question is did Jim Tricarichi tell</p> <p>8 you -- sorry. I may have misspoken.</p> <p>9 Did Jim Tricarichi tell you that</p> <p>10 Mr. Stovsky had any reaction in 2009 with respect</p> <p>11 to the imposition of transferee liability on you?</p> <p>12 A Specifically? No, not that I recall.</p> <p>13 Q If you look at Exhibit 76.</p> <p>14 (WHEREUPON, a certain document was marked</p> <p>15 PwC Deposition Exhibit No. 76, for</p> <p>16 identification.)</p> <p>17 BY MR. LANDGRAFF:</p> <p>18 Q Do you have Exhibit 76 in front of you,</p> <p>19 sir?</p> <p>20 A I do.</p> <p>21 Q And Exhibit 76 is another letter on Glenn</p> <p>22 Miller's letterhead dated October 9, 2009; is that</p> <p>23 correct?</p> <p>24 A I do. I see that.</p> <p>25 Q And Exhibit 76 is Mr. Miller's response to</p>	<p>183</p> <p>1 Q And you see --</p> <p>2 A (Unintelligible.)</p> <p>3 Q -- your name at the bottom of Page --</p> <p>4 A I see it.</p> <p>5 Q Sorry. Let me just get the question out.</p> <p>6 You are copied on Exhibit 76, right?</p> <p>7 A Yeah.</p> <p>8 Q And -- and you reviewed Exhibit 76 before</p> <p>9 it was sent to Ms. McCaskill at the IRS?</p> <p>10 A I'm sure I did. I guess I did.</p> <p>11 Q Yeah, if you turn to the Bates number</p> <p>12 ending in -- we'll use the TRICAR-NV Bates number</p> <p>13 ending in 453. Would you turn to that page.</p> <p>14 A Yep.</p> <p>15 Q And page ending in 453 of Exhibit 76 says,</p> <p>16 "Penalty of Perjury Statement."</p> <p>17 "Under the penalties of perjury --</p> <p>18 perjury, I declare that I have examined this</p> <p>19 protest, including any accompanying documents, and</p> <p>20 to the best of my knowledge and belief, the facts</p> <p>21 presented in this protest are true, correct, and</p> <p>22 complete," right?</p> <p>23 A That's what it says.</p> <p>24 Q And you signed it, right?</p> <p>25 A Yep. That's my signature.</p>
<p>182</p> <p>1 the IRS's August 2009 letter that it sent to</p> <p>2 Mr. Miller, right?</p> <p>3 MR. HESSELL: Objection, calls for</p> <p>4 speculation and foundation.</p> <p>5 BY THE WITNESS:</p> <p>6 A Yeah, I don't know what it's responding</p> <p>7 to.</p> <p>8 BY MR. LANDGRAFF:</p> <p>9 Q Well, the first line of Exhibit 76 says,</p> <p>10 "Dear, Ms. McCaskill. Enclosed please find the</p> <p>11 formal written protest submitted on behalf of</p> <p>12 Michael Tricarichi in response to the finding by</p> <p>13 the Internal Revenue Service and the transferee</p> <p>14 reported date August 11, 2009, that Mr. Tricarichi</p> <p>15 is a transferee of the assets of Westside Cellular</p> <p>16 Inc.," right?</p> <p>17 A I see it says that, yeah.</p> <p>18 Q So that's in response to the August 11,</p> <p>19 2009 IRS letter, right?</p> <p>20 A That's what it says.</p> <p>21 Q Okay. And you're copied on this, right?</p> <p>22 A I don't know. Am I?</p> <p>23 Q The bottom of Exhibit 76, it says CC and</p> <p>24 it's got Maria --</p> <p>25 A Oh, yeah. I see it. I see it.</p>	<p>184</p> <p>1 Q Did you discuss the protest that is</p> <p>2 Exhibit 76 with anyone at PwC?</p> <p>3 A Same answer.</p> <p>4 Q What's the answer?</p> <p>5 A The same one I've given you four times</p> <p>6 now. I'll give it to you again. I personally did</p> <p>7 not have any discussions with anyone at PwC. My</p> <p>8 brother, Jim, was in the loop on this and was</p> <p>9 always speaking with Stovsky about many different</p> <p>10 issues.</p> <p>11 My understanding was that Stovsky knew</p> <p>12 exactly what was happening here.</p> <p>13 Q Did -- did your brother, Jim, tell you --</p> <p>14 or communicate anything to you about what Rich</p> <p>15 Stovsky said about Exhibit 76?</p> <p>16 A I don't have a specific recollection of</p> <p>17 that.</p> <p>18 Q Did you ask Jim to ask Mr. Stovsky to</p> <p>19 re-examine the advice that PwC have given you in</p> <p>20 2003?</p> <p>21 A Listen, it was obvious that the advice</p> <p>22 that I was given in 2003 was bad. It was obvious</p> <p>23 to everyone who looked at it. It was obvious that</p> <p>24 the -- and the particular advice that was bad was</p> <p>25 the advice that I was given by Don Rocen which</p>

<p>185</p> <p>1 said there was no transferee liability to me. 2 So everybody knew what that was. I didn't 3 know that Don Rocen was the one who gave that 4 advice until we started these proceedings or until 5 we got into the tax case -- tax court case. But 6 it was obvious that that advice was bad. It 7 should have been obvious to anybody with an eye. 8 So I don't know what to make of your 9 question. 10 Q Did you ask Jim Tricarichi to ask 11 Mr. Stovsky to re-examine the advice that PwC had 12 given you in 2003? 13 A Particularly, no. 14 Q Now, just before the -- the protest letter 15 was sent -- withdrawn. 16 By the -- at the time the protest letter 17 was sent that's Exhibit 76, you had retained 18 Sullivan & Cromwell, right? 19 A I believe that's correct. 20 Q So if you turn to Exhibit 295. 21 (WHEREUPON, a certain document was marked 22 PwC Deposition Exhibit No. 295, for 23 identification.) 24 BY MR. LANDGRAFF: 25 Q And do you have that in front of you, sir?</p>	<p>187</p> <p>1 BY THE WITNESS: 2 A I don't understand. I just said I don't 3 believe I've ever seen this document. So you're 4 asking me to say that I recognize it goes directly 5 against the answer that I just gave you. 6 BY MR. LANDGRAFF: 7 Q The -- Exhibit 295, the people that it's 8 from are at Sullivan & Cromwell, right? Mr. Korb, 9 Mr. Corn, and Mr. Gadwood? 10 A Yes. 11 Q And Sullivan & Cromwell billed you for the 12 work that they did for you, right? 13 A Yeah. 14 Q If you turn to Exhibit 314. 15 (WHEREUPON, a certain document was marked 16 PwC Deposition Exhibit No. 314, for 17 identification.) 18 BY THE WITNESS: 19 A Got it. 20 BY MR. LANDGRAFF: 21 Q Exhibit 314, which we'll mark as PwC 22 Exhibit 314 is a Sullivan & Cromwell invoice to 23 you dated October 28, 2009; do you see that? 24 A Yeah. 25 Q And Don Korb was the partner on the</p>
<p>186</p> <p>1 A Give me a second. 2 Got it. 3 Q And this is marked as PwC Exhibit 295, and 4 it's an October 8th, 2009 memorandum addressed 5 to -- memorandum addressed to you and Randy Hart 6 from Donald Korb, Richard Corn, and James Gadwood, 7 right? 8 A That's what it says. 9 Q Did you receive Exhibit 295? 10 MR. HESSELL: Take a second to review it. 11 BY THE WITNESS: 12 A Yeah, can I look at it? 13 BY MR. LANDGRAFF: 14 Q Of course. 15 A I don't believe I ever saw this document. 16 Q Do you recognize Exhibit 295? 17 A If I said -- 18 MR. HESSELL: Object to the -- 19 BY THE WITNESS: 20 A -- believe -- 21 MR. HESSELL: Hold on. Objection to the 22 form of the question. What do you mean by 23 "recognize"? 24 You can answer if you understand. 25</p>	<p>188</p> <p>1 account for -- that worked on your case, right? 2 A He was. 3 Q And he billed you \$1,500 an hour for the 4 work that he performed, right? 5 A That's what this says. 6 Q And for this invoice dated October 28th, 7 if you look at the top, it says, "For legal advice 8 and services rendered to you" -- that's 9 Mr. Tricarichi, that's you -- "during the period 10 September 16, 2009, through October 15th, 2009. 11 Do you see that? 12 A Yeah. 13 Q And if you look under Mr. Korb's time, he 14 says review summary outline prepared by Richard 15 Corn and James Gadwood, right? 16 A Yeah. 17 Q And then he says reviewed draft of protest 18 prepared by Bingham. And he says -- the third 19 entry is prepare for and attend meeting in 20 New York with Michael Tricarichi, Randy Hart, 21 Richard Corn, and James Gadwood regarding our 22 analysis of case and recommendations to move 23 forward with same. 24 Do you see that? 25 A Where are you?</p>

<p>189</p> <p>1 Q Under Don -- Donald Korb's time. The 2 first little I for his time in September -- 3 mid-September to mid-October time frame is review 4 summary outline prepared by Richard Corn and James 5 Gadwood, right? 6 A Yeah, that would have been Richard Corn's 7 time. 8 Q The -- no, I'm looking at Don Korb's time. 9 A Oh, okay. I'm seeing -- I'm seeing the 10 time on -- on top and the -- the -- the 11 documentation on the bottom. I'm looking at it 12 backwards. 13 Q We'll go through each -- we'll go through 14 each attorney's time, okay? 15 The first -- the first time -- first 16 timekeeper is Donald Korb; do you see that? 17 A Yes. 18 Q And the -- the -- he lists three tasks 19 that he did at his rate of \$1,500 an hour, right? 20 A Right. 21 Q The first one was review summary outline 22 prepared by Richard Corn and James Gadwood, right? 23 A Right. 24 Q And then the second one is review draft of 25 protest prepared by Bingham McCutchen and there's</p>	<p>191</p> <p>1 BY THE WITNESS: 2 A Well, he was charging us for -- 3 MR. HESSELL: Wait. Wait. Wait. Whoa. 4 Whoa. Whoa. 5 Objection to the form of the question and 6 foundation. 7 Go ahead. 8 BY THE WITNESS: 9 A Well, I don't know what he was charging me 10 for. He charged me -- he charged me to review of 11 a draft protest by -- by Bingham. I know what 12 that is. He charged me to attend a meeting in 13 New York. I know what that is. And it says 14 review summary outline prepared by Richard Corn. 15 Okay, now I can tell you that I have had 16 substantial write-offs from Sullivan that are way 17 more than \$54,000, so I'm guessing that if I 18 didn't see something and I got a bill for it, I 19 would have addressed that somehow. 20 BY MR. LANDGRAFF: 21 Q What's the New York meeting referred to in 22 little -- little three? 23 A It's exactly that, we had a meeting in 24 New York. 25 Q Where -- where Sullivan & Cromwell</p>
<p>190</p> <p>1 Mr. Miller, right? 2 A Right. 3 Q And the third task is prepare for and 4 attend meeting in New York with Michael 5 Tricarichi, Randy Hart, Richard Corn, and James 6 Gadwood regarding our analysis of case and 7 recommendations to move forward with same, right? 8 A That's what it says. 9 Q Did you -- did you pay Sullivan & 10 Cromwell's invoices? 11 A Yeah, we -- we had a little deduction here 12 and there but paid -- we paid all outstanding 13 money to them. 14 Q And the -- and this invoice for the -- if 15 you look at the end of the -- if you look at the 16 page ending in 562 of Exhibit 314 is for 53 -- 17 over \$53,000, right? 18 A That's what it says. 19 Q And if, as you claim today, you didn't get 20 the memorandum, did you ask what memorandum they 21 were talking about -- Mr. Korb was talking about 22 in the invoice where he was charging you \$1,500 an 23 hour for his work? 24 MR. HESSELL: Objection -- 25</p>	<p>192</p> <p>1 discussed -- 2 A At their office. 3 Q At that meeting Sullivan & Cromwell gave 4 you their analysis of the case and 5 recommendations, right? 6 A I believe so, yeah. 7 Q Looking at Mr. Corn's time entry, Mr. Corn 8 was an associate at the time, right? 9 A That's what it says here. 10 Q And in 2003, his billing rate was \$750 an 11 hour, right? 12 A Right. 13 Q And his time entry for that 24 hours of 14 time at \$750 an hour says, one, review fraudulent 15 conveyance authority and case law, right? 16 A That's what it says. 17 Q Review draft protest, right? 18 A Also what it says. 19 Q And it also says review and revise 20 memorandum of advice and analysis of the IRS's 21 case, right? 22 A Okay. Got that. 23 Q And the -- and Mr. Corn's time also says 24 attend meeting with client to discuss case and 25 various approaches to the IRS, right?</p>

<p>193</p> <p>1 A Right.</p> <p>2 Q And that's the meeting that you recall</p> <p>3 attending in New York?</p> <p>4 A Yeah, we had one meeting with them at</p> <p>5 their office in New York.</p> <p>6 Q If you turn to Mr. Gadwood's time on the</p> <p>7 next page of Exhibit 314.</p> <p>8 Mr. Gadwood was another associate at</p> <p>9 Sullivan & Cromwell?</p> <p>10 A Well, that's what the bill says. I don't</p> <p>11 remember him specifically.</p> <p>12 Q Well, you got a bill for him for 36 hours</p> <p>13 just in one month and it's \$750 an hour, right?</p> <p>14 A I'm not denying that he was an associate.</p> <p>15 I just said I don't remember him specifically.</p> <p>16 Q And the first time entry that he has is,</p> <p>17 Draft memorandum to client summarizing potential</p> <p>18 IRS arguments and discussing intermediary</p> <p>19 transaction issue.</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q But you still don't think you got</p> <p>23 Exhibit 295?</p> <p>24 MR. HESSELL: Objection, asked and</p> <p>25 answered.</p>	<p>195</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q If you look at -- sorry. Go ahead. I</p> <p>3 didn't mean to cut you off.</p> <p>4 A That's all I have to say.</p> <p>5 Q Under Mr. Gadwood's time, he also -- the</p> <p>6 second entry is review PricewaterhouseCoopers</p> <p>7 memorandum, right?</p> <p>8 A That's what it says.</p> <p>9 Q And that's the Stovsky memorandum, right?</p> <p>10 MR. HESSELL: Objection, foundation.</p> <p>11 Calls for --</p> <p>12 BY THE WITNESS:</p> <p>13 A Yeah, I don't -- I have no idea what</p> <p>14 memorandum that is.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q Well, what memorandum did PwC provide to</p> <p>17 Sullivan & Cromwell?</p> <p>18 MR. HESSELL: Objection --</p> <p>19 BY THE WITNESS:</p> <p>20 A That's a --</p> <p>21 MR. HESSELL: -- calls --</p> <p>22 BY THE WITNESS:</p> <p>23 A Yeah, that's an excellent question. I</p> <p>24 have no idea.</p> <p>25</p>
<p>194</p> <p>1 BY THE WITNESS:</p> <p>2 A Yeah, I -- I think I've already answered</p> <p>3 that question.</p> <p>4 BY MR. LANDGRAFF:</p> <p>5 Q What's your answer after reviewing</p> <p>6 Sullivan & Cromwell's bills for over \$53,000 from</p> <p>7 this time period?</p> <p>8 MR. HESSELL: Objection, asked and</p> <p>9 answered. And I don't see anything in these bills</p> <p>10 that would change anything about that testimony.</p> <p>11 BY MR. LANDGRAFF:</p> <p>12 Q Do you have an answer, sir?</p> <p>13 MR. HESSELL: Okay, objection to the form</p> <p>14 of the question.</p> <p>15 BY THE WITNESS:</p> <p>16 A This bill is for a whole bunch of</p> <p>17 different things. There's nothing in this bill</p> <p>18 that says specifically or how much or who drafted</p> <p>19 or whatever the document that I said I didn't</p> <p>20 remember seeing.</p> <p>21 So if I'm going to get a bill for a whole</p> <p>22 bunch of different things and one of them is a</p> <p>23 document that I didn't see, chances are I asked</p> <p>24 them to write it off at some point in time. Which</p> <p>25 I did. I had them write off a lot of stuff, so --</p>	<p>196</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q How is it that you have --</p> <p>3 MR. HESSELL: Mike, you've got to let me</p> <p>4 make my objections because you're talking over me</p> <p>5 and -- and it's too hard for the court reporter to</p> <p>6 record both of us.</p> <p>7 BY MR. LANDGRAFF:</p> <p>8 Q How did Sullivan & Cromwell get materials</p> <p>9 from PwC?</p> <p>10 MR. HESSELL: Objection, calls for</p> <p>11 speculation and --</p> <p>12 BY THE WITNESS:</p> <p>13 A Yeah, I have no idea. I have -- I</p> <p>14 provided no materials from PwC to Sullivan &</p> <p>15 Cromwell. So my guess is they called PUC -- I'm</p> <p>16 sorry, they called PwC and got them that way, but</p> <p>17 I can't say that one way or the other.</p> <p>18 They didn't --</p> <p>19 BY MR. LANDGRAFF:</p> <p>20 Q When you --</p> <p>21 A -- get them from me. I got nothing from</p> <p>22 PwC. What would I have given to them?</p> <p>23 Q When you saw the bill from Sullivan &</p> <p>24 Cromwell for \$53,000 in 2009, did you ask, "What</p> <p>25 is this PwC memorandum that Mr. Gadwood spent time</p>

<p>197</p> <p>1 reviewing at \$750 an hour?"</p> <p>2 A Did I ask that specifically? No.</p> <p>3 Q You weren't curious?</p> <p>4 MR. HESSELL: Is that a real question?</p> <p>5 BY MR. LANDGRAFF:</p> <p>6 Q Were you curious as to what the PwC</p> <p>7 memorandum was, when you said you got nothing from</p> <p>8 PwC, how it is that Sullivan & Cromwell was</p> <p>9 reviewing a PwC memorandum at \$750 an hour?</p> <p>10 A No --</p> <p>11 MR. HESSELL: Objection to the form of the</p> <p>12 question.</p> <p>13 BY THE WITNESS:</p> <p>14 A I wasn't curious.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q If you turn to Page 9 of Exhibit 295.</p> <p>17 A Got it. Page 9.</p> <p>18 Q Page 9 of Exhibit 295. It ends in Bates</p> <p>19 number 487; do you see that?</p> <p>20 A I do.</p> <p>21 Q Do you recall at the New York meeting that</p> <p>22 you attended and Sullivan & Cromwell billed you</p> <p>23 during the same time period of the date of this</p> <p>24 memorandum, that Sullivan & Cromwell told you that</p> <p>25 seeking a settlement is recommended?</p>	<p>199</p> <p>1 Cromwell to tell me that.</p> <p>2 BY MR. LANDGRAFF:</p> <p>3 Q Do you recall discussing with Sullivan &</p> <p>4 Cromwell in October of 2009 that most cases have</p> <p>5 ruled against the taxpayer in analogous fact</p> <p>6 patterns?</p> <p>7 A No.</p> <p>8 Q Your testimony is that Sullivan & Cromwell</p> <p>9 didn't say anything relating to the fact that in</p> <p>10 analogous cases, cases have gone against the</p> <p>11 taxpayer?</p> <p>12 A Cases were --</p> <p>13 MR. HESSELL: Object --</p> <p>14 BY THE WITNESS:</p> <p>15 A -- going both ways --</p> <p>16 MR. HESSELL: Hold on. Hold on --</p> <p>17 THE WITNESS: Sorry.</p> <p>18 MR. HESSELL: -- hold on.</p> <p>19 THE WITNESS: Sorry.</p> <p>20 MR. HESSELL: Object to the form of the</p> <p>21 question and incomplete recitation of what the</p> <p>22 document says.</p> <p>23 You can answer if you know.</p> <p>24 BY THE WITNESS:</p> <p>25 A I -- I'm not going to go any further than</p>
<p>198</p> <p>1 A I think they told us that, yeah, I think</p> <p>2 that's why we hired them.</p> <p>3 Q And do you recall Sullivan & Cromwell</p> <p>4 telling you that litigation risks are significant?</p> <p>5 A Yeah, that's why we hired them. We hired</p> <p>6 Sullivan & Cromwell because Don Korb was the</p> <p>7 former chief counsel of the IRS and he purported</p> <p>8 to us that he could get a good settlement for us.</p> <p>9 That was the sole reason to hire</p> <p>10 Sullivan & Cromwell. Whether they wrote that in a</p> <p>11 document that I never saw or not, that's the</p> <p>12 reason we hired them. We hired them to settle.</p> <p>13 That's why we hired them. We didn't hire them to</p> <p>14 litigate; we hired them to settle. We had Bingham</p> <p>15 to litigate if we needed to litigate.</p> <p>16 Q Do you recall Sullivan & Cromwell at the</p> <p>17 meeting you attended in New York in October 2009,</p> <p>18 you recall them telling you that the litigation</p> <p>19 risks are significant?</p> <p>20 MR. HESSELL: Objection, asked and</p> <p>21 answered.</p> <p>22 BY THE WITNESS:</p> <p>23 A No, I don't specifically recall that, but</p> <p>24 I know that litigation risks are significant. I</p> <p>25 know that on my own. I don't need Sullivan &</p>	<p>200</p> <p>1 I just said. Cases were going both ways.</p> <p>2 BY MR. LANDGRAFF:</p> <p>3 Q My question is, do you recall Sullivan &</p> <p>4 Cromwell telling you that most cases have ruled</p> <p>5 against the taxpayer in analogous fact patterns?</p> <p>6 A No, I don't recall that.</p> <p>7 Q Do you recall Sullivan & Cromwell telling</p> <p>8 you something to the effect of in October 2009,</p> <p>9 that without express favorable authority, there's</p> <p>10 a substantial concern that a court would rule</p> <p>11 against you?</p> <p>12 A No, I don't recall that. I've already</p> <p>13 told you I've not seen this document before. I've</p> <p>14 already told you that I hired Sullivan & Cromwell</p> <p>15 to settle the case with the IRS.</p> <p>16 There would have been no reason for</p> <p>17 Sullivan & Cromwell to give me reasons why I</p> <p>18 should settle the case. They knew they were there</p> <p>19 to settle the case. That's why they were hired.</p> <p>20 Whether they put it in a document or not, I don't</p> <p>21 care. They were hired to settle the case.</p> <p>22 Period. That's why they were hired.</p> <p>23 Q As you sit here today, do you deny -- are</p> <p>24 you denying that Sullivan & Cromwell told you in</p> <p>25 substance that without an express favorable legal</p>

<p>201</p> <p>1 authority, there's a substantial concern that a 2 court would rule against you? 3 MR. HESSELL: Objection -- 4 BY THE WITNESS: 5 A I have no -- 6 MR. HESSELL: -- form. 7 BY THE WITNESS: 8 A -- recollection of that. 9 BY MR. LANDGRAFF: 10 Q Do you recall discussing what's referred 11 to in number three under settlement that it is -- 12 if a settlement is pursued, it is important to 13 consider potential sources of settlement proceeds 14 and whether any tax will be incurred as a result 15 of converting investments into cash? 16 Do you recall any discussion around that 17 issue with Sullivan & Cromwell at the meeting in 18 2009? 19 MR. HESSELL: Objection -- 20 BY THE WITNESS: 21 A I don't have a -- 22 MR. HESSELL: -- to the form of the 23 question. 24 BY THE WITNESS: 25 A I don't have a specific recollection of</p>	<p>203</p> <p>1 have the money to pay the tax at the time. The 2 tax was an outrageous amount that the IRS was 3 requesting. That's why we hired Korb, to settle 4 it. 5 In order to -- my understanding is in 6 order to go to federal court, you have to pay the 7 tax. You said that at the beginning of this 8 thing. So I know you have that understanding. 9 Q Do you recall discussing with Sullivan & 10 Cromwell their recommendation that the case not be 11 brought in tax court? 12 A I don't have a recollection of that. 13 Q And in two-thousand -- in October 2009, 14 you were unable to pay the transferee liability 15 amount? 16 A That's my recollection, yes. 17 Q What happened to all the money you got? 18 A You got financial statements. Ask me 19 specific questions, and I'll answer them. 20 Q You were -- you were -- you took over 21 \$35 million from the sale. The IRS transferee 22 liability wasn't that much, was it? 23 A I -- I don't know if you're joking or not. 24 I'm trying to figure out if you're joking or not. 25 MR. HESSELL: What's the question?</p>
<p>202</p> <p>1 that. 2 BY MR. LANDGRAFF: 3 Q What about a general recollection? 4 A I don't have a recollection of that. 5 Q And Part C of Exhibit 295, the memo 6 addressed to you and Mr. Hart from Sullivan & 7 Cromwell, it says if -- number one, if litigation 8 is sought, we highly recommend that the case not 9 be brought in the tax court because the tax court 10 is most likely to rule against the taxpayer on 11 issues similar to those involved in the sale. 12 Do you see that? 13 A I see what it says. 14 Q Do you recall discussing litigation venue 15 with Sullivan & Cromwell in October 2009? 16 A No, there was no reason to discuss it 17 because we couldn't go to federal court; we had to 18 go to tax court. There was no -- there was no 19 option. 20 Q Why was there no option? 21 A So there wouldn't be -- there would have 22 been no discussion. 23 Q Why was there no option? 24 A There was no option. You know why there 25 was no option. We had to pay the tax. We didn't</p>	<p>204</p> <p>1 BY MR. LANDGRAFF: 2 Q Question was what happened to all the 3 money? Why couldn't you have paid the IRS in 4 2009? 5 MR. HESSELL: Objection to the form of the 6 question -- hold on. Objection to the form of the 7 question. You got two pending there. 8 And you can answer if you understand what 9 he's asking you. 10 BY THE WITNESS: 11 A It's -- it's -- that question is the 12 broadest question I think I've ever been asked. 13 You really need to narrow that down. 14 BY MR. LANDGRAFF: 15 Q You said there was no option, right? You 16 testified three minutes ago that there was no 17 option, that you couldn't go to District Court, 18 right? 19 A That's what I said. 20 Q And you said the reason you couldn't is 21 because you couldn't pay the liability, right? 22 A Also what I said. 23 Q Why couldn't you pay the liability? 24 A Because I didn't have that much cash 25 available liquid to pay the liability.</p>

<p>205</p> <p>1 Q Why not? What happened to all your money?</p> <p>2 MR. HESSELL: Chris that -- objection to</p> <p>3 the form of the question.</p> <p>4 BY THE WITNESS:</p> <p>5 A I used it. I invested it. I did various</p> <p>6 things with it. I don't know how much money you</p> <p>7 think I had. I think the most I ever had at the</p> <p>8 beginning was 24- or \$26 million. That's the most</p> <p>9 I ever had before I spent a nickel, okay?</p> <p>10 So if I would have spent \$10 million on</p> <p>11 real estate or I had invested 10 million -- well,</p> <p>12 \$10 million in investment I could -- was liquid.</p> <p>13 If I would have spent \$10 million of the</p> <p>14 24 in real estate, I wouldn't have had enough</p> <p>15 money to pay the IRS.</p> <p>16 Does that answer your question?</p> <p>17 BY MR. LANDGRAFF:</p> <p>18 Q Did you reach out to Rich Stovsky or</p> <p>19 anybody at PwC after your meeting with Sullivan &</p> <p>20 Cromwell in New York in October 2009?</p> <p>21 A I did not personally.</p> <p>22 Q Did you ask Jim Tricarichi to reach out to</p> <p>23 Mr. Stovsky?</p> <p>24 A I told Jim Tricarichi about the meeting.</p> <p>25 I don't know whether he reached out to Rich</p>	<p>207</p> <p>1 November 16th, 2009 memo to you and Randy Hart</p> <p>2 from Richard Corn, right?</p> <p>3 A Yeah.</p> <p>4 Q Did you receive Exhibit 296?</p> <p>5 A I don't have a specific recollection</p> <p>6 that -- we got cases all the time. People were</p> <p>7 sending us cases all the time.</p> <p>8 Q Do you have any reason to doubt you</p> <p>9 received Exhibit 296?</p> <p>10 MR. HESSELL: Objection, calls for</p> <p>11 speculation, form.</p> <p>12 BY THE WITNESS:</p> <p>13 A Yeah, I have no reason one way or the</p> <p>14 other.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q Well, I mean, one reason you might have</p> <p>17 received it is that it's addressed to you and</p> <p>18 Mr. Hart from your lawyer, right?</p> <p>19 MR. HESSELL: Is that a question?</p> <p>20 MR. LANDGRAFF: Yes.</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q Do you --</p> <p>23 MR. HESSELL: That's.</p> <p>24 THE WITNESS: (Unintelligible.)</p> <p>25 MR. HESSELL: That's not a question. It's</p>
<p>206</p> <p>1 Stovsky or not.</p> <p>2 Q Did you ask Jim Tricarichi to reach out to</p> <p>3 Rich Stovsky after the Sullivan & Cromwell</p> <p>4 meeting?</p> <p>5 A Specifically, I don't have the specific</p> <p>6 recollection. The Sullivan & Cromwell meeting was</p> <p>7 not a milestone in this particular case.</p> <p>8 Q If you turn to Exhibit 296.</p> <p>9 (WHEREUPON, a certain document was marked</p> <p>10 PwC Deposition Exhibit No. 296, for</p> <p>11 identification.)</p> <p>12 BY THE WITNESS:</p> <p>13 A I'm on 296 -- oh, no, I'm sorry. I'm on</p> <p>14 295.</p> <p>15 296. Got it.</p> <p>16 BY MR. LANDGRAFF:</p> <p>17 Q And 296, the first page has a Tab O on it.</p> <p>18 Do you see that?</p> <p>19 A Yep.</p> <p>20 Q And it ends -- the first page of</p> <p>21 Exhibit -- which we marked as PwC Exhibit 296 ends</p> <p>22 in the Bates number 451; is that right?</p> <p>23 A Yeah, 451.</p> <p>24 Q And if you look at the first page with</p> <p>25 writing on it of Exhibit 296, it's a</p>	<p>208</p> <p>1 a statement.</p> <p>2 BY MR. LANDGRAFF:</p> <p>3 Q You said I have no reason to know one way</p> <p>4 or the other. Is it -- do you agree with me that</p> <p>5 one reason that you might have received</p> <p>6 Exhibit 296 is that it's a memorandum addressed to</p> <p>7 you and your lawyer, Mr. Hart, from your other</p> <p>8 lawyer, Mr. Corn?</p> <p>9 MR. HESSELL: Objection --</p> <p>10 BY THE WITNESS:</p> <p>11 A It's a case.</p> <p>12 MR. HESSELL: Hold on. Hold on, Mike.</p> <p>13 Objection to the form of the question, and</p> <p>14 asked and answered as to whether he recalls having</p> <p>15 received this.</p> <p>16 BY MR. LANDGRAFF:</p> <p>17 Q You said it's a case. What case is it?</p> <p>18 A It's a case that was sent to me and Randy.</p> <p>19 If it's a case, Randy's going to read it, not me.</p> <p>20 What do I know? What do I know what I'm reading.</p> <p>21 I'm not a tax lawyer. I've established</p> <p>22 that six times already in this discussion. Why</p> <p>23 would I be reading a tax case?</p> <p>24 I think it's interesting that it's</p> <p>25 Enbridge because you asked me before what</p>

<p>209</p> <p>1 information that PwC had that they didn't 2 disclose? Didn't you ask me that question? I'll 3 give you one. PwC took a fee from Enbridge -- I'm 4 sorry, from Fortrend in the Enbridge case. They 5 never disclosed that. To this day in any 6 document, they haven't disclosed that. Why is 7 that, sir? 8 Q Are you done? 9 A Yeah. 10 Q So in -- so in November 2009, you knew of 11 the Enbridge case? 12 A No, I knew of the Enbridge case way, way 13 after the fact. Way after the fact. 14 Q The memo that you said Randy would have 15 read is from November 2009. That's Exhibit 296, 16 right? 17 A Yeah, Randy knew about. I didn't know 18 about it. Randy was -- I told you, cases were 19 going past all the time. These cases were 20 decided, sometimes they were in favor of the 21 taxpayer, sometimes they were in the favor of the 22 IRS. 23 I didn't read the cases. 24 Q Did you read the memos that Sullivan & 25 Cromwell sent you?</p>	<p>211</p> <p>1 BY THE WITNESS: 2 A You're really focused on those fees, 3 aren't you? 4 BY MR. LANDGRAFF: 5 Q Did you read the materials that Sullivan & 6 Cromwell sent you? 7 A Some of it I read when it was appropriate 8 for me to read it, and some of it I had someone 9 else read when it was appropriate for them to read 10 it, okay? And some of them that I never got or 11 that I didn't remember getting I had them write 12 off and they did. 13 Q Well, how did you decide what was 14 appropriate for you to read when something was 15 sent to you? 16 MR. HESSELL: Objection to the form of the 17 question. 18 BY THE WITNESS: 19 A If it was something that pertained to 20 something I had familiarity with, I would read it. 21 If it was something that pertained to something I 22 didn't have familiarity with, I would give it to 23 somebody who had. 24 BY MR. LANDGRAFF: 25 Q And -- and did I hear you right, you say</p>
<p>210</p> <p>1 MR. HESSELL: Objection to the form of the 2 question. Calls -- 3 BY THE WITNESS: 4 A Show me a memo, and I'll tell you if I 5 read it. 6 BY MR. LANDGRAFF: 7 Q Exhibit 296, sir, a memo to you and Randy 8 Hart from Richard Corn regarding the United States 9 Court of Appeals for the Fifth Circuit Disregards 10 Form of Intermediary Transaction. 11 A Show me the memo. What memo? 12 Q Exhibit 296. 13 A I told you. I have no specific 14 recollection of this particular memo and was not 15 my job to read cases. That was one of the things 16 that Randy did. 17 Q My question is did you read memoranda that 18 summarized cases that your lawyers who are 19 charging you between \$750 and \$1,500 an hour sent 20 you? 21 MR. HESSELL: Objection -- 22 BY THE WITNESS: 23 A You're really -- 24 MR. HESSELL: -- asked and answered. 25</p>	<p>212</p> <p>1 you didn't read cases; is that what your testimony 2 is? 3 A I said I don't read cases generally. I 4 said that's for the lawyers to do. Sometimes I 5 read cases. If they're simple enough for me to 6 do, yeah, I do. Sometimes I do and sometimes I 7 don't. 8 And this particular one, I didn't. 9 Q What about the summary of the case, 10 though? I'm not asking if you read Enbridge; did 11 you read Mr. Corn's summary of Enbridge? 12 A I've told you this -- well, I'm waiting 13 for an objection. 14 THE WITNESS: Go ahead. 15 MR. HESSELL: Objection, asked and 16 answered. 17 THE WITNESS: Thank you. 18 BY THE WITNESS: 19 A Yeah, I've answered this question five 20 times. How many more times do you want me to 21 answer it? 22 BY MR. LANDGRAFF: 23 Q Did you read the summary of the 24 case -- I'm not asking if you read the case. Did 25 you read Mr. Corn's summary of the Enbridge case?</p>

<p>213</p> <p>1 MR. HESSELL: Chris, you've asked at least 2 four times whether he's read this document and 3 he's given you the same answer all four times. I 4 don't know why you want to ask the same question 5 over and over again. It's badgering. 6 You can answer if you have anything 7 different to say on the subject. 8 BY THE WITNESS: 9 A I have nothing different to say. 10 THE WITNESS: I'd like the court reporter 11 to go back and read how many times he's asked this 12 exact same question. 13 BY MR. LANDGRAFF: 14 Q That's okay. I'm in charge of the 15 deposition, sir. You can do that on your own 16 time. 17 Why don't we take a lunch break. 18 MR. HESSELL: Okay. 19 THE VIDEOGRAPHER: We are now going off 20 the record. The time is 1:23 p.m. 21 (WHEREUPON, a lunch recess was had.) 22 THE VIDEOGRAPHER: We are now going back 23 on the record. The time is 2:20 p.m. 24 BY MR. LANDGRAFF: 25 Q Mr. Tricarichi, did you discuss the</p>	<p>215</p> <p>1 A I said I think I did. What did -- what 2 did I miss? 3 Q If you look at the first paragraph of 4 Exhibit 80, it says that there's a deficiency of 5 approximately 15,000 -- \$15.1 million in income 6 tax and penalties and a little over \$6 million in 7 tax and penalties, right? 8 Sorry, let me -- 9 A That's not what it says. 10 Q Let me say it again. I said it wrong. 11 The notice of liability notes that there's 12 a tax deficiency of about \$15.1 million and then 13 penalties of a little over \$6 million; is that 14 right? 15 A That's what it says, yeah. So that should 16 have answered your other question about why I 17 didn't go to District Court. 18 Q Did -- as of June 25th, 2012, could you 19 have paid the IRS about \$21 million? 20 A No. 21 Q Assuming you could have sold or borrowed 22 against your real estate holdings at that time, 23 could you have paid \$21 million to the IRS in June 24 of 2012? 25 A Not unless I got 100 percent.</p>
<p>214</p> <p>1 substance of your testimony over the lunch with 2 anybody? 3 A I did not. 4 Q If you'd turn to Exhibit 80. 5 (WHEREUPON, a certain document was marked 6 PwC Deposition Exhibit No. 80, for 7 identification.) 8 BY THE WITNESS: 9 A Exhibit 80. Okay. Got it. 10 BY MR. LANDGRAFF: 11 Q Exhibit 80, which we marked as PwC 12 Exhibit 80, is a letter to you via certified mail 13 from the IRS dated June 25, 2012. 14 Do you see that there at the top? 15 A Yes. 16 Q And it's entitled -- Exhibit 80 is 17 entitled "Notice of Liability," right? 18 A That's what it says. 19 Q Well, you know that's what it is, right? 20 A I know that's what it says. 21 Q Did you receive Exhibit 80? 22 A I think I did. 23 Q You think you would have remembered 24 receiving a notice of liability a little over 25 \$21 million from the IRS?</p>	<p>216</p> <p>1 Q What do you mean by that? 2 A Normally when you borrow money, you can't 3 borrow 100 percent of the value of something, so 4 no. 5 Q What about if you -- assuming you could 6 have sold your -- the real estate holdings in 7 two-thousand -- in June of 2012, would you have 8 been able to pay the IRS \$21 million? 9 A No. 10 Q What is your current theory as to why PwC 11 is responsible for the fact that you owe the IRS 12 money? 13 MR. HESSELL: Objection to the form of the 14 question. Calls for a legal conclusion. 15 BY THE WITNESS: 16 A Yeah, I can't answer -- I don't know the 17 answer to that. 18 BY MR. LANDGRAFF: 19 Q What do you contend that you know now that 20 PwC should have told you in 2003? 21 A Well, I told you one of the things, that 22 you took money from Fortrend in the Enbridge deal 23 that we have no knowledge of and you have never 24 disclosed that even as we sit here today. 25 I can tell you that -- that there is stuff</p>

<p style="text-align: right;">217</p> <p>1 in that IRS notice that you won't show me that is 2 stuff you should have known and didn't. 3 I can tell you that you spent all of two 4 hours determining that there was no transferee 5 liability and the guy that made that determination 6 is dead, and I -- and we can't even ask him any 7 kind of questions about how he arrived at that. 8 The main problem that I have with -- 9 with -- with PwC is that they kept secrets from 10 us. They never gave us an opinion, they never 11 told us what the potential pitfalls of the 12 transaction were, which the judge seized on in the 13 tax case. 14 Q So you said that PwC took money from 15 Fortrend in the Enbridge transaction, there's some 16 IRS notice that you claim I won't show you. What 17 are you talking about? 18 A The notice that's in contention in this 19 case that I -- that you keep asking me about, 2008 20 something 111. I don't know. Whatever it is. 21 Q Whatever -- 22 A I asked you -- 23 Q -- about the -- 24 A I asked you twice to show me that notice 25 and you refused to show to me.</p>	<p style="text-align: right;">219</p> <p>1 transferee -- the entire transferee liability 2 theory, which we don't know what your transferee 3 liability theory was and we'll never know. 4 Q What would you have done in 2003 if you 5 had learned, as you claim today, that PwC received 6 money from Fortrend in the Enbridge transaction? 7 A I wouldn't have -- that's a clear conflict 8 of interest, and I would have fired you 9 immediately. 10 Q What would you have done with respect to 11 the sale of Westside? 12 A I would have probably tried to find 13 another accounting firm to give me another 14 opinion. I wouldn't have done the deal with 15 Westside for sure in September of 2009 depending 16 on when that came up. 17 I don't think I could have hired another 18 accounting firm and gotten a -- I couldn't hire -- 19 I told you before I couldn't hire KPMG and if -- 20 if PwC was out, I would have to go find another 21 accounting firm of some stature to give me another 22 opinion. 23 That wouldn't have happened immediately. 24 I would not have done that deal. 25 Q If you had gotten another opinion from</p>
<p style="text-align: right;">218</p> <p>1 Q I -- what is it about 2008-111 that PwC 2 should have told you in 2003? 3 A Oh, not in 2003, no. In 2008 they should 4 have told me. 5 Q Okay -- 6 A In 2003 they should have disclosed that 7 they knew what was going on and they should have 8 known that they were giving conflicting advice to 9 different clients that they didn't disclose. 10 You have some kind of a goofy, I don't 11 know what it is, I'll call it a wall set up 12 between accountants over there where one 13 accountant can't talk about what another 14 accountant did. 15 So you've given advice in these -- in 16 these Midco cases -- and we're going to call them 17 all Midco cases -- you -- your -- your client has 18 given conflicting advice in Midco cases under the 19 same facts. 20 Sometimes -- sometimes you give advice go 21 ahead and do the deal, sometimes you give advice 22 don't do the deal, and sometimes you give advice, 23 hey, pay me and I'll -- and I'll hook you up. 24 So I don't know what else -- what else do 25 you want to know. And the -- and the</p>	<p style="text-align: right;">220</p> <p>1 another accounting firm, would you have gone 2 through with the sale? 3 A Depends on what the opinion was. 4 Q With respect to transferee liability, what 5 did Mr. Stovsky tell you about transferee 6 liability? 7 A He told me that there's not a problem with 8 transferee liability. And it was not couched in 9 any kind of 51/49 percentage. He understood why I 10 retained him and he understood that there was -- 11 he told me there was no problem with transferee 12 liability or -- or words to that effect. 13 And I don't think we were using the term 14 transferee liability. I told you before, I think 15 we were using the term that it could -- the IRS 16 could come back at me. Which is the only way the 17 IRS can come back at me is transferee liability. 18 So -- can I finish? So -- and -- 19 and -- and you guys in papers that we have -- 20 you -- we have seen since the onset of this case 21 and in the tax case, you guys had a lot of notes, 22 a lot of things that you were discussing that you 23 didn't clue us in on. 24 You're looking at -- at my bills from my 25 lawyers, looking at what they're discussing,</p>

<p>221</p> <p>1 meanwhile you're discussing nothing with me?</p> <p>2 Q The transferee liability advice</p> <p>3 Mr. Stovsky gave you that you're referring to</p> <p>4 occurred in 2003, right?</p> <p>5 A I don't know when it occurred. That's</p> <p>6 when he gave it to me. He wasn't the guy that did</p> <p>7 it. You had some other guy over there that's</p> <p>8 dead.</p> <p>9 Q Did the person who's deceased talk to you</p> <p>10 ever?</p> <p>11 A Never.</p> <p>12 Q Okay. So the -- all the advice you got</p> <p>13 from PwC came from Rich Stovsky, correct?</p> <p>14 A Yeah.</p> <p>15 Q And Mr. Stovsky --</p> <p>16 A He was the point of contact. He didn't</p> <p>17 originate the advice, but he was the deliverer of</p> <p>18 the advice.</p> <p>19 Q And what Mr. Stovsky told you that you</p> <p>20 claim with respect to transferee liability, he</p> <p>21 told you that in 2003, right?</p> <p>22 A Yeah.</p> <p>23 Q And the -- you claim that PwC had secrets</p> <p>24 or a wall about advice to other clients, something</p> <p>25 like that; is that right?</p>	<p>223</p> <p>1 deal -- same type of deal -- not the same deal but</p> <p>2 same type of deal.</p> <p>3 Q Which one is it; is it the same type of</p> <p>4 deal or is it the same deal?</p> <p>5 A It's the same type of deal on the same</p> <p>6 facts.</p> <p>7 Q So -- and what do you mean by that?</p> <p>8 A I think I said it's the same type of deal</p> <p>9 on the same facts.</p> <p>10 Q What do you mean by "same facts"?</p> <p>11 A The facts of the Westside deal versus the</p> <p>12 facts of a different deal.</p> <p>13 Q What other deal do you know of where PwC</p> <p>14 gave advice that you claim conflicted --</p> <p>15 A I don't have those -- I don't have them at</p> <p>16 my fingertips, but I can tell you they exist. And</p> <p>17 if you want me to supply you with that</p> <p>18 information, I'll be more than happy to.</p> <p>19 Q Are you qualified to look at a transaction</p> <p>20 and determine whether or not that transaction is</p> <p>21 substantially similar to an IRS notice?</p> <p>22 A No, but I have opinions from others that</p> <p>23 are.</p> <p>24 Q And who are the others that you got</p> <p>25 opinions from?</p>
<p>222</p> <p>1 A I don't claim it. It's a fact. It's in</p> <p>2 the -- it's in the deposition transcripts.</p> <p>3 Q Did you study the -- the terms of other</p> <p>4 transactions that PwC advised other clients on?</p> <p>5 A I don't understand the question.</p> <p>6 Q When you say PwC gave conflicting advice,</p> <p>7 did you study the terms and the makeup of the</p> <p>8 transactions that you're referring to when you</p> <p>9 claim PwC gave other people different advice on</p> <p>10 transactions?</p> <p>11 A The -- the transactions that I'm referring</p> <p>12 to were substantially similar to the Westside</p> <p>13 transaction.</p> <p>14 Q But you're not a tax lawyer, right?</p> <p>15 A I didn't study it, no. Other people --</p> <p>16 other people have studied it.</p> <p>17 Q You don't have an opinion that -- that any</p> <p>18 other -- you haven't -- withdrawn.</p> <p>19 You haven't studied the terms and</p> <p>20 conditions of other deals in which PwC offered</p> <p>21 advice that you claim conflict with the advice</p> <p>22 that you were given, right?</p> <p>23 A I have seen documents that were supplied</p> <p>24 by PwC that give advice saying do the deal and</p> <p>25 advice saying don't do the deal on the same</p>	<p>224</p> <p>1 A The people who represent me.</p> <p>2 Q Who?</p> <p>3 A People that represent me. The guy in the</p> <p>4 upper left-hand corner for one.</p> <p>5 Q It's Mr. Hessel's opinion that --</p> <p>6 A One of them.</p> <p>7 Q What's his opinion?</p> <p>8 A I'm not going to tell you that.</p> <p>9 Q Well, you just told me he has some</p> <p>10 opinion --</p> <p>11 A Yes, and I'm not going to tell you what it</p> <p>12 is.</p> <p>13 Q Okay. Who else has told you that PwC has</p> <p>14 given what you claim is conflicting advice to</p> <p>15 various clients?</p> <p>16 A That aren't lawyers? No one.</p> <p>17 Q And you can't, as you sit here today,</p> <p>18 identify a transaction that you claim PwC gave</p> <p>19 conflicting advice -- or advice that conflicts</p> <p>20 with the advice they gave you?</p> <p>21 A I --</p> <p>22 MR. HESSELL: Objection, mischaracterizes</p> <p>23 the witness's testimony.</p> <p>24 BY THE WITNESS:</p> <p>25 A Yeah, I told you I can't lay my hands on</p>

<p style="text-align: right;">225</p> <p>1 that information right now, but I will be happy to 2 supply it to you. 3 BY MR. LANDGRAFF: 4 Q This IRS notice that you're saying that I 5 won't show you, why don't we look at IRS 6 Notice 2008-111, which is Exhibit 3. 7 A Okay. Sure. 8 (WHEREUPON, a certain document was marked 9 PwC Deposition Exhibit No. 3, for identification.) 10 BY MR. LANDGRAFF: 11 Q And so Exhibit 3, which we've marked as 12 PwC Exhibit 3, is a copy of Notice 2008-111. 13 Do you see that? 14 A I do. 15 Q What do you contend would have happened if 16 after 2008-111 was issued that PwC had alerted you 17 to the existence of this notice? 18 A Well, it wasn't the -- it wasn't the 19 alerting of the notice. I knew about the notice. 20 It was the information that was possessed by PwC 21 that would have been relevant to this notice, 22 which I did not have. 23 Q What's the information that PwC possessed 24 that would have been relevant to this notice that 25 you claim today that you did not have?</p>	<p style="text-align: right;">227</p> <p>1 didn't work is because the IRS disallowed the 2 deduction of the debt or whatever the heck it was. 3 And we were not in touch with any of that. 4 When I sat on the witness stand in the tax 5 case, the judge showed me a document that I had 6 never seen before and that document said there's 7 something -- something along the lines of there's 8 a substantial risk to -- to the -- the buyer that 9 the IRS was going to disallow this transaction, 10 okay? That was what the testimony said. 11 I had never seen that document. So I 12 didn't know what the substantial risk that the IRS 13 was not going to go along with the deductions that 14 were taken as -- vis-à-vis this transaction 15 internally with -- between Westside and Fortrend. 16 Not by Westside but after they had acquired it. 17 So the judge looks at me and he says to me 18 under his breath, he says, "Why did you go along 19 with this? Didn't you know what was going on?" 20 And I said, "Your Honor, that's the first 21 time I've seen that document and I didn't know any 22 of this." 23 Does that explain to you what -- does 24 that -- does that answer your question? 25 Q What evidence do you have that PwC knew in</p>
<p style="text-align: right;">226</p> <p>1 A Well, let's talk about the plan. This 2 notice refers to a plan, right? 3 Q Can you answer my question? 4 A I just did. I said let's talk about the 5 plan. This notice -- this notice has a plan. It 6 says definition of the plan, Section 2. 7 Q And what does -- what did PwC know about 8 Section 2 that you -- that you claim PwC knew that 9 they didn't tell you in 2008? 10 A They knew the plan that Fortrend had to 11 avoid paying the tax. 12 Q How do you -- what evidence do you have 13 that PwC knew that Fortrend had a plan to avoid 14 paying the tax? 15 A Isn't that what this case is about? They 16 knew about -- they knew about the way Fortrend was 17 going to do this cockamamie write-off thing that 18 they did as far as the Japanese debt -- do you not 19 know what this transaction -- how this transaction 20 was -- was formulated? 21 Because I didn't at the time, but you did. 22 For- -- Fortrend -- I'm sorry, PwC knew exactly 23 how this transaction was supposed to work as 24 far -- vis-à-vis Fortrend, okay? 25 And it didn't work. And the reason it</p>	<p style="text-align: right;">228</p> <p>1 2003 that Fortrend didn't intend to pay the taxes? 2 A I don't have any evidence that they didn't 3 intend to pay the taxes. I have evidence that 4 they had a cockamamie scheme that PwC knew about. 5 Q When do you contend PwC knew about what 6 you claim is a cockamamie scheme? 7 A Prior to the advice given in 2003. 8 Q What evidence do you have that PwC knew 9 about some scheme that you're claiming PwC -- 10 sorry, that Fortrend was going to engage in, what 11 evidence do you have that PwC knew about that in 12 2003? 13 A It's in your own documents. 14 Q What are you talking about? 15 A It's in your -- 16 MR. HESSELL: Are you asking him to 17 identify the document by Bates label -- 18 MR. LANDGRAFF: I'm just -- 19 MR. HESSELL: -- I mean -- 20 MR. LANDGRAFF: -- looking for answers to 21 questions. That's all I'm doing. 22 BY MR. LANDGRAFF: 23 Q So what evidence do you have that PwC knew 24 that Fortrend had a scheme not to pay the taxes 25 when PwC gave you advice in --</p>

<p>229</p> <p>1 A Okay, now you're mischaracterizing my 2 testimony. 3 Q I'm not trying to. Tell me what evidence 4 you have that PwC knew in 2003 of a Fortrend 5 scheme not to follow through on whatever Fortrend 6 said it was going to do? 7 A We have notes to file that you people 8 wrote to one another. 9 Q That say what about knowledge of 10 Fortrend -- of a Fortrend scheme? 11 THE WITNESS: I -- I -- I don't know where 12 to go with this, Scott. I really don't know where 13 to go with this because he's playing stupid now, 14 and I am not going to go along with that, okay? 15 BY MR. LANDGRAFF: 16 Q Can you answer my question, sir? 17 A I did answer your question. 18 Q No, you haven't, and so I'll ask it again. 19 And if you can't answer it, that's okay, but the 20 question is, what -- what evidence do you have 21 that PwC knew in 2003 of a Fortrend scheme for 22 Fortrend not to follow through on whatever 23 Fortrend said it was going to do? 24 MR. HESSELL: Objection, asked and 25 answered. He identified --</p>	<p>231</p> <p>1 have any evidence that PwC -- 2 A Where did that come from? 3 Q I'm asking you. 4 A You -- you better lay some kind of 5 foundation for that because I don't know where 6 that's coming from. 7 Q Okay. So you don't have any information 8 or evidence to suggest that PwC knew that Fortrend 9 intended not to follow through on what Fortrend 10 said it was going to follow through on in 2003? 11 MR. HESSELL: Objection, asked and 12 answered, and mischaracterizes what the witness 13 just said. 14 You can answer if you can. 15 BY THE WITNESS: 16 A I think I've already answered it. I don't 17 know what more I can say. I don't know where you 18 get the failed to follow through part. They 19 followed through just fine. Fortrend followed 20 through just fine. 21 BY MR. LANDGRAFF: 22 Q So what do you contend PwC should have 23 told you about what you claim PwC knew of 24 Fortrend's plan? 25 A Look, they should have given me</p>
<p>230</p> <p>1 MR. LANDGRAFF: He hasn't -- don't testify 2 for him, Scott. 3 MR. HESSELL: I'm not -- 4 MR. LANDGRAFF: Don't testify for him. 5 MR. HESSELL: I'm not. It's right there. 6 I mean, I'm read -- I'm literally -- 7 MR. LANDGRAFF: I'd like -- 8 MR. HESSELL: -- just reading what he's 9 already said. 10 MR. LANDGRAFF: I'm sorry to talk over 11 you. I'd like an answer to my question. 12 BY MR. LANDGRAFF: 13 Q Mr. Tricarichi -- 14 MR. HESSELL: He gave you -- 15 BY MR. LANDGRAFF: 16 Q -- answer the question, please do so. If 17 not, just say you can't answer it, and I'll move 18 on. 19 A I'm telling you that you have produced 20 documents that show that Fortrend -- that -- that 21 PwC knew the plan that Fortrend had to reduce the 22 tax liability. That's what I'm saying, okay? 23 Q Do you have any evidence of what you 24 called Fortrend's intention not to follow through 25 on what Fortrend said it was going to do? Do you</p>	<p>232</p> <p>1 information on what the plan was and what the 2 degree of difficulty was of that plan and how the 3 IRS would look at that plan and what the 4 likelihood was that the IRS was going to bounce 5 the plan. 6 Not only that, but your knowledge, just 7 your knowledge of this plan is attributed to me. 8 Based on this Notice 2008-111, it's attributed to 9 me. And I -- and you didn't give me the 10 information. 11 Go to number four. "An officer or 12 director of T engages in the transaction pursuant 13 to the plan or any of the following knows or has 14 reason to know the trans- -- the transaction is 15 structured to effectuate the plan. 16 "Any officer or director of T. Any of T's 17 advisors by T to invade -- to advise T or X with 18 the respect to the transaction or any advisor of X 19 engaged by that -- engaged by that X to advise it 20 with respectation -- with respect to the 21 transaction." 22 You are the advisor. PwC is the advisor. 23 And the judge in the tax case attributed your 24 knowledge of the plan to me, which I had no 25 knowledge of.</p>

<p>233</p> <p>1 Q What do you --</p> <p>2 A Could I be more clear?</p> <p>3 Q What do you contend you would have done if</p> <p>4 PwC had told you whatever it is you claim PwC</p> <p>5 should have told you in 2008 after Notice 2008-111</p> <p>6 came out? What would you have none?</p> <p>7 A I would not have done the transaction. If</p> <p>8 I knew that there was a risk of -- in this</p> <p>9 transaction that it was going to blow up, I</p> <p>10 wouldn't have done it. I made that clear to</p> <p>11 Stovsky when he was retained.</p> <p>12 Q That -- that wasn't my question. What do</p> <p>13 you contend --</p> <p>14 A (Unintelligible) just said what would I</p> <p>15 have done if I'd had known. And I said I wouldn't</p> <p>16 have done the transaction --</p> <p>17 Q Okay. What --</p> <p>18 A -- what don't you understand?</p> <p>19 Q Well, let --</p> <p>20 MR. HESSELL: Take a breath --</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q -- why don't you calm down.</p> <p>23 MR. HESSELL: -- 2008.</p> <p>24 BY MR. LANDGRAFF:</p> <p>25 Q Do you want to take a break?</p>	<p>235</p> <p>1 litigation section of the IRS, they had directives</p> <p>2 as to what they could or could not do with Midco</p> <p>3 cases.</p> <p>4 Q So how do you know you could have settled</p> <p>5 with the IRS if PwC told you whatever you claim</p> <p>6 today that PwC should have told you in 2008, how</p> <p>7 do you know you could have settled with the IRS?</p> <p>8 A Because we would have got -- we would have</p> <p>9 acknowledged the -- the document -- just like, I</p> <p>10 don't know, you showed me a couple of documents on</p> <p>11 here where we could have just signed off on it,</p> <p>12 acknowledged that we owed the tax.</p> <p>13 We would have knowledged -- acknowledged</p> <p>14 that we owed the tax. It would have gone to a</p> <p>15 different section of the IRS, what Desmond used to</p> <p>16 refer to as the adults in the room, and they would</p> <p>17 have settled for a much lower number than the</p> <p>18 people who were structured and had no ability or</p> <p>19 no flexibility to settle.</p> <p>20 Q What amount could you have gotten then --</p> <p>21 A I don't know. They're telling me between</p> <p>22 a million five and 5 million.</p> <p>23 Q Why didn't the IRS ever make an offer in</p> <p>24 that range?</p> <p>25 A I just explained --</p>
<p>234</p> <p>1 A No, I don't need a break. Go ahead.</p> <p>2 Q Okay. So try to listen to my question and</p> <p>3 stop yelling at me, okay?</p> <p>4 Are you --</p> <p>5 A Then ask --</p> <p>6 Q -- ready?</p> <p>7 A -- legitimate questions and stop going</p> <p>8 over the same material 16 different times.</p> <p>9 Q Okay. Here's the question: What would</p> <p>10 you -- what do you contend you would have done if</p> <p>11 PwC had told you whatever it is you claim PwC</p> <p>12 should have told you in 2008 after 2008-111 came</p> <p>13 out? What would you have done?</p> <p>14 A I would have settled with the IRS.</p> <p>15 Q And how much would you have settled with</p> <p>16 the IRS for?</p> <p>17 A I don't know, whatever I could get. My</p> <p>18 problem with settlement with the IRS was we never</p> <p>19 got to the point where they were reasonable in</p> <p>20 terms of what the settlement was.</p> <p>21 I was getting advice from counsel as far</p> <p>22 as what the settlement should be, okay? The IRS</p> <p>23 never got to that point. The reason they never</p> <p>24 got to that point is because as long as we were in</p> <p>25 the -- I don't know what you call it -- the</p>	<p>236</p> <p>1 MR. HESSELL: Objection -- hold on. Hold</p> <p>2 on. Hold on.</p> <p>3 Why didn't they ever -- objection to</p> <p>4 foundation and calls for speculation about the</p> <p>5 IRS.</p> <p>6 BY MR. LANDGRAFF:</p> <p>7 Q Why did you never get into that range with</p> <p>8 the IRS?</p> <p>9 MR. HESSELL: Same objection.</p> <p>10 BY THE WITNESS:</p> <p>11 A Because the litigation squad had specific</p> <p>12 settlement instructions from the IRS and they were</p> <p>13 not authorized to come down to a level that we</p> <p>14 could afford to settle at.</p> <p>15 Had we acknowledged the debt and not</p> <p>16 gotten -- and not gone to court and not gone to</p> <p>17 trial, we would have been transferred to the</p> <p>18 collection section of the IRS and we would have</p> <p>19 gotten a substantially better deal, I think,</p> <p>20 and -- and that was my advice -- that I was</p> <p>21 getting, not that I was giving -- my advice was we</p> <p>22 could have settled at that point in time for</p> <p>23 substantially less, somewhere in the neighborhood</p> <p>24 of between a million five and \$5 million.</p> <p>25 We thought we had to beat this thing</p>

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<p style="text-align: right;">237</p> <p>1 because we were getting advice from PwC and 2 Hahn Loeser that we didn't meet whatever the 3 situation was. 4 Q You didn't get advice from PwC in 2008 5 that you could beat whatever this thing was, did 6 you? 7 A I got advice from PwC that this deal 8 wasn't going to implode. That was the advice that 9 I got. 10 Q I'm focusing on the timing, sir. You 11 didn't get advice from PwC in 2008 or any time 12 after 2008 that -- that you could beat whatever 13 the IRS -- 14 A That advice, no. What I didn't get 15 from -- what also I didn't get from PwC was the 16 full fact as to this 2008 notice and the liability 17 that it created for us. 18 Had I had this notice, I would never have 19 gone to trial. I would have acknowledged the tax 20 and I would have gone -- I'm not going to say this 21 again. I would have acknowledged the tax and I 22 would have gone to collection. 23 And I was being told at the time by my 24 advisors that we could make a substantially better 25 deal in collection, okay?</p>	<p style="text-align: right;">239</p> <p>1 recognize that some taxpayers may have filed 2 returns taking the position that they were 3 entitled to the purported tax benefits of the 4 types of transactions described in Notice 2001-16. 5 "These taxpayers should consult with a tax 6 advisor to ensure that their transactions are 7 disclosed properly and to take appropriate 8 corrective action," right? 9 A All the more you should have given me this 10 document. Because I never saw it. 11 Q You saw two-thousand -- you knew of 12 2008-111, right? You just said you did. 13 A I knew about it, yeah. 14 Q Okay. And -- and your tax lawyers had 15 2008-111, right? 16 A They didn't have -- 17 MR. HESSELL: Objection, foundation. 18 You can answer. 19 BY THE WITNESS: 20 A They didn't have knowledge that PwC had. 21 BY MR. LANDGRAFF: 22 Q You agree that your tax lawyers that were 23 representing you from 2008 forward had access to 24 and knew of 2008-111, right? 25 MR. HESSELL: Objection to the form of the</p>
<p style="text-align: right;">238</p> <p>1 Q 2008-111 that you knew about tells 2 taxpayers to consult with advisors and ensure that 3 transactions are properly disclosed, right? 4 MR. HESSELL: Objection, document 5 speaks -- 6 BY THE WITNESS: 7 A I don't -- I don't have enough tax 8 knowledge to know that. 9 BY MR. LANDGRAFF: 10 Q Well, you were just reading from the -- 11 from the notice itself. Do you -- 12 A I thought I read English at that point. 13 Tell me where you're talking about. 14 Where -- where am I talking about that I have 15 engage advisors. Where is that at? 16 Q If you turn to page -- the page ending 817 17 of Exhibit 2008-111. 18 A 817, I don't have anything like that. 19 Q Hold on. Exhibit 3, the -- I'm sorry. 20 We'll look at -- so Exhibit 3, the page ending in 21 643. 22 Do you see that? 23 A Yeah, I got it. 24 Q And at the top of page ending in 643, it 25 says, "The service and the Treasury Department</p>	<p style="text-align: right;">240</p> <p>1 question and foundation. Calls for speculation. 2 BY THE WITNESS: 3 A I don't know exactly what they had, 4 okay -- 5 BY MR. LANDGRAFF: 6 Q Well -- 7 A -- I know that -- 8 Q -- you've seen documents that they filed 9 on your behalf from 2009 referring to 2008-111, 10 right? 11 MR. HESSELL: I don't think he was done 12 with your prior question. You just cut me off. 13 THE WITNESS: Sorry. He cut me off, it's 14 not the first time. 15 MR. LANDGRAFF: I'll withdraw the question 16 and ask the question I've just asked. 17 BY MR. LANDGRAFF: 18 Q You've seen documents today from 2009 19 where your lawyers, writing on your behalf, 20 discussed 2008-111, right? 21 A Yes, I have. 22 Q Did you ever try to connect your lawyers 23 in the 2008, 2009, 2010 time frame to PwC? 24 A I think we had this discussion. I think 25 that's where Korb got whatever it was he talked</p>

<p style="text-align: right;">241</p> <p>1 about in the document that you referred to because 2 we did not supply him with that document. I don't 3 even know what that document is. 4 Q Did your attorneys ever say, "Mike, can we 5 call PwC?" 6 MR. HESSELL: Objection to the form of the 7 question. 8 BY THE WITNESS: 9 A Yeah, I don't know what that means. They 10 can call PwC any time they want. 11 BY MR. LANDGRAFF: 12 Q Did your attorneys ask you to -- to 13 introduce you to the PwC folks who provided you 14 advice in 2003? 15 MR. HESSELL: Objection to the form of the 16 question. 17 BY MR. LANDGRAFF: 18 Q The 2008 -- 19 BY THE WITNESS: 20 A I don't -- 21 BY MR. LANDGRAFF: 22 Q Hold on a second. I withdrew the 23 question. Let me ask you a new question. 24 In the 2008 and forward time frame -- 25 2008, 2009, '10, '11, '12 -- did your -- did you</p>	<p style="text-align: right;">243</p> <p>1 Hahn Loeser. 2 Q Who had contact with Hahn Loeser? 3 A I don't know. Whoever was producing the 4 documents. 5 Q So do you know whether whoever on your 6 legal team, whether it's Hahn Loeser, Glenn 7 Miller, Michael Desmond, Don Korb, do you know 8 whether they discussed the substance of the advice 9 that PwC provided you in 2003? 10 MR. HESSELL: Objection, calls for 11 speculation, foundation. 12 BY THE WITNESS: 13 A Yeah, I don't -- I can't tell you what 14 they discussed. I wasn't there. 15 BY MR. LANDGRAFF: 16 Q When you said a powwow, what did you mean? 17 A I mean they were in the same room at the 18 same time. 19 Q You have no idea what they discussed in 20 that room at the same time? 21 A I think I just said that. 22 Q Is that a yes? 23 Do you know -- 24 A That's a yes. 25 Q Do you know what was discussed -- okay.</p>
<p style="text-align: right;">242</p> <p>1 ever say, "Hey, Tricarichi legal team, Mike 2 Desmond, Glenn Miller, Don Korb, can you reach out 3 to PwC and talk to them about the advice they gave 4 me in 2003?" 5 A Did I tell them to? No. Did they know 6 that PwC represented me with an opinion? Yes. 7 Q Did -- did your lawyers, Mr. Desmond, 8 Mr. Miller, Mr. Korb, anyone else on the 9 Tricarichi legal team from 2008 and forward ask 10 you if it was okay if they contacted Mr. Stovsky 11 or anyone from PwC about the advice you were given 12 in 2003? 13 A I know they all had a big powwow in 2009 14 or 2010 or something like that over these 15 documents. And I know they all talked to one 16 another, including the lawyers. 17 Q You know that someone from PwC had a 18 powwow with your legal team in 2009? 19 A I know that when the IRS requested 20 documents in 2008 or 2009, whenever that was, that 21 the lawyers from P -- the -- I'm sorry, the people 22 from PwC and my lawyers, whoever that was at the 23 time -- and I don't know what time in 2009 because 24 I don't know when Glenn Miller got involved in 25 this -- but they certainly had contact with</p>	<p style="text-align: right;">244</p> <p>1 You answered it. Never mind. 2 Do you remember reading what the judge in 3 the tax court case thought of your credibility? 4 A Yeah, he didn't like me very much because 5 he thought I knew things that I didn't know. 6 Q What's the lowest amount of money the IRS 7 ever offered to settle at? 8 A Somewhere in the \$12 million range. 9 Q Do you remember when that offer was made? 10 A No. 11 Q Could you have -- 12 A I think it was right there -- I think it 13 was right before the trial. Might have been right 14 before the trial. Right around that time. 15 But that might have been the 14 million -- 16 there was a bunch of different offers, none of 17 which was less than 12 million. That was the 18 lowest offer I ever got from the IRS. 19 Q When the \$12 million offer was made by the 20 IRS, were you able to pay it if -- if you had 21 decided to accept the offer? 22 A No. 23 Q Did you ever make a counteroffer to the 24 IRS? 25 A Yeah, that was what was Korb for. That</p>

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<p style="text-align: right;">245</p> <p>1 was Korb's job. Korb made a \$5 million offer to</p> <p>2 the IRS.</p> <p>3 Q When did Korb make a \$5 million offer to</p> <p>4 the IRS?</p> <p>5 A At the conference that he had with the --</p> <p>6 one of the officers from the IRS with the slides.</p> <p>7 Don't you remember the slides? And the -- and</p> <p>8 the -- what was that thing called, the decision</p> <p>9 tree?</p> <p>10 Q Well, we'll talk about that. We'll go</p> <p>11 over that.</p> <p>12 Do you recall Mr. Korb sending you a</p> <p>13 binder of materials in the fall of 2010?</p> <p>14 MR. HESSELL: Objection to the form of the</p> <p>15 question.</p> <p>16 BY THE WITNESS:</p> <p>17 A If that was the slides, I remember the</p> <p>18 slides.</p> <p>19 BY MR. LANDGRAFF:</p> <p>20 Q We'll get to the slides. Do you recall</p> <p>21 getting a binder -- a binder of information from</p> <p>22 Mr. Korb in the fall of 2010?</p> <p>23 A Not off the top of my head.</p> <p>24 Q Can you turn to Exhibit 125.</p> <p>25</p>	<p style="text-align: right;">247</p> <p>1 the letter --</p> <p>2 A That's not what you asked me.</p> <p>3 Q Listen to my question, please, and --</p> <p>4 A I'm listening fine. I hear your</p> <p>5 questions. I have no problem hearing your</p> <p>6 questions. I think you have a problem asking your</p> <p>7 questions.</p> <p>8 Q Okay. My question was -- that I've asked</p> <p>9 twice and haven't received an answer so here's the</p> <p>10 question. Please listen. Do you know if you</p> <p>11 received the letter that is Exhibit 125?</p> <p>12 A I have no recollection of receiving this</p> <p>13 letter. That's not to say I didn't but I can tell</p> <p>14 you I have no recollection of receiving it.</p> <p>15 I do have recollection of receiving</p> <p>16 something that had slides that were going to be</p> <p>17 used at the IRS appeals meeting.</p> <p>18 Q Do you --</p> <p>19 A I can't be more specific than that.</p> <p>20 Q Do you recall getting a binder -- a large</p> <p>21 binder from Mr. Korb sent to your home address?</p> <p>22 A I don't have specific recollection of</p> <p>23 that.</p> <p>24 Q If you turn to Exhibit 123.</p> <p>25</p>
<p style="text-align: right;">246</p> <p>1 (WHEREUPON, a certain document was marked</p> <p>2 PwC Deposition Exhibit No. 125, for</p> <p>3 identification.)</p> <p>4 BY THE WITNESS:</p> <p>5 A It's going to take a second. Your</p> <p>6 notebooks don't lend themselves to large page</p> <p>7 movement.</p> <p>8 Okay. I got it.</p> <p>9 BY MR. LANDGRAFF:</p> <p>10 Q So Exhibit 125 is a letter to you dated</p> <p>11 September 17th, 2010, from Sullivan & Cromwell</p> <p>12 enclosing a binder.</p> <p>13 Do you see that in the beginning of</p> <p>14 Exhibit 125?</p> <p>15 MR. HESSELL: Objection, foundation.</p> <p>16 BY THE WITNESS:</p> <p>17 A I see that he says that.</p> <p>18 BY MR. LANDGRAFF:</p> <p>19 Q Did you receive Exhibit 125?</p> <p>20 A I don't know what Exhibit 125 refers to.</p> <p>21 Q You don't know if you received the letter</p> <p>22 that is Exhibit 125?</p> <p>23 A I just said I don't know what it refers</p> <p>24 to.</p> <p>25 Q I asked you if you know if you received</p>	<p style="text-align: right;">248</p> <p>1 (WHEREUPON, a certain document was marked</p> <p>2 PwC Deposition Exhibit No. 123, for</p> <p>3 identification.)</p> <p>4 BY THE WITNESS:</p> <p>5 A Got it.</p> <p>6 BY MR. LANDGRAFF:</p> <p>7 Q And what's marked as PwC Exhibit 123 has</p> <p>8 a -- has some kind of filing form on the front</p> <p>9 page, but if you turn to the second page of</p> <p>10 Exhibit 123, that ends in Bates number 951.</p> <p>11 Do you see that?</p> <p>12 A I see it.</p> <p>13 Q Do you recall getting a binder that had</p> <p>14 materials that -- that lined up with this table of</p> <p>15 contents?</p> <p>16 A You keep asking me about a binder. I said</p> <p>17 I remembered a presentation that would -- that</p> <p>18 they were going to do in front of the IRS, okay?</p> <p>19 I don't -- I don't remember a binder. I</p> <p>20 don't know if they were in a binder. I don't have</p> <p>21 a clue about a binder, okay?</p> <p>22 Q I'm asking you about the binder because</p> <p>23 that's what the letter to you from Mr. Korb</p> <p>24 refers --</p> <p>25 A And I've already asked -- you've already</p>

<p style="text-align: right;">249</p> <p>1 asked me, and I've already answered that.</p> <p>2 Q Let's try not to interrupt each other.</p> <p>3 Exhibit 125 refers to a binder that</p> <p>4 Mr. Korb says that -- or the letter says in 125</p> <p>5 that he sent to your home address, right?</p> <p>6 A That's what the letter says.</p> <p>7 Q Do you recall getting a binder of</p> <p>8 materials that looks like Exhibit 123 from</p> <p>9 Mr. Korb in September of 2010?</p> <p>10 A I don't recall getting a binder, for the</p> <p>11 third time.</p> <p>12 I recall some of the documents that are</p> <p>13 contained in Exhibit 125. How they were presented</p> <p>14 to me, I have no clue.</p> <p>15 Q Do you have any reason to believe that</p> <p>16 what 125 says it was sending you that it -- that</p> <p>17 you received it?</p> <p>18 MR. HESSELL: Objection, foundation, asked</p> <p>19 and answered.</p> <p>20 BY THE WITNESS:</p> <p>21 A I don't have any reason to believe I</p> <p>22 received it or I didn't receive it.</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q You have no reason to believe you did</p> <p>25 receive a letter sent to your home address by your</p>	<p style="text-align: right;">251</p> <p>1 binder that was associated with it, okay? Can we</p> <p>2 move on? Please.</p> <p>3 Q Did you attend any of the settlement</p> <p>4 meetings -- withdrawn.</p> <p>5 How many settlement meetings were there</p> <p>6 with the IRS?</p> <p>7 A I don't know. That was up to Korb. I</p> <p>8 know I didn't -- this was the big meeting that</p> <p>9 they did all kind of work to get ready for, and I</p> <p>10 know I was specifically asked not to attend that</p> <p>11 meeting. And that's in your documents somewhere.</p> <p>12 Q When -- when you say this is the meeting,</p> <p>13 what are you talking about? What are you</p> <p>14 referring to?</p> <p>15 A Korb had set up a big meeting with the IRS</p> <p>16 to try to get them to come off of their number and</p> <p>17 to give us something that was palatable that we</p> <p>18 could settle on. This I think was the meeting.</p> <p>19 Q And I'm just asking when you say "this I</p> <p>20 think," what are you talking about? This -- are</p> <p>21 you looking at 125?</p> <p>22 A Preparation for the meeting I believe are</p> <p>23 these documents.</p> <p>24 Q Which are, 125 and 123?</p> <p>25 I just need a -- you're saying --</p>
<p style="text-align: right;">250</p> <p>1 attorney who was charging you \$1,500 an hour?</p> <p>2 MR. HESSELL: Objection, argumentative --</p> <p>3 THE WITNESS: He's really fixated on that,</p> <p>4 isn't he?</p> <p>5 MR. HESSELL: Objection, argumentative and</p> <p>6 asked and answered.</p> <p>7 BY THE WITNESS:</p> <p>8 A I've already answered that question. I'm</p> <p>9 not going to answer it again.</p> <p>10 BY MR. LANDGRAFF:</p> <p>11 Q No, you -- I'm asking you, you said you</p> <p>12 have no reason to believe that. And I'm saying do</p> <p>13 you -- is it -- as you sit here today, you have no</p> <p>14 reason to believe that you did receive a letter</p> <p>15 with enclosures sent to your home address?</p> <p>16 MR. HESSELL: Objection --</p> <p>17 BY THE WITNESS:</p> <p>18 A Do you want to keep asking me the same</p> <p>19 question over and over again? Go ahead.</p> <p>20 BY MR. LANDGRAFF:</p> <p>21 Q I just asked you the question.</p> <p>22 What's your --</p> <p>23 A Again. You just asked me again. I said I</p> <p>24 don't have specific recollection one way or the</p> <p>25 other of receiving this letter or receiving a</p>	<p style="text-align: right;">252</p> <p>1 A I like this guy.</p> <p>2 Q -- these. You're --</p> <p>3 A (Unintelligible) 125 is what I'm</p> <p>4 responding to.</p> <p>5 Q When you say "these," I need to have a</p> <p>6 record of what it is you're talking about. Are</p> <p>7 you --</p> <p>8 A (Unintelligible.)</p> <p>9 MR. HESSELL: (Unintelligible) or the</p> <p>10 binder? Are --</p> <p>11 THE WITNESS: What's that?</p> <p>12 MR. HESSELL: Are you talking about the</p> <p>13 letter or the binder? I'm --</p> <p>14 THE WITNESS: I don't know. That's a good</p> <p>15 question.</p> <p>16 MR. HESSELL: Well, which document are you</p> <p>17 looking at right now?</p> <p>18 MR. LANDGRAFF: Scott --</p> <p>19 THE WITNESS: (Unintelligible.)</p> <p>20 (Unintelligible - speaking at once.)</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q Stop. Stop. Stop. I'm asking the</p> <p>23 questions. Your counsel can ask you questions</p> <p>24 afterwards.</p> <p>25 You're saying "these" or "this" is what</p>

<p>253</p> <p>1 was the workup for --</p> <p>2 A I already said Exhibit 125. You weren't</p> <p>3 listening.</p> <p>4 Q And so 125 refers to the workup done for</p> <p>5 what you say is the big meeting with the IRS,</p> <p>6 right?</p> <p>7 A Right.</p> <p>8 Q And did you -- you said you were asked not</p> <p>9 to attend the meeting?</p> <p>10 A Yes.</p> <p>11 Q By whom?</p> <p>12 A Don Korb.</p> <p>13 Q Why did he ask you not to attend the</p> <p>14 meeting?</p> <p>15 A Go look at -- read his deposition.</p> <p>16 Q Why did Don Korb ask you not to attend the</p> <p>17 meeting?</p> <p>18 A I don't know the answer to that. Go read</p> <p>19 his deposition.</p> <p>20 Q Was he worried you'd lose your temper?</p> <p>21 MR. HESSELL: Object to --</p> <p>22 THE WITNESS: I do like this guy. He's</p> <p>23 really trying to get under my skin. I really want</p> <p>24 somebody to read this transcript to see what he's</p> <p>25 doing. I really do.</p>	<p>255</p> <p>1 (WHEREUPON, a certain document was marked</p> <p>2 PwC Deposition Exhibit No. 129, for</p> <p>3 identification.)</p> <p>4 THE WITNESS: That's in the other book.</p> <p>5 MR. HESSELL: No, it's not.</p> <p>6 THE WITNESS: This book only goes -- oh,</p> <p>7 I'm sorry. My bad. 129.</p> <p>8 BY THE WITNESS:</p> <p>9 A Got it.</p> <p>10 BY MR. LANDGRAFF:</p> <p>11 Q 129 is -- marked as PwC Exhibit 129 is a</p> <p>12 cover email from Richard Corn to Peter -- do you</p> <p>13 know how to pronounce his last name, Peter's last</p> <p>14 name?</p> <p>15 A I don't know.</p> <p>16 Q Peter, last name spelled S-z-p-a-l-i-k.</p> <p>17 And then it's CC Michael Desmond and Andrew Mason,</p> <p>18 and the subject is 10/27 Conference Slides.</p> <p>19 Do you see that, sir?</p> <p>20 A Yeah, I see that's what it says.</p> <p>21 Q And then there's attachments referenced in</p> <p>22 the email from Mr. Corn to Peter at the IRS,</p> <p>23 correct?</p> <p>24 A I don't know that I can answer that</p> <p>25 question. It doesn't say who the attachments are</p>
<p>254</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q Did Mr. Korb give you a reason why you</p> <p>3 shouldn't attend the settlement meeting with the</p> <p>4 IRS?</p> <p>5 A Didn't I just answer that question a</p> <p>6 minute ago? No, he didn't give me a reason.</p> <p>7 Q Did you ask --</p> <p>8 A He said words to the effect, "It's better</p> <p>9 if you're not there."</p> <p>10 Q And did you ask him why it's better that</p> <p>11 you're not there?</p> <p>12 A No.</p> <p>13 Q You didn't want to attend the meeting with</p> <p>14 the IRS?</p> <p>15 A Is that a question?</p> <p>16 Q Yeah, did you want to attend the meeting</p> <p>17 with the IRS?</p> <p>18 A I took the advice of my lawyer who said</p> <p>19 it's better if you're not there. Where -- why he</p> <p>20 gave me that advice, you should have asked him in</p> <p>21 his deposition and I believe you did. I think --</p> <p>22 if I'm not right, I think you did.</p> <p>23 Q You've referred to slides a few times. If</p> <p>24 you turn to Exhibit 129.</p> <p>25</p>	<p>255</p> <p>1 directed to.</p> <p>2 Q The attachment -- what do you mean?</p> <p>3 A I said the email does not reference who</p> <p>4 the attachments were sent to.</p> <p>5 Q Do you see the -- in Exhibit 129 where it</p> <p>6 says, "Peter, please find attached a set of</p> <p>7 PowerPoint slides for the appeals presentation</p> <p>8 tomorrow. We plan to go through these slides at</p> <p>9 the meeting tomorrow. We look forward to</p> <p>10 discussing this matter with you tomorrow."</p> <p>11 Do you see that?</p> <p>12 A Okay. Yeah, I see it.</p> <p>13 Q And then do you see the slides behind</p> <p>14 that?</p> <p>15 A I see it.</p> <p>16 Q Are these the slides you were referring to</p> <p>17 when you were talking about slides in preparation</p> <p>18 for a settlement conference with the IRS?</p> <p>19 A Yes.</p> <p>20 Q Did you review these slides before they</p> <p>21 were sent to the IRS?</p> <p>22 A Most likely, yes.</p> <p>23 Q Was Mr. Corn authorized to send the IRS</p> <p>24 these slides on your behalf?</p> <p>25 A They were authorized to do whatever they</p>

<p>257</p> <p>1 had to do to settle the case.</p> <p>2 Q And do you recall what -- what the offer</p> <p>3 was at the October 27th, 2010 settlement</p> <p>4 conference?</p> <p>5 A I don't know. It should be in here, I</p> <p>6 would think.</p> <p>7 Q Let me -- I can try to refresh your</p> <p>8 recollection. If you'd look at Exhibit 137.</p> <p>9 (WHEREUPON, a certain document was marked</p> <p>10 PwC Deposition Exhibit No. 137, for</p> <p>11 identification.)</p> <p>12 BY MR. LANDGRAFF:</p> <p>13 Q Do you have Exhibit 137 in front of you?</p> <p>14 A I do.</p> <p>15 Q And PwC 137 is an exhibit to Joel Levin</p> <p>16 from you -- you copy other people but it's to Joel</p> <p>17 Levin from you on November 11, 2010. Subject</p> <p>18 matter is IRS settlement meeting.</p> <p>19 Do you see that?</p> <p>20 A I see it.</p> <p>21 Q And you say at that meeting they made a</p> <p>22 settlement offer of 14 million. Does that sound</p> <p>23 right?</p> <p>24 A "They" is the IRS you're talking about?</p> <p>25 Q Correct. I was -- so does this refresh</p>	<p>259</p> <p>1 Q Did you -- did he -- did Mr. Korb discuss</p> <p>2 with you a counteroffer that he made at the</p> <p>3 meeting?</p> <p>4 A He may have.</p> <p>5 Q As you sit here today, do you know whether</p> <p>6 or not Mr. Korb made a counteroffer to the IRS in</p> <p>7 response to the IRS's offer to settle the case for</p> <p>8 14 million?</p> <p>9 A I don't know if he actually made it. I</p> <p>10 know that he had authorization to make it.</p> <p>11 Q Did you ask him if he made a counteroffer?</p> <p>12 A I don't recall.</p> <p>13 Q In late October/early November 2010, would</p> <p>14 you have been able to pay a \$14 million</p> <p>15 settlement?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A Didn't we go over this? I didn't have the</p> <p>19 money to make a \$14 million settlement. We've --</p> <p>20 we've had this discussion already. You like going</p> <p>21 back and forth -- are you trying to trap me or</p> <p>22 something with -- with different answers to the</p> <p>23 same question over and over again? Is that what</p> <p>24 you're doing?</p> <p>25 Q If you'd turn to Exhibit 140.</p>
<p>258</p> <p>1 your recollection that the IRS offer at that</p> <p>2 October meeting was \$14 million?</p> <p>3 A You asked me what our offer was.</p> <p>4 Q My question to you is do you remember what</p> <p>5 the IRS offer was to settle the case at the</p> <p>6 October 27th, 2010 settlement conference?</p> <p>7 A Based on this, it was 14 million. I</p> <p>8 thought it was less, but it could have been less</p> <p>9 later.</p> <p>10 Q Did you make a counteroffer at that</p> <p>11 meeting?</p> <p>12 A My understanding from --</p> <p>13 MR. HESSELL: Hold on.</p> <p>14 Objection, foundation.</p> <p>15 BY THE WITNESS:</p> <p>16 A Yeah, I wasn't at that meeting, so I can't</p> <p>17 say for sure what was discussed, but I can say</p> <p>18 that Korb had authorization to offer \$5 million.</p> <p>19 BY MR. LANDGRAFF:</p> <p>20 Q Do -- do you know whether Mr. Korb made a</p> <p>21 \$5 million counteroffer at the October 27th</p> <p>22 meeting?</p> <p>23 A The meeting that I wasn't at?</p> <p>24 Q Yeah.</p> <p>25 A No.</p>	<p>260</p> <p>1 (WHEREUPON, a certain document was marked</p> <p>2 PwC Deposition Exhibit No. 140, for</p> <p>3 identification.)</p> <p>4 BY THE WITNESS:</p> <p>5 A 140.</p> <p>6 BY MR. LANDGRAFF:</p> <p>7 Q 140 is PwC Exhibit 140, and it's an email</p> <p>8 from Don Korb dated December 6, 2010, to you and</p> <p>9 others.</p> <p>10 Do you see that?</p> <p>11 A Yep.</p> <p>12 Q And the subject is "Forward: Tomorrow's</p> <p>13 call," right?</p> <p>14 A Yeah, that's what it says.</p> <p>15 Q And there's a -- and there's an attachment</p> <p>16 called the decision tree. Tricarichi decision</p> <p>17 tree; do you see that?</p> <p>18 A Yeah, it's not here, but I see that it</p> <p>19 says that.</p> <p>20 Q So if you flip to what's marked as PwC</p> <p>21 Exhibit 139.</p> <p>22 (WHEREUPON, a certain document was marked</p> <p>23 PwC Deposition Exhibit No. 139, for</p> <p>24 identification.)</p> <p>25</p>

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<p>261</p> <p>1 BY THE WITNESS:</p> <p>2 A This is -- I know it's one letter -- one</p> <p>3 number off, but it's in a different book.</p> <p>4 BY MR. LANDGRAFF:</p> <p>5 Q Okay. Sorry. I apologize. Have --</p> <p>6 A If you're going to flip back and forth,</p> <p>7 you should have put these in the same book.</p> <p>8 139. Go ahead.</p> <p>9 Q Okay. So exhibit -- PwC Exhibit 139 is --</p> <p>10 is from Andrew Mason dated December 6, 2010, to</p> <p>11 Peter S-z-p-a-l-i-k at the IRS, which attaches</p> <p>12 this decision tree, correct?</p> <p>13 A There's nothing attached to 138.</p> <p>14 Q Do you not have -- to 139?</p> <p>15 A Oh, 139.</p> <p>16 Oh, yeah, there's something on the back of</p> <p>17 139. I see it. There's no numbers on it,</p> <p>18 though -- there are a few numbers.</p> <p>19 Q Is that the decision tree you were</p> <p>20 referring to when you refer to a decision tree?</p> <p>21 A It's a decision tree. It doesn't have any</p> <p>22 numbers on it. There's one of these that has</p> <p>23 numbers on it.</p> <p>24 Q Does the decision -- what -- what Bates</p> <p>25 number is the decision tree you're looking at of</p>	<p>263</p> <p>1 know -- have you seen any evidence of whether</p> <p>2 Mr. Korb ever made an offer to pay the IRS</p> <p>3 \$5 million to settle the case?</p> <p>4 A I know there's a decision tree somewhere</p> <p>5 that has \$5 million on it, but I don't know</p> <p>6 whether Korb actually submitted that or not. I</p> <p>7 told you I wasn't at that meeting.</p> <p>8 Q Do you -- do you have any knowledge at any</p> <p>9 time of any of your lawyers offering to settle the</p> <p>10 case for \$5 million?</p> <p>11 A I don't have a document other than the one</p> <p>12 I'm talking about, the decision tree, which I</p> <p>13 approved.</p> <p>14 Like I said, whether they actually</p> <p>15 presented it or whether the IRS said to them we</p> <p>16 don't want to see any -- we're not -- we're not</p> <p>17 willing to take anything lower or anything like</p> <p>18 that, I don't have a -- I don't have no clue. I</p> <p>19 don't know what happened.</p> <p>20 All I know is they were authorized by me</p> <p>21 to settle the case for 5 million or less.</p> <p>22 Q Do you remember any of your legal team</p> <p>23 coming back to you and saying, "Michael, we -- we</p> <p>24 made the \$5 million offer and here's what the IRS</p> <p>25 said?"</p>
<p>262</p> <p>1 Exhibit 139?</p> <p>2 A Well, Bates number is NV0026454.</p> <p>3 Q Do you see handwritten numbers in the --</p> <p>4 on the decision tree?</p> <p>5 A I see a couple of handwritten numbers,</p> <p>6 yeah. I don't see anything in the bottom.</p> <p>7 Taxpayer's total offer without interest, there's</p> <p>8 nothing on that line.</p> <p>9 Q Do you -- do you know whether the -- this</p> <p>10 decision tree was sent to the IRS?</p> <p>11 MR. HESSELL: Objection, foundation.</p> <p>12 BY THE WITNESS:</p> <p>13 A I -- I don't know. I could tell you</p> <p>14 probably not because there's -- it's not finished.</p> <p>15 BY MR. LANDGRAFF:</p> <p>16 Q Did your legal team think the case could</p> <p>17 get settled for 3.5 million?</p> <p>18 A Well, I told you the number I had in my</p> <p>19 head was 5 million and that's what they were</p> <p>20 authorized to settle it at. So it could be.</p> <p>21 Could be they thought they were settling at 3.5.</p> <p>22 I don't know.</p> <p>23 Their job was to settle it for as little</p> <p>24 as possible.</p> <p>25 Q Do you -- and you don't -- you don't</p>	<p>264</p> <p>1 Do you have any recollection of any</p> <p>2 reaction from the IRS to an offer to settle the</p> <p>3 case for \$5 million?</p> <p>4 A I don't recall that was ever said to me.</p> <p>5 Q Now, eventually -- I think you were</p> <p>6 talking about -- you were talking about</p> <p>7 constraints that different IRS groups had on</p> <p>8 settlement. And I don't want to put words in your</p> <p>9 mouth.</p> <p>10 Did you refer to one group at the IRS and</p> <p>11 then the matter moving to another group? What --</p> <p>12 what were you talking about there?</p> <p>13 A Well, that's my understanding from</p> <p>14 Desmond.</p> <p>15 Q And what are the two groups? What are</p> <p>16 the -- tell me what you -- what you understood</p> <p>17 about who you were talking to at the IRS and when</p> <p>18 that shifted to a trial team or whatever it is you</p> <p>19 said. Just explain to me what your understanding</p> <p>20 of that -- of -- of that is.</p> <p>21 A My recollection is that the people who</p> <p>22 were trying the case or who were about to try the</p> <p>23 case or were trying the case had instructions from</p> <p>24 on high.</p> <p>25 And I even remember a conversation that</p>

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<p style="text-align: right;">265</p> <p>1 somebody had with one of them that said we don't 2 even know -- if you present us with a -- with a 3 number, we don't even know who to give it to 4 because we don't know where these instructions are 5 coming from. But we know that what we're 6 empowered to do. 7 And they had a range where they could 8 settle the case between one number and another 9 number. And those numbers were all between 12 and 10 14 million, 12 and 15 million, okay? That's what 11 I was told. 12 And then Desmond had some concept that he 13 called the adults in the room. And he would 14 always say to us or to me, "Wait until we get the 15 adults in the room. We'll be able to get a much 16 better deal with the adults in the room," okay? 17 And that is what I was told. And my 18 understanding from that was that there was another 19 group at the IRS that was not bound by these same 20 constraints, okay? And that they were much more 21 easy to settle with. 22 Q And using your phrase, do you know whether 23 or not you ever discussed settlement with the 24 adults in the room at the IRS? 25 A We never got to the adults in the room.</p>	<p style="text-align: right;">267</p> <p>1 and that's the reason why I didn't have 2 credibility with the judge. Because you had the 3 knowledge and that knowledge was attributed to me 4 by the judge, and I didn't have it, okay? 5 So I don't know if that answers your 6 question or not, but if we would have had that 7 knowledge in 2008, things most likely would have 8 gone a different direction because we would have 9 looked at it and said, shit, we don't have that. 10 They know stuff that we don't know or they knew 11 stuff that we don't know. 12 And we would have said let's see what our 13 options would be as far as confessing judgment, if 14 you will. There was a document in here that you 15 showed me today that had an option for me to sign 16 it and return it acknowledging what the IRS was 17 saying, okay? 18 Had I signed that document and returned it 19 in 2009, my feeling is -- and I don't know this 20 for a fact -- we would have got to the adults in 21 the room. 22 But since we didn't have the knowledge, 23 the lawyers thought they could win the case. And 24 they thought that it was a better outcome for us 25 to go to trial than it was to confess to judgment.</p>
<p style="text-align: right;">266</p> <p>1 Q Do you know? 2 A Do I know why? Because we litigated it. 3 The litigation team was always on board. We never 4 got to a point until after the tax court trial 5 where there would be any collection people 6 involved. 7 Q Did Mr. Desmond tell you you needed to go 8 through with the trial before you got to the 9 adults in the room at the IRS? 10 A We needed to concede the debt. If you 11 people had told us in 2008 what you knew in 12 particular about that circular, whatever it was, 13 2008-111, as far as the information that you gave 14 us. 15 You made a comment about what did the 16 judge think of you. The judge did not think of me 17 very highly. And the judge didn't think of me 18 highly because he thought I was lying to him when 19 I told him that I didn't have information about 20 the internal workings of the plan, as it's 21 referred to in that document. 22 And I didn't. I had no knowledge of 23 anything that was going on inside of that black 24 box. You did, your people did, but I didn't. 25 So the judge thought I was lying to him</p>	<p style="text-align: right;">268</p> <p>1 Q What's the plan that you say PwC knew 2 about that you didn't know about? 3 A Still we're on -- 4 MR. HESSELL: Asked and answered. 5 BY MR. LANDGRAFF: 6 Q You just referred to a plan. I want to 7 know what you're talking about. What -- 8 A Are you -- do you -- 9 Q -- the plan -- 10 A -- do you not listen to what I'm saying? 11 Seriously, do you not listen to what I'm saying? 12 The plan that PwC recognized when they 13 looked at the Fortrend transaction and how they 14 were going to reduce the -- the tax liability. 15 That plan. The one we talked about for about 16 15 minutes before lunch. Do you remember that 17 one? 18 Q You know that Hahn Loeser knew of that 19 plan, right? 20 MR. HESSELL: Objection, foundation. 21 BY THE WITNESS: 22 A No idea. I don't think Hahn Loeser knew 23 of that plan. 24 BY MR. LANDGRAFF: 25 Q Your testimony is -- as you sit here today</p>

<p>269</p> <p>1 is that you don't know that Hahn Loeser knew how 2 Fortrend intended to reduce its tax liability? 3 A I don't know if they knew it or not. I 4 know that you knew it. I knew that PwC knew it 5 because it's in the documents. 6 Q Your own lawyers knew about it, right? 7 A How do you know that? Show me the 8 document. 9 Q I'm asking -- 10 A Show me the document. Show me a document 11 that shows me that my lawyers knew about it 12 because I -- I've never seen it and I have no 13 knowledge of it. Show it to me. 14 Q Is it your testimony that you don't know 15 whether or not Hahn Loeser knew what Fortrend's 16 plan was to reduce its tax liability after the 17 Westside stock sale transaction? 18 MR. HESSELL: Objection, asked and 19 answered. 20 BY THE WITNESS: 21 A That's my testimony. 22 BY MR. LANDGRAFF: 23 Q Now, you -- you thought you were going to 24 win in tax court, right? 25 A I wouldn't have gone there if I didn't</p>	<p>271</p> <p>1 MR. HESSELL: Object -- 2 BY THE WITNESS: 3 A -- case -- 4 MR. HESSELL: Hold on. Hold on. Hold on. 5 Objection to the form of the question and 6 the colloquy that preceded it. 7 BY MR. LANDGRAFF: 8 Q Okay. You wrote to your lawyer, Randy 9 Hart, "Take a look at this case I just got from 10 Glenn Miller. It's identical to ours, transferee 11 liability, involves MidCoast and was decided in 12 favor of the taxpayer. It doesn't get any better 13 than this." 14 Did you write that to your lawyer? 15 A Most likely, yeah. 16 Q Most likely or -- or yes? 17 A Most likely. 18 Q There's a chance you didn't write that? 19 MR. HESSELL: Oh, gosh. Come on. 20 BY THE WITNESS: 21 A I can't believe you. I'm really having 22 trouble with you. You are really a bad 23 questioner. I got to tell you. You ask the 24 dumbest questions I've ever been asked in a 25 deposition.</p>
<p>270</p> <p>1 think there was a good chance that we were going 2 to win. 3 Q So looking at Exhibit -- would you turn to 4 Exhibit 146. 5 (WHEREUPON, a certain document was marked 6 PwC Deposition Exhibit No. 146, for 7 identification.) 8 BY THE WITNESS: 9 A Got it. 10 BY MR. LANDGRAFF: 11 Q And Exhibit 146 is -- 12 A No, wait a minute. That's 140. I'm 13 sorry. 146. 14 Got it. 15 Q Exhibit 146 is a March 16th, 2011 email 16 from you to Randy Hart forwarding the Starnes 17 case, right? 18 A That's what it says. 19 Q And this is a case you did read, whether 20 or not you claim you didn't read Enbridge before 21 in the memo that was sent to you, you did read the 22 Starnes -- 23 A No, I -- 24 Q -- case, right? 25 A -- know that --</p>	<p>272</p> <p>1 BY MR. LANDGRAFF: 2 Q Is there a chance you didn't write the 3 email to Mr. Hart that's part of Exhibit 1 -- 4 A I said I probably sent it to him, yes. 5 Probably, okay? 6 Q Is there a difference between most likely 7 and probably? 8 A No, there isn't. 9 Q Okay. So you probably sent this email to 10 Randy Hart. When you probably sent it to 11 Mr. Hart, had you read the case that you tell him 12 is identical to yours? 13 A I don't know that I read the case. I got 14 the case from Glenn Miller who said it was a great 15 case for us and I sent it to Randy to read. 16 I don't know this is the case. I don't 17 think this is the case, is it? Maybe it is. I 18 don't know. I don't think I read the case. 19 I think I had something from Glenn 20 Miller -- I had an email from Glenn Miller prior 21 to this that said, as discussed -- it's right here 22 underneath. 23 Was this before that one? Yeah. 24 The -- the prior email I got from Glenn Miller was 25 right underneath it, and it says, "As discussed."</p>

<p style="text-align: right;">273</p> <p>1 So that would lead me to believe that I had a 2 discussion with Glenn Miller about Starnes. 3 It doesn't lead me to believe that I read 4 it. It leads me to believe that I had a 5 discussion with my attorney about it and he 6 thought it was a good case and I -- and he sent it 7 to me and forwarded it to Randy. 8 Q Exhibit 157, if you'd turn to that, 9 please. 10 (WHEREUPON, a certain document was marked 11 PwC Deposition Exhibit No. 157, for 12 identification.) 13 BY MR. LANDGRAFF: 14 Q Do you have -- 15 A Got it. 16 Q -- Exhibit 157 in front of you? 17 A Mm-hm. 18 Q And Exhibit 157 is a -- the top of it is a 19 March 2nd, 2012 email from Glenn Miller to you, 20 right? 21 A Yeah, that's what it says. 22 Q And it's the -- it's a Slone case, right? 23 That's supposedly the attachment? 24 A Yeah. 25 Q And it -- the message is, I think it's,</p>	<p style="text-align: right;">275</p> <p>1 BY MR. LANDGRAFF: 2 Q And Exhibit 159, which is marked as PwC 3 Exhibit 159, at the top it's a series of emails, 4 but just to orient you, the top email is to you 5 from Glenn Miller on July 5th, 2012, right? 6 A That's what it says. 7 Q And if you go to the -- the bottom email 8 on Exhibit 159, which has the email from Glenn 9 Miller to you dated July 3rd, 2012; do you see 10 that? 11 A I see it. 12 Q And it's CC'd Sheri Dillon and Michael 13 Kummer, K-u-m-m-e-r, right? 14 A Yep. 15 Q Who are Sheri Dillon and Michael Kummer? 16 A I believe they're other lawyers at 17 Miller's firm. 18 Q Did Sheri Dillon work on your case? 19 A She did things sporadically. 20 Q Is she one of Donald Trump's tax lawyers? 21 A She is. 22 Q Ms. -- 23 A Is that supposed to mean -- wait a minute. 24 Wait a minute. Is that supposed to mean 25 something?</p>
<p style="text-align: right;">274</p> <p>1 "Mike, FYI more good news," signed Glenn, right? 2 A That's what it says. 3 Q Do you recall looking at the Slone case? 4 A I have more knowledge of the Slone case 5 probably than anything else, but I don't ever 6 remember that I specifically read the case. 7 I do remember the outcome of the Slone 8 case, and it was a very good case for us. 9 Q Did the Slone case boost your confidence? 10 A It gave me another -- it gave me 11 another -- yeah, it gave me another, whatever, 12 another positive outcome. 13 Q Did you reach out to PwC to discuss the 14 meaning of the Starnes case or the Slone case? 15 A No, there was no reason to by that time. 16 Q If you turn to -- 17 A We already had a tolling agreement with 18 you. 19 Q If you turn to Exhibit 159. 20 A 159. 21 (WHEREUPON, a certain document was marked 22 PwC Deposition Exhibit No. 159, for 23 identification.) 24 BY THE WITNESS: 25 A Okay.</p>	<p style="text-align: right;">276</p> <p>1 Q So -- 2 A Wait a minute. I want an answer to that. 3 Is that supposed to mean something? Is that some 4 kind of jab? 5 Q Glenn Miller says to you -- 6 A (Unintelligible.) 7 Q -- on July 3rd -- in Exhibit 159, on 8 July 3rd, Glenn Miller in the middle there says, 9 "The government is now, by my latest count, 0 and 10 7 in these Midco transferee cases, by the way." 11 Do you see that? 12 A I see it. 13 Q Did that boost your confidence in your 14 chances at -- at trial? 15 A I'm sure it did. 16 Q Did you contact PwC about the government's 17 winning percentage on Midco or transferee cases? 18 A I don't know. I don't think there was a 19 reason to contact PwC. You have to understand, if 20 we would have won this case, PwC would have 21 absolutely no liability here. 22 So I don't know what -- what you're going 23 after when you're asking me if I communicated 24 victories in tax court to PwC. How would that 25 possibly affect PwC other than positively?</p>

<p style="text-align: right;">277</p> <p>1 Q If you turn to Exhibit 177. 2 (WHEREUPON, a certain document was marked 3 PwC Deposition Exhibit No. 177, for 4 identification.) 5 BY MR. LANDGRAFF: 6 Q Do you have Exhibit 177 in front of you? 7 A I do. 8 Q Exhibit 177 is an email from Michael 9 Desmond to you with copies to Craig Bell and 10 Bradley Ridlehoover dated May 29, 2014; is that 11 right? 12 A May 29, 2014, yeah. 13 Q And that's -- is that just before the tax 14 trial? 15 A I don't know, the tax trial was in 2014. 16 Q Do you recall the tax trial was in June 17 of 2014? 18 A I recall it was in 2014 in the summer. 19 Q Okay. And Mr. Desmond's forwarding you 20 another case, a transferee liability case holding 21 for -- or I don't know if he's forwarding it to 22 you, but he's saying the tax court issued a 23 decision in another pending transferee liability 24 case holding for the taxpayer and against the IRS, 25 right?</p>	<p style="text-align: right;">279</p> <p>1 I think that's a pretty strong statement, 2 don't you? 3 I'm going to mark this one. 4 Q Do you recall in 2011 -- well, I'll just 5 show it to you because I think you were saying you 6 weren't sure when the -- you think the IRS came 7 down around \$12 million, but you didn't recall 8 when; is that -- is that fair? 9 A Yeah, I don't know when. I think they 10 were -- I think it was a couple times. I think it 11 was right before the tax case, and I think it was 12 sometime prior to that. 13 Q Okay. Let's look at what I think is one 14 of the times, which is Exhibit 151. If you'd turn 15 to that, please. 16 (WHEREUPON, a certain document was marked 17 PwC Deposition Exhibit No. 151, for 18 identification.) 19 BY THE WITNESS: 20 A Thank you for not having me change the 21 book again. Got it. 22 BY MR. LANDGRAFF: 23 Q And Exhibit 151 is an email -- or, excuse 24 me, is a fax -- cover page is a fax to Don Korb 25 from Pete S. -- I'll just call him because we</p>
<p style="text-align: right;">278</p> <p>1 A I don't think I've ever read this before. 2 I'm sorry, answer your -- ask your question again. 3 Q You don't think you read what? 4 A I don't think I've ever really read this 5 email, but it's a great email. 6 Go ahead and ask your question. 7 Q You don't think you read the email from 8 your attorney to you in -- in May of 2014? 9 A Well, I may have read it then, but I 10 haven't seen it recently and it's a great email. 11 Q So Mr. Desmond told you in late May 12 of 2014 that the tax court issued a decision in 13 another pending transferee liability case holding 14 for the taxpayer and against the IRS, right? 15 A That's what it says. 16 Q And what -- what do you like about the 17 email? 18 A Well, it says exactly what I'm contending. 19 "It also turns heavily on numerous factual 20 findings that the taxpayers directly and through 21 their lawyers and accountants, quote, did not at 22 the time that their stock was sold have or have 23 reason to have any inkling that the buyer or 24 someone related thereto was acting illegitimately 25 to avoid the payment of federal tax."</p>	<p style="text-align: right;">280</p> <p>1 spelled his name a few times -- from August 29th, 2 2011. 3 Do you see that? 4 A I'm sorry. I'm looking at the actual 5 document. What do you want me to look at? 6 Q I'm just trying to orient you to the first 7 page of Exhibit 151, which is a fax cover 8 transmission to Don Korb from Peter S. at the IRS, 9 correct? 10 A Yeah, that's what it says. 11 Q And it's -- it's dated August 29th, 2011? 12 A Mm-hm. 13 Q Is that a yes? 14 A That is. 15 Q And so in the second page that you were 16 looking at ending in Bates number 035 of 17 Exhibit 151 -- 18 A That's what I was looking at. 19 Q Is -- is -- is this -- 20 THE WITNESS: I'm sorry to the video guy 21 if I block my face with this, but I have to hold 22 it up in order to read it. 23 THE VIDEOGRAPHER: Not a problem. 24 BY THE WITNESS: 25 A Go ahead.</p>

<p>281</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q Is the -- did you receive or review</p> <p>3 Exhibit 151?</p> <p>4 A I don't know. I remember it.</p> <p>5 Q You do remember it?</p> <p>6 A Mm-hm.</p> <p>7 Q And I just -- you just need to say "yes"</p> <p>8 or "no" for the record.</p> <p>9 A I said I don't know, I remember it.</p> <p>10 That's the record.</p> <p>11 Q Do you -- do you understand what the IRS</p> <p>12 settlement offer is in Exhibit 151?</p> <p>13 MR. HESSELL: Objection, foundation.</p> <p>14 BY THE WITNESS:</p> <p>15 A I remember there was some hink to this. I</p> <p>16 don't remember what it was. I'm looking for it</p> <p>17 now.</p> <p>18 There was something that wasn't included</p> <p>19 on this, but I don't see it off the top of my</p> <p>20 head. So with the caveat that I -- I thought</p> <p>21 there was something that wasn't including</p> <p>22 on -- included on this -- I see a \$12,416,438</p> <p>23 number.</p> <p>24 BY MR. LANDGRAFF:</p> <p>25 Q And you -- did you say there was a hink to</p>	<p>283</p> <p>1 BY MR. LANDGRAFF:</p> <p>2 Q Exhibit 153 is an email from Mr. Korb to</p> <p>3 you from September 1st, 2011.</p> <p>4 Do you see that, sir?</p> <p>5 A That's what it says.</p> <p>6 Q And the subject is, "Just got off the</p> <p>7 phone with the IRS appeals officer," right?</p> <p>8 A Yeah.</p> <p>9 Q And Mr. Korb tells you, "I -- I told him</p> <p>10 that you were ready to go to court and that there</p> <p>11 was nothing that could be done at appeals except</p> <p>12 settling for the cost of litigation. He said fine</p> <p>13 and will now send the case back to exam for exam</p> <p>14 to prepare the statutory notice of deficiency, the</p> <p>15 90-day letter."</p> <p>16 And then Mr. Korb says, "I did get the</p> <p>17 impression from a couple of things he said during</p> <p>18 our conversation that he might move his offer down</p> <p>19 but was clear that it would not get in the range</p> <p>20 you need at the present time."</p> <p>21 Do you see that?</p> <p>22 A That's what it says.</p> <p>23 Q Do you know -- do you recall what the</p> <p>24 range that you needed in this time frame,</p> <p>25 November -- pardon me, September 2011?</p>
<p>282</p> <p>1 it, h-i-n-k?</p> <p>2 A Yeah, there was some blank line or</p> <p>3 something that had to be filled in later.</p> <p>4 Q What's a -- what's a hink? I just want to</p> <p>5 understand what you think wasn't here.</p> <p>6 A Something that wasn't included in the</p> <p>7 calculation.</p> <p>8 Q Okay. So as you look at Exhibit 151,</p> <p>9 you're not sure whether that's a -- a full offer</p> <p>10 or includes everything that the IRS was willing to</p> <p>11 settle for?</p> <p>12 A That's correct.</p> <p>13 Q Okay. But is it your recollection,</p> <p>14 separate and apart from -- from this exhibit, 151,</p> <p>15 that at some point the IRS made an offer in the</p> <p>16 neighborhood of -- to settle the case in the</p> <p>17 neighborhood of \$12 million?</p> <p>18 A That's what I said a couple times already.</p> <p>19 Q If you turn to Exhibit 153.</p> <p>20 (WHEREUPON, a certain document was marked</p> <p>21 PwC Deposition Exhibit No. 153, for</p> <p>22 identification.)</p> <p>23 BY THE WITNESS:</p> <p>24 A I see it.</p> <p>25</p>	<p>284</p> <p>1 A I think it was \$5 million, between 1.5 and</p> <p>2 \$5 million. That was the range. I've said that</p> <p>3 about five times already now, too.</p> <p>4 Q And after you decided to go to trial, were</p> <p>5 you told that the IRS would not settle for less</p> <p>6 than what was offered in the -- in this</p> <p>7 administrative appeals process?</p> <p>8 A I don't know. I recollect they made</p> <p>9 another offer right before trial that was also in</p> <p>10 the either 12 or \$14 million range. I was not</p> <p>11 told that, no.</p> <p>12 Q Would you turn to Exhibit 166.</p> <p>13 MR. HESSELL: Chris, before you do, could</p> <p>14 we take a restroom break?</p> <p>15 MR. LANDGRAFF: Sure thing.</p> <p>16 THE VIDEOGRAPHER: We are now going off</p> <p>17 the record. The time is 3:41 p.m.</p> <p>18 (WHEREUPON, a recess was had.)</p> <p>19 THE VIDEOGRAPHER: We are now going back</p> <p>20 on the record. The time is 3:54 p.m.</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q In 2008, do you recall how much you would</p> <p>23 have been able to pay to settle your liability</p> <p>24 with the IRS?</p> <p>25 A Probably around \$5 million. It would</p>

<p>285</p> <p>1 depend when exactly in 2008.</p> <p>2 Q So when you say if you had -- if PwC had</p> <p>3 told you of what you claim is their knowledge of</p> <p>4 Fortrend's plan to reduce Fortrend's tax liability</p> <p>5 and you would have settled with the IRS if PwC had</p> <p>6 told you that, you would have needed a \$5 million</p> <p>7 number from the IRS to settle?</p> <p>8 A Somewhere in that neighborhood, yeah.</p> <p>9 Q Now, before we broke, I asked you if after</p> <p>10 you decided to go to trial, you were -- were you</p> <p>11 told that the IRS would not settle for less than</p> <p>12 what was offered in the administrative appeals</p> <p>13 process. And I think you said you didn't know or</p> <p>14 you didn't remember. Is that correct?</p> <p>15 A Yeah, that's what I said.</p> <p>16 Q And if you look at -- would you turn now</p> <p>17 to Exhibit 166.</p> <p>18 (WHEREUPON, a certain document was marked</p> <p>19 PwC Deposition Exhibit No. 166, for</p> <p>20 identification.)</p> <p>21 BY THE WITNESS:</p> <p>22 A Yep. I'm on it.</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q And 166 is an email to you from Michael</p> <p>25 Desmond from August 13th, 2013.</p>	<p>287</p> <p>1 A Yeah.</p> <p>2 Q Why did you hire McGuireWoods?</p> <p>3 A We lost Bingham.</p> <p>4 Q Why did you lose Bingham?</p> <p>5 A Desmond went on his own and had his own</p> <p>6 tax -- boutique tax firm. And I think Glenn</p> <p>7 Miller went to another firm.</p> <p>8 So we kept Desmond. Desmond didn't think</p> <p>9 he could do the case by himself, he needed help,</p> <p>10 so he thought McGuireWoods was the way to go.</p> <p>11 Q Do you remember that in May of 2014, a</p> <p>12 month or so before the trial began, that</p> <p>13 Mr. Desmond suggested to you that you make another</p> <p>14 settlement offer to the IRS?</p> <p>15 A No, I don't remember that. I thought the</p> <p>16 settlement offers were futile at this point.</p> <p>17 Q So if you would turn to Exhibit 178.</p> <p>18 (WHEREUPON, a certain document was marked</p> <p>19 PwC Deposition Exhibit No. 178, for</p> <p>20 identification.)</p> <p>21 BY THE WITNESS:</p> <p>22 A Okay. 178.</p> <p>23 BY MR. LANDGRAFF:</p> <p>24 Q 178, which is marked as PwC Exhibit 178,</p> <p>25 is an email from May 31st, 2014. The top email is</p>
<p>286</p> <p>1 Do you see that?</p> <p>2 A Yep.</p> <p>3 Q And Mr. Desmond is -- is -- part of the</p> <p>4 email he's talking to you about the IRS's trial</p> <p>5 team; is that correct?</p> <p>6 A Yep, that's correct. That's what it says.</p> <p>7 Q And in the second paragraph of</p> <p>8 Exhibit 166, the last sentence, Mr. Desmond tells</p> <p>9 you, "The IRS has given no indication of a</p> <p>10 willingness to discuss settlement on terms other</p> <p>11 than what was offered in the administrative</p> <p>12 appeals process, basically a 15 percent discount</p> <p>13 on the total amount the IRS is looking to</p> <p>14 collect."</p> <p>15 Do you see that?</p> <p>16 A That's what it says.</p> <p>17 Q Did you receive the email that's</p> <p>18 Exhibit 166?</p> <p>19 A I assume I did. I'm not 100 percent sure,</p> <p>20 but I assume I did.</p> <p>21 Q You eventually added the McGuireWoods firm</p> <p>22 to your legal team, right?</p> <p>23 A Well, we added and subtracted.</p> <p>24 Q Did you eventually hire McGuireWoods to</p> <p>25 help try the tax court case?</p>	<p>288</p> <p>1 from you to Mr. Desmond copying Craig Bell and</p> <p>2 Bradley Riddlehoover, right?</p> <p>3 A That's what it says, yeah.</p> <p>4 Q And the first email in the chain from the</p> <p>5 day before is from Mr. Desmond to you, correct?</p> <p>6 A Yeah.</p> <p>7 Q And Mr. Desmond -- and you can review the</p> <p>8 first paragraph, but Mr. Desmond suggests that it</p> <p>9 may not -- the IRS may not consider an offer but</p> <p>10 he recommends making an offer, if nothing else, at</p> <p>11 a minimum to see where the IRS is on settlement,</p> <p>12 right?</p> <p>13 A Yeah.</p> <p>14 Q And you responded, "I think it's premature</p> <p>15 for any settlement offer and I don't want to offer</p> <p>16 one at this time. I don't want to give the IRS</p> <p>17 the impression that we think our case is weak,</p> <p>18 which I don't believe it is. If you still want to</p> <p>19 talk on Sunday, I'm available," right?</p> <p>20 A Again, that's what it says.</p> <p>21 Q And that's what you told Mr. Desmond?</p> <p>22 A I think so. I think -- I don't think it</p> <p>23 was -- I don't think it would have been good at</p> <p>24 that point for us to make a -- another low-ball</p> <p>25 offer to -- to the IRS.</p>

<p style="text-align: right;">289</p> <p>1 We weren't getting anywhere. And I didn't 2 want them to think that we were worried about 3 losing. That's strategy. 4 Q If you would turn to Exhibit one-eighty -- 5 excuse me -- 6 A (Unintelligible) hold on a second. Let me 7 just add one more thing to that. 8 I don't know whether we actually had the 9 phone call or not. I presume we did. And I can't 10 tell you if I author- -- if he convinced me during 11 the phone call that he should make the offer or 12 not. 13 So as I sit here today, I don't have any 14 specific knowledge as to whether he ever made them 15 another offer. He knew what the range was. 16 Q But at least as of the writing of this 17 email that's Exhibit 178, you thought it was 18 premature to make a settlement offer and you 19 didn't want to make one? 20 A That's what I told him, yeah. But we had 21 a conversation subsequent to that, and he may have 22 given me a good reason why I should make one. And 23 I-- in which case he would have made one, but I 24 don't recall. I don't recall either way. 25 Q And if you need -- if you need to be</p>	<p style="text-align: right;">291</p> <p>1 (WHEREUPON, a certain document was marked 2 PwC Deposition Exhibit No. 190, for 3 identification.) 4 BY MR. LANDGRAFF: 5 Q And you have Exhibit 190 in front of you? 6 A I do. 7 Q And 190 is emails to and from you and 8 Mr. Desmond, correct? 9 A That's what it is. That's what it says. 10 Q And Exhibit 190, the emails were exchanged 11 between you and Mr. Desmond on September 3rd, 12 2014, correct? 13 A I'm sorry, ask the question again. 14 Q Sure. Exhibit 10, the emails between you 15 and Mr. Desmond, were sent on September 3rd, 2014? 16 A Yeah, that's the date on here. 17 Q And Mr. Desmond in the first email to you 18 in that first paragraph refers to the fact that 19 the IRS, without putting a final number on the 20 table, confirmed that they calculate the Fortrend 21 premium at 11.4 million as reflected in the 22 spreadsheet I sent you last week, meaning the 23 baseline for their 70 percent offer is 6.8 million 24 if you get credit for the capital gains paid on 25 the premium value of your Westside stock.</p>
<p style="text-align: right;">290</p> <p>1 refreshed on the date of the trial, take a look at 2 Exhibit 309, but I'll just tell you that it looks 3 like the trial ran sort of the week of June 9th, 4 2014, but just tell me if that -- if you disagree 5 with that or you have a-- 6 A Can I take your word for it -- well, I 7 guess I'll go there now. 8 Well, I got a transcript dated July 10th, 9 so I assume we were in trial that -- at that point 10 in time -- oh, wait a minute. Oh, the intake of 11 the transcript was July 10th. So the date was 12 June 9th. Okay. Got it. 13 Q Does that seem about right to you, that 14 the trial was in June -- 15 A Yeah, I said it was in the summer of '14. 16 Q So do you recall getting -- receiving a 17 settlement offer from the IRS after the trial but 18 before the tax court decision was issued? 19 A I know there was another offer. It was -- 20 it was around that time, but I don't know if it 21 was before the trial started or after the trial 22 started. 23 Q And so I'd ask you to flip to Exhibit 190. 24 25</p>	<p style="text-align: right;">292</p> <p>1 Did you understand what that meant -- or 2 do you -- sorry. Withdrawn. 3 Do you understand what that means? 4 A It means with interest, we're probably 5 still around \$12 million. 6 Q And so -- and then Mr. -- 7 A That wasn't their offer, the 6.8 million; 8 their offer was 6.8 million plus interest. 9 Q That's what I'm asking you, what did you 10 understand the IRS offer to be in this time frame? 11 A I understood it to be about \$12 million. 12 Q And Mr. Desmond says to you, "With 13 interest, there does not seem to be any way to get 14 the number close to even 5 million, which I 15 understand would be a non" -- he says 16 "nonstarted," I assume he meant "nonstarter" -- 17 "from your perspective anyway." 18 Do you see that? 19 A I see it. 20 Q Do -- did you understand what Mr. Desmond 21 was saying? 22 A Well, I think I spent a couple million on 23 this trial, so while I would have had 5 million 24 before the trial, I'm sure I didn't have 5 million 25 after the trial.</p>

<p style="text-align: right;">293</p> <p>1 Q So after the trial, even a \$5 million 2 offer from the IRS would be a nonstarter? 3 MR. HESSELL: Objection, speculation. 4 BY THE WITNESS: 5 A Yeah, I don't know. I never got it, so I 6 never considered it. 7 BY MR. LANDGRAFF: 8 Q And you responded to him, "No questions. 9 Nothing new here." 10 A Yeah -- 11 Q Correct? 12 A Yeah, that's what I see. 13 Q At -- do -- at this time in 14 September 2014, would you have settled with the 15 IRS for \$5 million? 16 MR. HESSELL: Objection, speculation. 17 BY THE WITNESS: 18 A I just asked -- I just answered that. I 19 said I don't think I had \$5 million at this time 20 because I think I spent a couple million in the 21 trial. 22 BY MR. LANDGRAFF: 23 Q Did you -- how did you feel with respect 24 to your likelihood of success after the trial; did 25 you -- did you all -- or did you think you -- you</p>	<p style="text-align: right;">295</p> <p>1 Q If you'd look at Exhibit 192. 2 (WHEREUPON, a certain document was marked 3 PwC Deposition Exhibit No. 192, for 4 identification.) 5 BY THE WITNESS: 6 A Yeah, I see it. 7 BY MR. LANDGRAFF: 8 Q Exhibit 192 is your Opening Post-Trial 9 Brief in the tax court case; is that correct? 10 A That's what it says. 11 Q Did you review your opening brief before 12 it was filed? 13 A I'm sure I did. 14 Q Did you -- do you remember whether or not 15 you had edits to your opening brief that's 16 Exhibit 192? 17 A I don't know one way or the other. 18 Q Was 192 the -- your opening brief in the 19 post-trial, was it -- was it -- was Mr. Desmond 20 authorized to file this brief on your behalf? 21 A Yeah. He did. 22 Q If you'd look at Exhibit 208. 23 (WHEREUPON, a certain document was marked 24 PwC Deposition Exhibit No. 208, for 25 identification.)</p>
<p style="text-align: right;">294</p> <p>1 had won the trial? 2 A I would say I felt good about it. I think 3 that it went according to plan as far as Desmond 4 was concerned. 5 The wild card was when the judge started 6 asking questions because the IRS presented a very, 7 very weak case. And I think the judge knew that, 8 and I think that's why he started asking 9 questions. And he had his whole plan laid out as 10 far as what he was trying to prove, what the judge 11 was trying to prove, not what the IRS was trying 12 to prove. 13 So I -- I mean, that was the worrisome 14 part about the trial was that the judge was asking 15 questions, and he obviously had an agenda. We 16 didn't know what it was. 17 Q What -- the judge had an agenda, what was 18 the judge's agenda? 19 A We didn't know what it was. 20 Q Why did you think the judge had an agenda? 21 A Because he was asking questions and they 22 were very pointed questions. 23 Q You would -- 24 A Why would a judge ask questions if he 25 didn't have an agenda?</p>	<p style="text-align: right;">296</p> <p>1 BY THE WITNESS: 2 A Okay. 3 BY MR. LANDGRAFF: 4 Q And Exhibit 208 is a November 29, 2016 5 email to you from Michael Desmond regarding tax 6 case appeal mediation order; is that correct? 7 A That's what it says. 8 Q And do you recall that as part of the 9 appeal process of the tax court decision, that you 10 were ordered or required to participate in -- in a 11 mediation as part of the appeal process? 12 A Yeah, the federal courts of appeals always 13 have some mediation process before you go to 14 trial. 15 Q And -- 16 A Try to get rid of as many cases as 17 possible. 18 Q Sorry. Were you done? I didn't -- 19 A I said they tried to get rid of as many 20 cases as possible. 21 Yes, I'm done. 22 Q So, again, Exhibit 208, Mr. Desmond writes 23 that, "For context, required -- recall that the 24 post-trial and pre-opinion, the IRS approached us 25 about settling the case for payment of 6.6 million</p>

<p>297</p> <p>1 computed by reference to a 70 percent of the 2 premium they claim you received for your Westside 3 stock plus interest of another 6.8 million for a 4 total settlement offer of 13.6 million. The IRS 5 demanded immediate payment of the 13.6 million 6 which alone made their offer a nonstarter." 7 Do you see that? 8 A I do. 9 Q Do you know whether or not you made a 10 settlement offer in the Ninth Circuit Court of 11 Appeals appeal -- mediation process? 12 A I'm sure we did. I'm sure the mediator 13 made us do it. 14 Q Do you remember what the offer was? 15 A Not off the top of my head. 16 Q Would -- in 2016, do you recall what you 17 would have been able to pay? 18 A A few million dollars. Couple million 19 dollars. 20 Q Do you recall whether or not the IRS made 21 an offer to settle the case in the Ninth Circuit 22 Court of Appeals mediation process? 23 A I'm sure they did. 24 Q Do you know what it was? 25 A My guess it was somewhere around this</p>	<p>299</p> <p>1 MR. LANDGRAFF: Okay. 2 BY MR. LANDGRAFF: 3 Q So if you'd turn to Exhibit 210, please. 4 (WHEREUPON, a certain document was marked 5 PwC Deposition Exhibit No. 210, for 6 identification.) 7 BY THE WITNESS: 8 A Yep. 9 BY MR. LANDGRAFF: 10 Q Do you recognize Exhibit 210 as the -- the 11 brief that appellant filed in the Ninth Circuit 12 Court of Appeals? That is, you. 13 A Yep, that's me. 14 Q Did you review drafts of the -- of 15 Exhibit 210, the Ninth Circuit opening brief? 16 A I'm sure I did. 17 Q Did you provide comments on it? 18 A I may have. I don't know. 19 Q Was Michael Desmond authorized to file 20 Exhibit 210 on your behalf? 21 A Yeah, he was my lawyer. 22 Q Would you turn to Exhibit 217, please. 23 (WHEREUPON, a certain document was marked 24 PwC Deposition Exhibit No. 217, for 25 identification.)</p>
<p>298</p> <p>1 number, but that's just a guess. I have no 2 specific knowledge of what they made in the 3 mediation process. I was part of the mediation 4 process, but I don't recall anything that would 5 have been in our range. 6 Q And at this time in 2016, your 7 recollection is that your range would have been in 8 the couple-million-dollars range? 9 A Yeah, few million dollars. I -- keep in 10 mind, we just -- like I said, we just spent a 11 couple million dollars on the trial, so, you know, 12 there wasn't that much left in the pot by the 13 time. 14 MR. LANDGRAFF: Excuse me. I'm going to 15 mute myself. I've got to cough. Excuse me. 16 THE WITNESS: I'm going to have a drink 17 while you're doing that. 18 (Brief pause in proceedings.) 19 MR. LANDGRAFF: And -- and just tell me if 20 you need to take a break. I know we've been 21 taking breaks, but if you need to take a break, 22 just tell me and we'll take a break. 23 THE WITNESS: The only thing I'll have to 24 take a break for is if I have to go to the 25 bathroom, and I'm good right now.</p>	<p>300</p> <p>1 BY THE WITNESS: 2 A I'm there. 3 BY MR. LANDGRAFF: 4 Q Can you tell us what Exhibit 217 is? Do 5 you know the origin of it or can you identify it? 6 A I have no idea where you got this from. 7 This is a document that we provided to the lender 8 in a project that Randy was doing just recently, 9 last year. 10 Q Well, as of last year, you had a real 11 estate partnership with Randy Hart? 12 A It wasn't really a partnership. We had -- 13 we had some properties that we swapped. He had a 14 half interest in a building and I had a piece of 15 vacant land, and we swapped his half interest in 16 the building for my piece of vacant land. 17 And he wanted to -- I had plans to build 18 an apartment building on that piece of land, and 19 he basically assumed that. 20 Q In the -- and you -- you said this 21 document was provided to lenders; is that correct? 22 A A lender, yeah. 23 Q A lender. Who was the lender to whom it 24 was provided? 25 A Ooh, good question. I don't recall off</p>

<p>301</p> <p>1 the top of my head. It was a hedge fund.</p> <p>2 Q In the middle of Exhibit 217 -- withdrawn.</p> <p>3 Did you write Exhibit 217 or help put it</p> <p>4 together?</p> <p>5 A I'm sure I had some part --</p> <p>6 MR. HESSELL: Hold on. Hold on.</p> <p>7 Objection to the form of the question. Compound.</p> <p>8 BY MR. LANDGRAFF:</p> <p>9 Q Did you help put Exhibit 217 together?</p> <p>10 A I'm sure I had some part in it.</p> <p>11 Q In the middle of Exhibit 217, it says,</p> <p>12 "They formed a partnership and bought a half dozen</p> <p>13 sunbelt residential and commercial properties,</p> <p>14 mostly vacant land, in California, Arizona, and</p> <p>15 Florida.</p> <p>16 "The success of those investments enabled</p> <p>17 them to move on to bigger and better things,</p> <p>18 including buying several river front buildings in</p> <p>19 2005 through 2008 in Cleveland's Flats and the</p> <p>20 Kromheim's Furniture building across from the</p> <p>21 Mentor Mall in Mentor in 2008."</p> <p>22 Do you see that?</p> <p>23 A I do.</p> <p>24 Q And what was the success with respect to</p> <p>25 the sunbelt properties that led to bigger and</p>	<p>303</p> <p>1 A I don't know, 5- or 6 million.</p> <p>2 Q And then how -- and then you sold a few,</p> <p>3 and you said you broke even on selling a few?</p> <p>4 A Yeah, I had sold three buildings in 2017</p> <p>5 or '18 -- I'm not sure which -- river front</p> <p>6 buildings.</p> <p>7 I think I had 2.2 invested in them. We</p> <p>8 sold them for 3.2. But we had held them for</p> <p>9 13 years and we had paid \$800,000 in property tax</p> <p>10 over those 13 years. So we called that a</p> <p>11 breakeven. It probably wasn't. If you do the</p> <p>12 math, it was probably a loss but somewhere in</p> <p>13 there.</p> <p>14 Q And then what about the -- the ones that</p> <p>15 you hold, the Telecom Acquisition Corp. still</p> <p>16 holds, how much are those worth?</p> <p>17 A I don't know. There's a document</p> <p>18 someplace that tells -- I think Telecom holds</p> <p>19 about \$7 million in property right now if I'm not</p> <p>20 mistaken.</p> <p>21 Q But I'm just asking just about the</p> <p>22 remaining Flats buildings that -- that -- you</p> <p>23 say are --</p> <p>24 A What are they worth or what did I pay?</p> <p>25 Q What did you pay and then what are they</p>
<p>302</p> <p>1 better things?</p> <p>2 A Well, it gave us money to buy more stuff.</p> <p>3 Q So you -- you made a profit on the six</p> <p>4 sunbelt properties that you invested in?</p> <p>5 A That's my recollection, yes.</p> <p>6 Q And then the bigger and better things, one</p> <p>7 of the bigger and better things was buying river</p> <p>8 front -- several river front buildings in the</p> <p>9 Flats area of Cleveland, right?</p> <p>10 A Right.</p> <p>11 Q And what -- did you -- were those</p> <p>12 investments in the buildings in the Flats</p> <p>13 successful?</p> <p>14 A No.</p> <p>15 Q What happened?</p> <p>16 A The area was depressed when I bought it.</p> <p>17 It was supposed to get redeveloped, and it got</p> <p>18 redeveloped badly, and as a result we broke even</p> <p>19 on three properties that we sold. And I think one</p> <p>20 of our properties -- I think Telecom still owns</p> <p>21 three or four buildings down there in the Flats,</p> <p>22 but they're less today than what we paid for them.</p> <p>23 Q Do you recall how much you spent in total</p> <p>24 on the buildings in the Flats between 2005 and</p> <p>25 2008?</p>	<p>304</p> <p>1 worth? Let's ask both.</p> <p>2 A I paid 800,000 for the Odeon. It's</p> <p>3 probably worth less because it's closed -- been</p> <p>4 closed because of COVID. It's a -- it's a concert</p> <p>5 venue, and it's -- I'm sure concert venues are not</p> <p>6 going for high multiples today.</p> <p>7 I paid -- that was two buildings. I paid</p> <p>8 400,000 for a restaurant that's never been</p> <p>9 occupied. So that's 1.2. And I paid 800,000 for</p> <p>10 a three-story building that has a tenant on the</p> <p>11 first floor and I have an office on the third</p> <p>12 floor. The second floor is vacant.</p> <p>13 So that's -- between those, one, two,</p> <p>14 three, four buildings, about 2 million bucks.</p> <p>15 Q Would you turn to Exhibit 221.</p> <p>16 (WHEREUPON, a certain document was marked</p> <p>17 PwC Deposition Exhibit No. 221, for</p> <p>18 identification.)</p> <p>19 BY THE WITNESS:</p> <p>20 A Yep.</p> <p>21 BY MR. LANDGRAFF:</p> <p>22 Q 221 is a -- an article from June 29, 2007,</p> <p>23 from Cleveland.com entitled "Odeon Building Finds</p> <p>24 a Buyer," right?</p> <p>25 A Yeah, that's what it says.</p>

<p>305</p> <p>1 Q And that's the Odeon -- Odeon Concert Club 2 you just referred to? 3 A It is. 4 Q And the article at the bottom of the first 5 page of Exhibit 221 says that, "Real estate 6 investor Mike Tricarichi, who bought the old 7 Jimmy's Bar in 2004, said he had signed a sales 8 agreement with the port, contingent on a hazardous 9 waste inspection. He plans to plow the proceeds 10 into his growing portfolio of properties just 11 south of Wolstein's development. 12 Do you see that? 13 A I do. 14 Q Is that -- is Wolstein's development, is 15 that in the Flats? 16 A It is. 17 Q And the article goes on to say, "He 18 wouldn't specify the price, but he said it's more 19 than the port's original offer of 410,000 and 20 second offer of 451,000. Quote, 'I'm a business 21 man,' Tricarichi said, 'Do you think I would have 22 sold without a profit?' end quote." 23 Did you say that to the -- to the author 24 of the article about the Odeon building? 25 A I'm sure I did.</p>	<p>307</p> <p>1 A As far as I know. 2 Q You -- 3 A I said I may have left something off. 4 Q But you wouldn't have left something off 5 on purpose, right? 6 A No. 7 Q To the best of your ability, when you were 8 creating Exhibit 240, you -- you -- your intention 9 was to list all of your assets and liabilities? 10 A Yeah. 11 Q Are there any trusts that you have an 12 interest in that are not listed on Exhibit 240? 13 A Well, yes and no. 14 Q What does that mean? 15 A Well, there's a trust that held an 16 insurance policy that wasn't worth anything, the 17 Tricarichi trust, which is not listed on here 18 because it wasn't worth anything. 19 We just recently sold it. We didn't know 20 that it was still active. And then the insurance 21 guy told us it was still active, so we sold it and 22 we got 50,000 for it. That's not reflected on 23 here. But that wasn't in 2019. That was in 2020. 24 And the Telecom trust holds the stock of 25 Telecom Acquisition. So the value of Telecom</p>
<p>306</p> <p>1 Q So if you would please turn to 2 Exhibit 240. 3 (WHEREUPON, a certain document was marked 4 PwC Deposition Exhibit No. 240, for 5 identification.) 6 BY THE WITNESS: 7 A 240. Okay. Go ahead. 8 BY MR. LANDGRAFF: 9 Q And 240 is a document entitled "Tricarichi 10 Joint Assets and Liabilities," right? 11 A Yep. 12 Q And it said as of 1/1/2019, correct? 13 A Correct. 14 Q Now, did you -- did you create 15 Exhibit 240? 16 A I did. 17 Q And does Exhibit 240 list all assets which 18 you have any claim to as of January 1st, 2019? 19 A It should. Something may have been 20 inadvertently left off, but I'm pretty sure it was 21 pretty comprehensive. 22 Q To the best of your knowledge, Exhibit 240 23 is a -- is a complete and accurate list of the 24 assets which you have an interest in as of 25 January 1st, 2019?</p>	<p>308</p> <p>1 Acquisition would be the value of the Telecom 2 stock -- Telecom trust. 3 So Telecom Acquisition -- when I said yes 4 and no, Telecom's value is listed on here as of 5 that time, but the trust holds the stock of 6 Telecom Acquisition, so if -- if I listed them 7 both twice, one would be at zero. 8 Q On Exhibit 240, is the concert club valued 9 at \$50,000? 10 A Well, there's two parts to the concert 11 club. There's the concert club and the building. 12 Q And the building's listed separately, 13 right? 14 A The building's listed on the Telecom 15 assets, and the concert club is listed under my 16 assets, joint assets. 17 So the club is worth 50. Of that, 18 probably 25 or 30 is the liquor license, and the 19 rest is incidental equipment. And then the 20 building is listed on the -- there should be a 21 real estate listing in this thing somewhere. 22 Q Okay. We'll go through that. That 23 clarifies it, so thank you. 24 What -- what is Commercial Real Estate 25 Financing?</p>

<p>309</p> <p>1 A That on here somewhere?</p> <p>2 Q I'm just asking you what it is.</p> <p>3 A Well, I asked is it on here, or are we</p> <p>4 doing this out in the air?</p> <p>5 Q You can look at and tell me if you see it</p> <p>6 on here. I--</p> <p>7 A I don't see it on here. That's why I'm</p> <p>8 asking you is it on here.</p> <p>9 Q So what is it?</p> <p>10 A It was a company -- early on when I first</p> <p>11 got involved in real estate, I had a relative of</p> <p>12 my mother's boyfriend had a building in Ohio in</p> <p>13 independence that they had a construction loan on.</p> <p>14 And the construction loan was expiring and</p> <p>15 they needed -- they needed to convert it to a --</p> <p>16 to a loan, a regular loan.</p> <p>17 So I loaned them 3.6 million. I formed</p> <p>18 this Commercial Real Estate Financing company and</p> <p>19 I loaned them 3.6 million so that they could pay</p> <p>20 off their construction loan and take possession of</p> <p>21 the building.</p> <p>22 And then Commercial Real Estate -- excuse</p> <p>23 me, Commercial Real Estate Financing took the</p> <p>24 first position on the building.</p> <p>25 Does that answer your question?</p>	<p>311</p> <p>1 activity. Could be, but I don't think so.</p> <p>2 Q What about Commercial Real Estate</p> <p>3 Financing II?</p> <p>4 A Commercial Real Estate Financing II was a</p> <p>5 company -- as a -- was an entity that we set up to</p> <p>6 loan money to an investment in Arizona, which was</p> <p>7 a property in Avondale, which we paid \$1.7 million</p> <p>8 for. And I think we made a pretty good profit on</p> <p>9 that. I think we made about a million bucks</p> <p>10 profit on that one when we sold it.</p> <p>11 And then we took the money and we bought</p> <p>12 another Arizona property with the same -- there</p> <p>13 was a developer that turned us onto that property.</p> <p>14 So we bought the property, we sold it, we made</p> <p>15 about a million bucks on it.</p> <p>16 And then we took the million bucks and we</p> <p>17 put it into another property in Arizona. This</p> <p>18 time it was in a place called Sierra Vista, which</p> <p>19 was over by -- I'm losing my voice. Give me a</p> <p>20 second here.</p> <p>21 Q Take your time.</p> <p>22 A Which is by -- not Phoenix. What's the</p> <p>23 other big city in southern Arizona -- or northern</p> <p>24 Arizona?</p> <p>25 Q Tucson?</p>
<p>310</p> <p>1 Q Is Commercial Real Estate Financing still</p> <p>2 an active entity?</p> <p>3 A No, it doesn't have any holdings.</p> <p>4 Q What happened to the \$3.6 million loan?</p> <p>5 A That's a good question. We sold the</p> <p>6 building -- well, first of all, the people who</p> <p>7 were in the building defaulted on the loan -- a</p> <p>8 relative of a friend or whatever -- they defaulted</p> <p>9 on the loan. We foreclosed on the building.</p> <p>10 We sold the building -- I'm sorry, did I</p> <p>11 say 3.6? It was 4.6. I'm doing the math in my</p> <p>12 head and it's not working. 4.6 million we loaned</p> <p>13 them.</p> <p>14 So we foreclosed on the building. We took</p> <p>15 title to the building. We sold it to someone for</p> <p>16 3.3 million, and then we sued the entity that was</p> <p>17 in there for the difference, which would have been</p> <p>18 a million bucks. And I think we settled it for</p> <p>19 800 grand.</p> <p>20 So that investment was a net loss of about</p> <p>21 200 grand if my math is right.</p> <p>22 Q Was there any other activity of Commercial</p> <p>23 Real Estate Financing I?</p> <p>24 A No, that was the only thing it ever did.</p> <p>25 I don't think -- I don't think there was any other</p>	<p>312</p> <p>1 A Tucson. It was by Tucson.</p> <p>2 And this same developer who had turned us</p> <p>3 onto that property turned us onto this one. And</p> <p>4 he had wanted to do some development there. He</p> <p>5 wanted to do a low-cost housing development or</p> <p>6 something. So we loaned the money.</p> <p>7 And he did -- he -- it was one lot, and I</p> <p>8 think it was a-million-two if I'm not mistaken.</p> <p>9 We split the lot into three subparcels. He built</p> <p>10 on one. He paid us about 400 and -- 400 and</p> <p>11 change, 4-, 500,000 -- I don't remember what the</p> <p>12 exact number was -- for that particular parcel.</p> <p>13 We had two parcels left, and he -- I have</p> <p>14 an offer for him for 2 million -- 2 million --</p> <p>15 200,000 on the middle parcel. And the other</p> <p>16 parcel is not -- I don't have any on that one.</p> <p>17 So -- so I got about -- let's say I got</p> <p>18 400,000 for the -- for the one parcel. I was</p> <p>19 expecting to take the 2 million -- I'm sorry, the</p> <p>20 million-two and divide it three ways, boom, boom,</p> <p>21 boom so each parcel would have been worth 400,000.</p> <p>22 He paid 400,000 for the first one. The</p> <p>23 economy took a crap in that area -- I think it was</p> <p>24 a military base there or something -- and he</p> <p>25 couldn't do the second development.</p>

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<p>313</p> <p>1 And the -- the property sat idle for a</p> <p>2 long time. And he's just come back recently and</p> <p>3 offered us 200,000 for the middle parcel, which we</p> <p>4 have no other buyers, so we'll probably wind up</p> <p>5 selling it to him.</p> <p>6 Q So Commercial Real Estate Financing II is</p> <p>7 an active entity?</p> <p>8 A It still holds an interest in that parcel.</p> <p>9 Q And is that -- is that parcel listed as</p> <p>10 the Prima County parcel on page -- the page ending</p> <p>11 in 097 of Exhibit 40 [sic]?</p> <p>12 A Yeah, that's it.</p> <p>13 Q What's -- what's M & R Investments --</p> <p>14 Investment Properties?</p> <p>15 A Mike and Randy.</p> <p>16 Q That's the -- the venture with Mr. Hart?</p> <p>17 A Yeah, that's the furniture store.</p> <p>18 Q That's a -- is that also referred to as</p> <p>19 the Kromheim building?</p> <p>20 A Correct.</p> <p>21 Q Is there -- what is East Bank South</p> <p>22 development?</p> <p>23 A That was a company that we set up that was</p> <p>24 going to hold the Flats property separately, but</p> <p>25 it never did anything. It's -- it's inactive.</p>	<p>315</p> <p>1 A In the show.</p> <p>2 Q And is Hairspray Holdings still an active</p> <p>3 entity?</p> <p>4 A No, that was liquidated out.</p> <p>5 Q Did you make money on that investment?</p> <p>6 A I may have made 100 grand by accident.</p> <p>7 Q Did you have any or -- before investing in</p> <p>8 the Hairspray show in Las Vegas, had you had any</p> <p>9 experience in investing in shows?</p> <p>10 A No.</p> <p>11 Q Did Hairspray Holdings LV invest in</p> <p>12 anything else other than the Hairspray show?</p> <p>13 A Not that I can recall.</p> <p>14 Q What is Dice Is Rolling?</p> <p>15 A That I lost my butt in. That was a --</p> <p>16 when we did Hairspray. That was a theater --</p> <p>17 Hairspray was done at the Luxor Hotel. Are you</p> <p>18 familiar with that? The pyramid.</p> <p>19 We remodeled the theater to accommodate</p> <p>20 another 200 people for Hairspray. So there was a</p> <p>21 lag time between the time the theater -- the</p> <p>22 theater was actually -- the theater was actually</p> <p>23 finished before the show was ready to go.</p> <p>24 So we needed something to put in there</p> <p>25 temporarily because we had an empty room and we</p>
<p>314</p> <p>1 Q No assets in East Bank --</p> <p>2 A No assets. It used to have a liquor</p> <p>3 license maybe, but I think we sold that to the</p> <p>4 tenant on the first floor of 1330 Old River.</p> <p>5 Q What is Hairspray Holdings, LV?</p> <p>6 A Where is that at?</p> <p>7 Q It's -- I'm not telling you it's on here;</p> <p>8 I'm just asking you what it is.</p> <p>9 A I did a Vegas show in 2005. Are you</p> <p>10 familiar with the play Hairspray? Big -- what's</p> <p>11 his name? The big flashy guy.</p> <p>12 Q John Waters?</p> <p>13 A No, I don't remember --</p> <p>14 Q Well, yes --</p> <p>15 A -- name. But, anyway, yes, it was a -- it</p> <p>16 was a -- it was a show in -- it was a show in</p> <p>17 Vegas, and I had invested a few million dollars in</p> <p>18 that show.</p> <p>19 Q Okay. I -- I didn't mean to be flippant.</p> <p>20 A Harvey Wein -- Harvey Fierstein.</p> <p>21 Q Harvey Fierstein was -- was the star of</p> <p>22 this show?</p> <p>23 A Yeah, he was the mother.</p> <p>24 Q So you invested a few million dollars</p> <p>25 in -- in what?</p>	<p>316</p> <p>1 had money invested in it.</p> <p>2 So I wound up putting in Andrew Dice Clay,</p> <p>3 hence the term Dice Is Rolling.</p> <p>4 So I had a -- two partners in that, and</p> <p>5 I -- I don't -- I lost a lot of money in there. I</p> <p>6 don't remember how much it was. I -- whatever</p> <p>7 money I made in Hairspray, I gave it back in Dice</p> <p>8 Is Rolling, but I -- it was backwards; I made the</p> <p>9 money in Hairspray after I paid the money for Dice</p> <p>10 is Rolling.</p> <p>11 Q How much do you think you lost in Dice is</p> <p>12 Rolling?</p> <p>13 A Ooh, couple hundred grand.</p> <p>14 Q And who is Steven Arnold?</p> <p>15 A He was the guy that brought Dice in.</p> <p>16 Q And does MT -- what is MTGW holdings?</p> <p>17 A Mike Tricarichi Glenn Wallings.</p> <p>18 Q And what does -- what does MTGW Holdings</p> <p>19 have other than the Sierra Vista land?</p> <p>20 A Nothing.</p> <p>21 Q And who is Glenn -- is it Wallings with an</p> <p>22 S at the end?</p> <p>23 A No -- Wallings with an S at the end, yeah.</p> <p>24 Q And who is Glenn Wallings?</p> <p>25 A He is the developer that I told you about</p>

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<p>317</p> <p>1 before that we split the property into three</p> <p>2 pieces and he bought -- he bought them a piece at</p> <p>3 a time.</p> <p>4 The parcel was owned by MTGW, but the</p> <p>5 Commercial Real Estate Financing II held the paper</p> <p>6 on it.</p> <p>7 Q You agree when -- when you make one of</p> <p>8 your real estate investments, when you buy a home</p> <p>9 or piece of land, whatever the asset that you're</p> <p>10 purchasing is, that doesn't mean the purchase</p> <p>11 price is gone, right; you have an asset in</p> <p>12 exchange for what you paid for, right?</p> <p>13 A Usually. Sometimes it's worth more than</p> <p>14 what you paid and sometimes it's worth less than</p> <p>15 what you paid. And sometimes it's easy to sell</p> <p>16 and sometimes it's hard to sell.</p> <p>17 Q The -- the valuations that are listed on</p> <p>18 the page ending in 097 on Exhibit 240 --</p> <p>19 A I'm going to open this up and take it out</p> <p>20 so I don't have to turn this thing sideways.</p> <p>21 Q Okay. Tell me when you've had a chance to</p> <p>22 break --</p> <p>23 A Go ahead.</p> <p>24 Q The -- the value of the land and the</p> <p>25 buildings that you've listed on Exhibit 240,</p>	<p>319</p> <p>1 A It's true in most of them. I don't know</p> <p>2 if it's true in every one, but I can tell you just</p> <p>3 looking at this, it's true in Cuyahoga County,</p> <p>4 it's a little light in -- it's a little light</p> <p>5 in -- well, maybe no. No, it's not.</p> <p>6 It's good in Florida. Looks pretty good</p> <p>7 in Nevada. And it's good in Arizona. So I would</p> <p>8 say overall it's pretty good.</p> <p>9 Q What about Lake County, Ohio?</p> <p>10 A Yeah, Lake -- well, Lake County is Mentor,</p> <p>11 so that's the -- that's the furniture store.</p> <p>12 There's three separate parcels on there. So I was</p> <p>13 just trying to add it up to see if it added up to</p> <p>14 what we spent on it. I can't add that much in my</p> <p>15 head.</p> <p>16 I'm looking at the numbers 204, 503, and</p> <p>17 661, and that totals about 3.135 [sic].</p> <p>18 Q Is that what your understanding is of</p> <p>19 the -- what you think the fair market value of</p> <p>20 that property is?</p> <p>21 A I think it's worth less than that.</p> <p>22 Q So Telecom Acquisition Corp., when was it</p> <p>23 formed?</p> <p>24 A 2003.</p> <p>25 Q And is it true that you're the president</p>
<p>318</p> <p>1 those -- those valuations are from the county</p> <p>2 auditor; is that right?</p> <p>3 A That's what it says, per county auditor.</p> <p>4 Q Is it your understanding that the county's</p> <p>5 assessed value is the actual fair market value of</p> <p>6 the property?</p> <p>7 A In most cases it is. They -- the tax</p> <p>8 value is 30 percent of the fair market value, but</p> <p>9 the fair market value in most cases is pretty</p> <p>10 accurate. If -- if you were going to sell the</p> <p>11 property.</p> <p>12 I told somebody the other day, I think it</p> <p>13 was Hessell, I would be happy to sell any property</p> <p>14 on this list for the tax value today.</p> <p>15 Q Is Mr. Hessell buying property in Arizona</p> <p>16 from you?</p> <p>17 A He was thinking about it.</p> <p>18 Q So -- and is -- when you say that the land</p> <p>19 value and the building value that the county</p> <p>20 auditor -- that you got from the county auditor</p> <p>21 reflects the fair market value, is it -- is it</p> <p>22 your understanding that's true for all the</p> <p>23 counties in which you've listed Telecom</p> <p>24 Acquisition real estate holdings here on</p> <p>25 Exhibit 240?</p>	<p>320</p> <p>1 and the secretary and the treasurer as well as a</p> <p>2 director of it?</p> <p>3 A I am.</p> <p>4 Q And Barbara Tricarichi is a director of --</p> <p>5 A Right.</p> <p>6 Q -- Telecom Acquisition Corp.?</p> <p>7 A Correct.</p> <p>8 Q Are there any other directors?</p> <p>9 A I don't think so, no. I think Doug French</p> <p>10 is VP, and I think that's the extent of our</p> <p>11 officers.</p> <p>12 Q Are -- are you the person who knows the</p> <p>13 most about Telecom Acquisition Corporation and its</p> <p>14 activities and holdings?</p> <p>15 A Most of them, yeah.</p> <p>16 Q Well, who else would be -- who might be</p> <p>17 more knowledgeable by you with respect to</p> <p>18 particular holdings of Telecom Acquisition Corp.?</p> <p>19 A I don't know. I don't know -- it would</p> <p>20 depend on what you were asking. As far as what</p> <p>21 the values would be, I -- I would be the person to</p> <p>22 ask.</p> <p>23 As far as operationally, some of these</p> <p>24 places have employees, so I don't know if I would</p> <p>25 know where the keys to something are or where</p>

<p>321</p> <p>1 the -- you know, how the doors close or whatever,</p> <p>2 that kind of thing you're talking about.</p> <p>3 Q But with respect to value, you -- you</p> <p>4 would be the most knowledgeable person at Telecom</p> <p>5 Acquisition Corp?</p> <p>6 A I would.</p> <p>7 Q If you would look at the Bates --</p> <p>8 A Are we done with this? Should I put it</p> <p>9 back in the folder or are you going to refer to it</p> <p>10 again?</p> <p>11 Q I'm still going to talk about 240, but are</p> <p>12 you referring to the --</p> <p>13 A The real estate holdings valuation.</p> <p>14 Q Um --</p> <p>15 A I'll put it back in.</p> <p>16 Q I don't want to -- I don't know whether</p> <p>17 I'll go back to it, but I -- go ahead and put it</p> <p>18 back in, and just tell me when you're -- when</p> <p>19 you're ready.</p> <p>20 A Go ahead. Where you going?</p> <p>21 Q If you'd go to Page 096 of Exhibit 240.</p> <p>22 It has at the top it says Telecom --</p> <p>23 A Yeah, I got it.</p> <p>24 Q And that's a list -- Page 096 is a list of</p> <p>25 Telecom Acquisitions assets as of July 27th, 2019?</p>	<p>323</p> <p>1 BY THE WITNESS:</p> <p>2 A We buy houses. We -- the people that I</p> <p>3 have on staff, I have to keep them busy, so I buy</p> <p>4 a lot of sheriff sale houses. I don't see any</p> <p>5 listed on here, so my guess is that I didn't have</p> <p>6 any at the time.</p> <p>7 But those things come and go, so they may</p> <p>8 be listed one month and not the next month and</p> <p>9 something else may be there the following month.</p> <p>10 I don't know.</p> <p>11 Q All right. You --</p> <p>12 A There's one on here, 290 Best Cuyahoga</p> <p>13 County. It's the last --</p> <p>14 Q 290 --</p> <p>15 A -- one under Cuyahoga County. Purchase</p> <p>16 price was forty-two eight. That was purchased</p> <p>17 in -- I don't remember when it was purchased, but</p> <p>18 that was purchased at a sheriff sale. We bought</p> <p>19 it for forty-two eight, the land value is</p> <p>20 twenty-two eight, and the rolling value is</p> <p>21 eighty-nine four, and it's listed at a</p> <p>22 hundred -- the total of those two is 112,000.</p> <p>23 So we got a deal on that one.</p> <p>24 Q And you said there's a -- you engage in</p> <p>25 a lot of sheriff's sell -- sheriff's sale</p>
<p>322</p> <p>1 A That's what it says.</p> <p>2 Q Do you have any recollection as to what</p> <p>3 the holdings of Telecom Acquisition Corp. were in</p> <p>4 the fourth quarter of 2008?</p> <p>5 A No. You have financial statements, don't</p> <p>6 you? You were given them.</p> <p>7 You were given tax returns as well.</p> <p>8 Q So I am going to go back to 097. I'm</p> <p>9 sorry to be flipping around or take it out. I</p> <p>10 didn't commit one way or the other, for the</p> <p>11 record.</p> <p>12 A It's only three punches. Go ahead.</p> <p>13 Q So on Page 097 of Exhibit 240, do you know</p> <p>14 whether you or Telecom Acquisition Corp. has</p> <p>15 bought or sold real estate holdings other than</p> <p>16 what's listed on seven between the fourth quarter</p> <p>17 of 2008 and July 27, 2019?</p> <p>18 A I don't know. I told you we sold three</p> <p>19 buildings in the Flats. I don't know exactly when</p> <p>20 that sale went through.</p> <p>21 Q Any other purchases or sales that aren't</p> <p>22 listed on Page 097 other than the three buildings</p> <p>23 we talked about in the Flats?</p> <p>24 (WHEREUPON, Mr. Blake Sercye entered the</p> <p>25 proceedings.)</p>	<p>324</p> <p>1 purchases?</p> <p>2 A Yeah, I think Telecom has got one selling</p> <p>3 on Friday. Just sold one about a month ago. I</p> <p>4 think it's got four left.</p> <p>5 Q Between the fourth quarter of 2008 and --</p> <p>6 and July 2019, do you know how much or how many</p> <p>7 sheriff's sale properties Telecom Acquisition</p> <p>8 Corp. bought?</p> <p>9 A No. I pointed to the one that I knew was</p> <p>10 a sheriff's sale was the Best -- the Best.</p> <p>11 Q Can you approximate how much Telecom</p> <p>12 Acquisition Corp. has made on the purchase and</p> <p>13 sale of sheriff's sale properties between the</p> <p>14 fourth quarter of '08 and -- and July 2019?</p> <p>15 A I don't keep records that way. I have no</p> <p>16 idea.</p> <p>17 Q Can you estimate it?</p> <p>18 A 50,000.</p> <p>19 Q Do you know what -- what the total amount</p> <p>20 of -- do you know what the total amount of money</p> <p>21 is that Telecom Acquisition Corp. has spent on</p> <p>22 real estate over the course of its existence?</p> <p>23 A No.</p> <p>24 Q Do you know what the total amount of money</p> <p>25 received for the sale of real estate by Telecom</p>

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<p>325</p> <p>1 existence over the course of its existence [sic]? 2 MR. HESSELL: Object to the form of the 3 question. 4 BY MR. LANDGRAFF: 5 Q Let me ask -- 6 A Off the -- I'm sorry. Go ahead. 7 Q I garbled the question. That's my fault. 8 Let me start over. 9 Do you know the total amount of money 10 received from the sale of real estate owned by 11 Telecom Acquisition Corp over the course of its 12 existence -- its existence? 13 A No. 14 Q Do you have any approximation of whether 15 or not Telecom Acquisition Corp. has made or lost 16 money over the course of its existence? 17 A It's lost money. 18 Q Do you know how much it's lost? 19 A No. 20 Q Do you know whether Telecom Acquisition 21 Corp. made or lost money between the fourth 22 quarter of 2008 and July 2019? 23 A I don't know. 24 Q Do you know what the total amount of rent 25 received by Telecom Acquisition Corp. has been</p>	<p>327</p> <p>1 Q It -- not holding -- 2 A If I had to pick one, that correct would 3 be the number that I would pick. 4 Q So not -- not holding you to a -- a 5 precise number, but in your best estimation, 6 Telecom Acquisition Corp. has lost about 7 \$5 million over the -- over the course of its 8 existence? 9 A That would probably be my estimation if I 10 had to pull a rabbit out of my butt. 11 Q What -- what about -- what about between 12 2008 and the present; do you have any 13 approximation as to whether or not Telecom 14 Acquisition Corp. made or lost money in that time 15 period? 16 A I don't -- I don't have any. I can't -- 17 you asked me over the -- over the term of the 18 company, and I -- I think there's a carry-forward 19 loss someplace, which is the number I'm thinking 20 of, but I can't tell you between 2008 and 2010 or 21 anything like that. I have no idea. 22 Q Did -- did your investments in -- that 23 Mr. Salkin advised you on, stock and bond type 24 investments, did you make or lose money on those 25 over the course of Mr. Salkin's work for you?</p>
<p>326</p> <p>1 during the course of its existence? 2 A No. 3 Q Do you have an approximation? 4 A No. 5 Q Do you have an approximation of the total 6 amount of revenue such as ticket sales received by 7 Telecom Acquisition Corp. through today? 8 A Telecom Acquisition Corp. doesn't sell 9 tickets, so that would be zero. 10 Q What about through the ownership of Odeon? 11 A Maybe 100 grand. Which exceeded its rent. 12 Q Have you taken money out of Telecom 13 Acquisition Corp. since Telecom Acquisition Corp. 14 was founded? 15 A I'm sure I have. I have a lot of loans 16 and equity in it, so I probably did. 17 Q And as you sit here today, can -- you 18 can't approximate how much you think Telecom 19 Acquisition Corp. has lost over the course of its 20 existence. 21 A I can't, no. I don't know. 22 Q What about an order of magnitude, like 23 more than 5 million, more than 10 million? 24 A I would say 5 million would probably be a 25 good number.</p>	<p>328</p> <p>1 A Win some, lose some. 2 Q As a total and the mix of your investment 3 portfolio separate from real estate, did you -- 4 did you make -- have you made or lost money 5 between 2008 and today? 6 A Between 2008 and today, I probably lost 7 more than I made. 8 Between 2003 and 2008 -- I know you didn't 9 ask that question, so I -- you can ask it now if 10 you want. 11 Q No, go ahead. Go ahead. 12 A Sorry. I wasn't supposed to volunteer 13 anything. 14 I'm -- I'm guessing from investments other 15 than real estate between 2008 and today, I've made 16 very little or no money because there wasn't a lot 17 of money to invest. 18 Between 2003 and 2008 when there was a lot 19 of money to invest, I made money but I didn't make 20 huge money. 21 Q And what happened -- when you say there 22 wasn't a lot of money to invest, what happened to 23 the money that you had between 2003 and 2008 that 24 you didn't have in 2008 to -- 25 A I think you should read our expert report.</p>

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<p>329</p> <p>1 Q Can you answer --</p> <p>2 A It'd be --</p> <p>3 Q -- my question?</p> <p>4 A It'd be easier than me telling you.</p> <p>5 Q Can you answer my question, though?</p> <p>6 A I just answered your question; I'm going</p> <p>7 to point you to our expert report.</p> <p>8 Q I want your testimony as you sit here</p> <p>9 today because you're the one with firsthand</p> <p>10 knowledge.</p> <p>11 When you say there wasn't a lot of money</p> <p>12 to invest after 2008, what happened to the money</p> <p>13 that you had between --</p> <p>14 A Well, you got the -- you got the Schwab</p> <p>15 statements; you can see it.</p> <p>16 I know you've got the Schwab statements.</p> <p>17 You've got year-end Schwab statements going</p> <p>18 from -- from 2003 to, like, present or whatever</p> <p>19 the last one is. You can see the money -- see</p> <p>20 where -- see it going down.</p> <p>21 I know 2008 was a particularly bad year</p> <p>22 for everyone, including me, so I had a substantial</p> <p>23 amount of money going into -- at the end of 2007</p> <p>24 and I had very little of it left in 2008.</p> <p>25 Partially that was the downturn in the market and</p>	<p>331</p> <p>1 Q Your -- your recollection is that before</p> <p>2 the downturn and the Great -- the 2008 time frame,</p> <p>3 The Great Recession, right?</p> <p>4 A You can call it that. I -- I would call</p> <p>5 it that, but, you know...</p> <p>6 Q Okay. Well, whatever -- the 2008 time</p> <p>7 frame, your recollection is that the Schwab -- the</p> <p>8 Schwab account went from 7 million to about</p> <p>9 2 million?</p> <p>10 A Like I said, that's -- that's what's on</p> <p>11 the top of my head. You have the statements, so</p> <p>12 if you want to look at the statements or show me</p> <p>13 the statements, I'll be more than happy to answer</p> <p>14 your questions, okay?</p> <p>15 But I don't -- I didn't bring any</p> <p>16 statements with me. I don't have any knowledge on</p> <p>17 the top of my head. You're going back -- 2003,</p> <p>18 you're going back 17 years and you're asking me</p> <p>19 questions about what my account was worth 17 years</p> <p>20 ago.</p> <p>21 Do you know what your bank account was</p> <p>22 worth 17 years ago? I would guess not.</p> <p>23 Q Where did the three and a half million</p> <p>24 dollars for the house come out of?</p> <p>25 A It came out of the Schwab account. There</p>
<p>330</p> <p>1 partially that was my wife deciding that she</p> <p>2 wanted to build a three-and-a-half-million-dollar</p> <p>3 house.</p> <p>4 So the three-and-a-half-million-dollar</p> <p>5 house got sold for two and a half million dollars</p> <p>6 in, I don't know, 2012, 2013.</p> <p>7 And the -- as a result of her taking the</p> <p>8 three and a half million dollars out of the</p> <p>9 brokerage account, there was not much left in the</p> <p>10 brokerage account to get the bounce-back that you</p> <p>11 think I made all this money on in 2009 forward.</p> <p>12 So there was \$3 million missing out of the</p> <p>13 account between two-thousand -- 2008 and 2012 or</p> <p>14 '13 or '14, whenever we sold that house.</p> <p>15 Q How much money did you have in the Schwab</p> <p>16 account in between 2003 and 2008?</p> <p>17 A I don't know.</p> <p>18 Q How much did you lose -- when you talked</p> <p>19 about the market downturn in 2008, how much did</p> <p>20 you lose during that time?</p> <p>21 A I don't know, probably several million.</p> <p>22 I'm not sure how many million. I remember going</p> <p>23 from seven to like two or something like that.</p> <p>24 But, again, you've got the statements, so</p> <p>25 you tell me. I don't have them in front of me.</p>	<p>332</p> <p>1 was a whole bunch of legal fees that came out of</p> <p>2 the Schwab account, too. Not at that time but</p> <p>3 later.</p> <p>4 Q Do you currently still have nine cars?</p> <p>5 A I may. I don't know. I think -- I think</p> <p>6 I still have all the cars that are listed on the</p> <p>7 thing but a lot of them are junk.</p> <p>8 Q You have five Mustangs? If you count the</p> <p>9 Shelby GT500 as a Mustang?</p> <p>10 A Yeah. But, I mean, two of them are worth</p> <p>11 \$10,000, one of them is worth -- one of them is</p> <p>12 junk I think on there. A couple of them -- I</p> <p>13 don't know.</p> <p>14 Here, let me go -- let me go to that</p> <p>15 schedule because I have that.</p> <p>16 The cargo van is junk. It's sitting in my</p> <p>17 backyard. The Roadster pickup is junk. It's</p> <p>18 sitting in my garage. There are two partially</p> <p>19 restored '66 Mustangs in my garage, and there is</p> <p>20 one driveable '64 Mustang, which is in my garage.</p> <p>21 And there's one driveable '65 Mustang, which is in</p> <p>22 my Vegas garage. The 2008 Shelby GT500 is in my</p> <p>23 Cleveland garage. And the -- the Lexus GX460 is</p> <p>24 my Cleveland garage.</p> <p>25 There's another couple vehicles that are</p>

<p>333</p> <p>1 owned by Telecom which are not on this list which 2 are on another list. And that's the extent of 3 the -- there might -- so there might be more than 4 nine vehicles. Some of them are owned by Telecom. 5 Q And -- and what does it mean to be a -- in 6 a basket-case condition for a vehicle? 7 A You're not a car guy, are you? It means 8 that it's taken apart and it's waiting to be put 9 back together in a better state than it was. 10 Q Did -- when the IRS issued its statutory 11 notice of liability to you, did you set aside 12 money for potential payment to the IRS? 13 A Didn't need to. Didn't have it. 14 Q Can you turn to Exhibit 336. 15 (WHEREUPON, a certain document was marked 16 PwC Deposition Exhibit No. 336, for 17 identification.) 18 BY THE WITNESS: 19 A Yep. Got it. 20 BY MR. LANDGRAFF: 21 Q Exhibit 336 is your response to PwC's 22 first set of interrogatories, correct? 23 A If you say so. 24 Q Well, can you -- have you ever seen 25 Exhibit 336 before?</p>	<p>335</p> <p>1 separated from your wife? 2 A No. 3 Q Did you give anyone any money during the 4 time you were separated from your wife? 5 A I may have. 6 Q Did you? 7 A I may have. 8 MR. HESSELL: What possible -- what 9 possible relevance -- 10 BY THE WITNESS: 11 A Yeah, I don't understand that either. 12 Where we going with this? Do you think I gave 13 away all the money to a girlfriend? No. The 14 answer to that is no. 15 MR. LANDGRAFF: Okay. Why don't we take a 16 five-minute break. I'm either done or close to 17 done. 18 THE VIDEOGRAPHER: Thank you. We are 19 going off the record. The time is now 5:01 p.m. 20 (WHEREUPON, a recess was had.) 21 THE VIDEOGRAPHER: We are going back on 22 the record. The time is now 5:08 p.m. 23 BY MR. LANDGRAFF: 24 Q Mr. Tricarichi, since the Ninth Circuit 25 mediation process, has the IRS made a settlement</p>
<p>334</p> <p>1 A Yeah. 2 Q Well, what is it? 3 A It looks like the responses that we put 4 together for your interrogatories. 5 Q And if you turn to what's labeled as 6 Page 9 at the bottom, you verified these 7 interrogatories under the -- under oath, right? 8 A Yeah. 9 Q And you did that in October of 2019? 10 A That's the date on here. 11 Q Did you ever separate from your wife? 12 A Yeah. 13 Q Did you have a girlfriend when you 14 separated from your wife? 15 MR. HESSELL: Objection -- 16 BY THE WITNESS: 17 A I'm not -- 18 MR. HESSELL: -- what possible -- 19 BY THE WITNESS: 20 A -- going to answer that question. 21 MR. HESSELL: What possible relevance -- 22 MR. LANDGRAFF: I'll get to that. 23 BY MR. LANDGRAFF: 24 Q Did you transfer any money to any 25 non-family members during the time you were</p>	<p>336</p> <p>1 offer to you? 2 A No. 3 Q Have you made a settlement offer to the 4 IRS? 5 A No. 6 MR. LANDGRAFF: I don't have any -- any 7 further questions. 8 MR. HESSELL: No questions. 9 THE VIDEOGRAPHER: All in agreement to go 10 off the record? 11 MR. LANDGRAFF: Yes. 12 MR. HESSELL: Can you give me the total 13 time when you're done? 14 THE VIDEOGRAPHER: Absolutely. 15 We are now going off the record. The time 16 is 5:09 p.m. 17 FURTHER DEPONENT SAITH NAUGHT. 18 (WHEREUPON, the deposition was concluded 19 at 5:09 p.m.) 20 21 22 23 24 25</p>

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85 (337 to 340)

<p style="text-align: right;">337</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, MICHAEL TRICARICHI, do hereby</p> <p>3 acknowledge that I have read and examined the</p> <p>4 foregoing testimony and the same is a true,</p> <p>5 correct, and complete transcription of the</p> <p>6 testimony given by me and any corrections appear</p> <p>7 on the attached errata sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (SIGNATURE) (Date)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">339</p> <p>1 IN WITNESS WHEREOF, I do hereunto set my</p> <p>2 hand and affix my seal of office at Chicago,</p> <p>3 Illinois, this 8th day of October, 2020.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 <u>Michelle M. Yohler</u></p> <p>9 Michelle M. Yohler, CSR, RMR, CRR</p> <p>10 Certified Shorthand Reporter</p> <p>11 CSR No.: 84-4531</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">338</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, MICHELLE M. YOHLER, a Certified</p> <p>4 Shorthand Reporter within and for the County of</p> <p>5 Cook, State of Illinois, do hereby certify:</p> <p>6 That previous to the commencement of the</p> <p>7 examination of the witness, the witness was duly</p> <p>8 sworn to testify the whole truth concerning the</p> <p>9 matters herein;</p> <p>10 That the foregoing deposition transcript</p> <p>11 was reported stenographically by me, was</p> <p>12 thereafter reduced to typewriting under my</p> <p>13 personal direction and constitutes a true record</p> <p>14 of the testimony given and the proceedings had;</p> <p>15 That the said deposition was taken</p> <p>16 remotely before me at the time and place</p> <p>17 specified;</p> <p>18 That I am not a relative or employee or</p> <p>19 attorney or counsel, nor a relative or employee of</p> <p>20 such attorney or counsel for any of the parties</p> <p>21 hereto, nor interested directly or indirectly in</p> <p>22 the outcome of this action.</p> <p>23</p> <p>24</p> <p>25</p>	

A			
a-	38:11, 218:13, 218:14	327:14	207:17, 208:6
290:5	accountants	acquisitions	administrative
a----b	218:12, 278:21	321:25	284:7, 285:12,
1:7, 8:7	accounting	across	286:11
a-million-two	37:3, 62:6,	301:20	adults
312:8	62:11, 81:20,	acting	235:16, 265:13,
ability	219:13, 219:18,	278:24	265:15, 265:16,
235:18, 307:7	219:21, 220:1	action	265:24, 265:25,
able	accounts	1:6, 239:8,	266:9, 267:20
216:8, 244:20,	170:9	338:22	adverse
259:14, 265:15,	accurate	active	143:7
284:23, 297:17	306:23, 318:10	307:20, 307:21,	advice
above	achieve	310:2, 313:7,	29:3, 43:15,
72:7, 151:7,	69:13	315:2	49:2, 55:20,
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