

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

MARK J. GARDBERG, ESQ., IN HIS CAPACITY AS  
RECEIVER FOR, AND ACTING ON BEHALF OF,  
FLAMINGO-PECOS SURGERY CENTER, LLC, A  
NEVADA LIMITED LIABILITY COMPANY;

Appellant,

vs.

WILLIAM D. SMITH, M.D., AN INDIVIDUAL; AND  
SHELDON J. FREEDMAN, M.D., AN INDIVIDUAL;

Respondents.

No. 83556

Electronically Filed  
Oct 25 2021 09:07 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XI  
County Clark Judge Elizabeth Gonzalez  
District Ct. Case No. A-17-750926-B

**2. Attorney filing this docketing statement:**

Attorney Mohamed A. Iqbal, Jr. Telephone 702-750-2950  
Firm 101 Convention Center Drive, Suite 1175, Las Vegas, NV 89109  
Address \_\_\_\_\_

Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting on behalf of, Flamingo-Pecos  
Client(s) Surgery Center, LLC a Nevada limited liability company

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Marc P. Cook Telephone 702-737-7702  
Firm 517 South Ninth Street, Las Vegas, NV 89101  
Address \_\_\_\_\_

Client(s) William D. Smith, M.D. and Sheldon J. Freedman, M.D.

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                                      |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____  |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>See attachment</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Case No.: 74726

Caption: SHELDON FREEDMAN, M.D.; PANKAJ BHATANAGAR, M.D.; AND MATHEW NG, M.D., Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOSEPH HARDY, JR., DISTRICT JUDGE, Respondents, and MARK J. GARDBERG, ESQ., IN HIS CAPACITY AS RECEIVER FOR AND ACTING ON BEHALF OF, FLAMINGO-PECOS SURGERY CENTER, LLC, A NEVADA LIMITED LIABILITY COMPANY, Real Parties in Interest.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

See attachment.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See attachment.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A



**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should be retained by the Supreme Court based on NRAP 17(a)(9), cases originating in business court, given this case originated in business court.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** 8/16/21

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** 8/17/21

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** 10/4/21

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

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### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Plaintiff appeals from summary judgment granted in favor of defendants; this order is associated with a subsequent final judgment in favor of defendants, which triggers the basis of NRAP 3A(b)(1).

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

MARK J. GARDBERG, ESQ., in his capacity as Receiver for, and acting on behalf of, FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company, plaintiff

WILLIAM SMITH MD, defendant

PANKAJ BHATANAGAR MD, defendant

MAJORIE BELSKY MD, defendant

SHELDON FREEDMAN MD, defendant

MATHEW NG MD, defendant

DANIEL BURKHEAD MD, defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendants PANKAJ BHATANAGAR MD, MAJORIE BELSKY MD, MATHEW NG MD, and DANIEL BURKHEAD MD reached settlements and were dismissed with prejudice.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

See attached response to question 8; defendants raised no counterclaims, cross-claims, or any other claims.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

MARK J. GARDBERG, ESQ., in his capacity as Receiver for,  
and acting on behalf of, FLAMINGO-PECOS SURGERY  
CENTER, LLC a Nevada limited liability company

Name of appellant

10/25/21

Date

Mohamed A. Iqbal, Jr.

Name of counsel of record



Signature of counsel of record

Clark county, Nevada

State and county where signed

## CERTIFICATE OF SERVICE


I certify that on the 26th day of October, 2021, I ~~served~~ <sup>will serve</sup> a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

COOK & KELESIS, LTD.  
517 SOUTH NINTH STREET  
LAS VEGAS, NV 89101

Dated this 25th day of October, 2021



Signature

#### 4. Other Disposition

(1) Order Granting in Limited Part Plaintiff's Motion to Extend Discovery; and (2) Notice of Entry of Order Regarding Motion and Counter-Motion for Sanctions.

#### 8. Brief Description of the Nature of the Action and the Result

This action involves duty of care and duty of loyalty violations and gross negligence on the part of board members who were asleep at the wheel while their employee robbed Plaintiff, an entity, blind for four (4) years—and which board members continued to fail their obligations to Plaintiff in the years following the discovery of the embezzlement.

Plaintiff, an entity, was created on or about January 1, 2002, pursuant to an operating agreement dated December 10, 2001. FPSC was a surgical center/medical services company, frequently operating under the name Surgery Center of Southern Nevada.

Robert Barnes ("Barnes") was hired in 2006 and, as he would later admit in his criminal guilty plea agreement, embezzled \$1.3 million from FPSC from approximately 2010 to 2013. Defendants Smith and Freedman—both of whom served on Plaintiff's board (the "Board")—had duties of loyalty and care to Plaintiff that they failed completely. Freedman was part of the Board that hired Barnes and then failed to oversee him, ever. Smith joined Freedman in empowering and emboldening Barnes. Smith and the Board, among other things, failed to review the company's finances and credit card statements for *four (4) years* before the embezzlement was discovered; failed to install safeguards and credit card policies before and after the discovery of the theft; vested in the embezzler (Barnes) such sweepingly broad authority that he was no longer managed or constrained by the Board, or even had to inform them of his actions; awarded sole authority for obtaining \$1.8 million in loan funds to the embezzler, violating the operating agreement's requirement that the Board affirmatively approve any action to borrow money or otherwise obtain credit; demonstrated naked *self-dealing* by failing to pursue the grossly negligent management company responsible for the embezzler because, well, Defendants owned shares in the management company; allowed, for years following the discovery of the embezzlement, *seven-figures worth* of accounts receivable to go to waste, uncollected and rendered worthless; and failed to pursue the embezzler in any reasonable sense. Defendants stranded FPSC following the September 10, 2015 notice of



dismissal of the chapter 11 bankruptcy Defendant Smith initiated (and represented FPSC in) December 31, 2014. (14-18480-ABL, U.S. Bankruptcy Court for the District of Nevada).

Plaintiff, the current Receiver appointed by the Honorable Judge Nancy L. Allf in 2017,<sup>1</sup> has maintained and/or initiated separate actions in the Eighth Judicial District Court, against Robert Barnes individually, Robert Barnes and his ex-wife, and, in this case—initially—~~six~~ individual defendants who led FPSC—during and after Barnes’ rampage—to ruin. The Receiver’s settlements with four of the six defendants were approved by the Court in the fall of 2019. The two remaining Defendants, Smith and Freedman, having failed to prevail on prior motions to dismiss and a motion for summary judgment, recently and finally prevailed on summary judgment. The trial court ignored the facts and erred in granting summary judgment to both Defendants, and Plaintiff appeals from both orders.

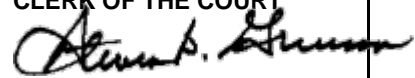
Plaintiff also appeals from a trial court order denying in part a motion to extend discovery, a motion for second deposition, and a motion for sanctions, that were each improperly decided by the trial court, and on legal bases antithetical to Nevada law.

## **9. Principal Issues on Appeal**

The principal issues on appeal are whether the district court erred: (1) in granting summary judgment (in favor of Defendants Smith and Freedman) when there is substantial evidence and a series of undisputed facts evidencing breaches of the duty of care and the duty of loyalty by the defendant board members; (2) in partially denying Plaintiff’s motion to extend discovery, given Defendants’ delays, the circumstances, and the lack of prejudice in granting Plaintiff more time; and (3) in granting Defendants’ motion for sanctions, when Plaintiff conducted discovery in good faith and Defendants sought to have false statements introduced into the record as “deemed admitted” and Defendants submitted false findings of fact and conclusions of law.

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<sup>1</sup> A-16-733627-B, *Patriot-Reading Associates, LLC v. Flamingo Pecos Surgery Center, LLC*. For the avoidance of confusion, the original receiver was appointed in 2016, and the current Receiver took his place pursuant to a July 20, 2017 Notice of Entry of Order (Ex. 5).



1 **NEOJ**  
2 **MARC P. COOK**  
3 Nevada State Bar No. 004574  
4 **GEORGE P. KELESIS**  
5 Nevada State Bar No. 000069  
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8 Las Vegas, Nevada 89101  
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11 Email: mcook@bckltd.com  
12 *Attorneys for Defendants Sheldon J. Freedman, M.D.*  
13 *And William D. Smith, M.D.*

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 **MARK J. GARDBERG, ESQ.,** in his  
12 capacity as Receiver for, and acting on  
13 behalf of, **FLAMINGO-PECOS SURGERY**  
14 **CENTER, LLC** a Nevada limited liability  
15 company,

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Plaintiff,  
vs.

16 **WILLIAM SMITH MD,** an individual;  
17 **PANKAJ BHATANAGAR MD,** an  
18 individual; **MAJORIE BELSKY MD,** an  
19 individual; **SHELDON FREEDMAN MD,**  
20 an individual; **MATHEW NG MD,** an  
21 individual; **DANIEL BURKHEAD MD,** an  
22 individual; and **DOE MANAGERS,**  
23 **DIRECTORS, AND OFFICERS 1-25, ROE**  
24 **BUSINESS ENTITIES 1-25;**

Defendants.

CASE NO. A-17-750926-B  
CONSOLIDATED WITH CASE NO.:  
A-18-769693-C

DEPT. NO. XI

**NOTICE OF ENTRY OF ORDER**  
**GRANTING DEFENDANT WILLIAM**  
**SMITH, MD'S MOTION FOR**  
**SUMMARY JUDGMENT**

22 **TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

23 Please take notice that on the 16<sup>th</sup> day of August, 2021 an Order Granting Defendant William  
24 Smith, MD's Motion for Summary Judgment was entered in the above-captioned action.

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A copy of the Order is attached hereto.

DATED this 17<sup>th</sup> day of August, 2021.

COOK & KELESIS, LTD.

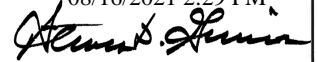
By : /s/ Marc P. Cook  
MARC P. COOK  
Nevada State Bar No. 004574  
GEORGE P. KELESIS  
Nevada State Bar No. 000069  
517 S. Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Defendants Sheldon J. Freedman, M.D.  
And William D. Smith, M.D.*

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares under penalty of perjury that on August 17, 2021, I caused to be  
3 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING**  
4 **DEFENDANT WILLIAM SMITH, MD'S MOTION FOR SUMMARY JUDGMENT** by the  
5 method indicated below:

- 6 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s)  
7 set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed  
8 transmission record is attached to the file copy of this document(s).
- 9 ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage  
10 thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth  
11 below.
- 12 ☐ **BY HAND DELIVERY:** at Las Vegas, Nevada addressed as set forth below.
- 13 ☐ **BY EMAIL:** by emailing a PDF of the document(s) listed above to the email address(es) of  
14 the individual(s) listed below.
- 15 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery  
16 service company for delivery to the addressee(s) on the next business day.
- 17 ☒ **BY ELECTRONIC SUBMISSION:** submitted to the Eighth Judicial District Court, for  
18 electronic filing in accordance with NRCP 5(b), NEFCR Administrative Order 14-2 and  
19 NEFCR 9(e) and service upon the Court's Service List for the above-referenced case.

20  
21 /s/ Shannon J. Fagin  
22 An employee of COOK & KELESIS, LTD.

  
CLERK OF THE COURT

1 **OGSJ**  
2 **MARC P. COOK**  
3 Nevada Bar No. 004574  
4 **GEORGE P. KELESIS**  
5 Nevada Bar No. 000069  
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12 *Attorneys for Defendants Sheldon J. Freedman, M.D.*  
13 *And William D. Smith, M.D.*

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 **MARK J. GARDBERG, ESQ.,** in his  
12 capacity as Receiver for, and acting on  
13 behalf of, **FLAMINGO-PECOS SURGERY**  
14 **CENTER, LLC** a Nevada limited liability  
15 company,

14 Plaintiff,  
15 vs.

16 **WILLIAM SMITH MD,** an individual;  
17 **PANKAJ BHATANAGAR MD,** an  
18 individual; **MAJORIE BELSKY MD,** an  
19 individual; **SHELDON FREEDMAN MD,**  
20 an individual; **MATHEW NG MD,** an  
21 individual; **DANIEL BURKHEAD MD,** an  
22 individual; and **DOE MANAGERS,**  
23 **DIRECTORS, AND OFFICERS 1-25, ROE**  
24 **BUSINESS ENTITIES 1-25;**

25 Defendants.

CASE NO. A-17-750926-B  
CONSOLIDATED WITH CASE NO.:  
A-18-769693-C

DEPT. NO. XI

**ORDER GRANTING DEFENDANT**  
**WILLIAM SMITH, MD'S MOTION**  
**FOR SUMMARY JUDGMENT**

Hearing Date: July 19, 2021  
Hearing Time: CHAMBERS

26 This matter having come before the Court on Defendant, William Smith, MD's Motion for  
27 Summary Judgment ("Motion") on July 19, 2021; the Court having decided the matter pursuant to  
28 Eighth Judicial District Court Administrative Order 21-04 without the necessity of oral argument;  
the Court having read and considered all pleadings and having entered a Findings of Fact and  
Conclusions of Law on August 5, 2021, the Court hereby determines that, Defendant is entitled to  
Judgment in his favor of the remaining causes of action as a matter of law.

1 Therefore:

2 IT IS ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

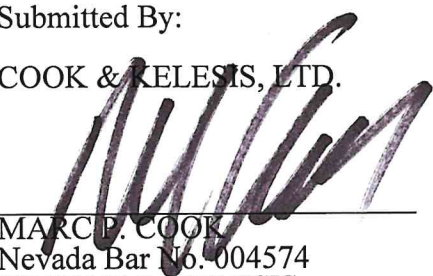
3 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021. Dated this 16th day of August, 2021

4  
5   
6 DISTRICT COURT JUDGE

7 Submitted By:

8 COOK & KELESIS, LTD.

119 AD2 60E5 F993  
Elizabeth Gonzalez  
District Court Judge

9  
10   
11 MARCI COOK  
Nevada Bar No. 004574  
12 GEORGE P. KELESIS  
Nevada Bar No. 000069  
13 517 S. Ninth Street  
Las Vegas, Nevada 89101  
14 Attorneys for Defendants Sheldon J.  
Freedman, M.D. and William D. Smith, M.D.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Flamingo-Pecos Surgery Center  
7 LLC, Plaintiff(s)

CASE NO: A-17-750926-B

8 vs.

DEPT. NO. Department 11

9 William Smith, M.D.,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting Summary Judgment was served via the court's  
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as  
16 listed below:

17 Service Date: 8/16/2021

18 Chris Mathews .

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info@ilawlv.com

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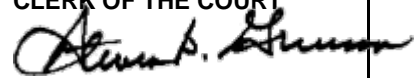
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1 **NEOJ**  
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3 Nevada State Bar No. 004574  
4 **GEORGE P. KELESIS**  
5 Nevada State Bar No. 000069  
6 **COOK & KELESIS, LTD.**  
7 517 S. Ninth Street  
8 Las Vegas, Nevada 89101  
9 Telephone: 702-737-7702  
10 Facsimile: 702-737-7712  
11 Email: [mcCook@bckltd.com](mailto:mcCook@bckltd.com)  
12 *Attorneys for Defendants Sheldon J. Freedman, M.D.*  
13 *And William D. Smith, M.D.*

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 **MARK J. GARDBERG, ESQ.,** in his  
12 capacity as Receiver for, and acting on  
13 behalf of, **FLAMINGO-PECOS SURGERY**  
14 **CENTER, LLC** a Nevada limited liability  
15 company,

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Plaintiff,  
vs.

16 **WILLIAM SMITH MD,** an individual;  
17 **PANKAJ BHATANAGAR MD,** an  
18 individual; **MAJORIE BELSKY MD,** an  
19 individual; **SHELDON FREEDMAN MD,**  
20 an individual; **MATHEW NG MD,** an  
21 individual; **DANIEL BURKHEAD MD,** an  
22 individual; and **DOE MANAGERS,**  
23 **DIRECTORS, AND OFFICERS 1-25, ROE**  
24 **BUSINESS ENTITIES 1-25;**

Defendants.

CASE NO. A-17-750926-B  
CONSOLIDATED WITH CASE NO.:  
A-18-769693-C

DEPT. NO. XI

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT SHELDON  
FREEDMAN, MD'S MOTION FOR  
SUMMARY JUDGMENT**

22 **TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

23 Please take notice that on the 16<sup>th</sup> day of August, 2021 an Order Granting Defendant Sheldon  
24 Freedman, MD's Motion for Summary Judgment was entered in the above-captioned action.

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A copy of the Order is attached hereto.

DATED this 17<sup>th</sup> day of August, 2021.

COOK & KELESIS, LTD.

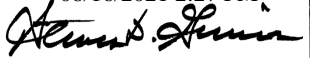
By :           /s/ Marc P. Cook            
MARC P. COOK  
Nevada State Bar No. 004574  
GEORGE P. KELESIS  
Nevada State Bar No. 000069  
517 S. 9<sup>th</sup> Street  
Las Vegas, Nevada 89101  
*Attorneys for Defendants Sheldon J. Freedman, M.D.  
And William D. Smith, M.D.*

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares under penalty of perjury that on August 17, 2021, I caused to be  
3 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING**  
4 **DEFENDANT SHELDON FREEDMAN, MD'S MOTION FOR SUMMARY JUDGMENT**  
5 by the method indicated below:

- 6 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s)  
7 set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed  
8 transmission record is attached to the file copy of this document(s).
- 9 ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage  
10 thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth  
11 below.
- 12 ☐ **BY HAND DELIVERY:** at Las Vegas, Nevada addressed as set forth below.
- 13 ☐ **BY EMAIL:** by emailing a PDF of the document(s) listed above to the email address(es) of  
14 the individual(s) listed below.
- 15 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery  
16 service company for delivery to the addressee(s) on the next business day.
- 17 ☒ **BY ELECTRONIC SUBMISSION:** submitted to the Eighth Judicial District Court, for  
18 electronic filing in accordance with NRCP 5(b), NEFCR Administrative Order 14-2 and  
19 NEFCR 9(e) and service upon the Court's Service List for the above-referenced case.

20  
21 /s/ Shannon J. Fagin  
22 An employee of COOK & KELESIS, LTD.

  
CLERK OF THE COURT

**OGSJ**

MARC P. COOK

Nevada Bar No. 004574

GEORGE P. KELESIS

Nevada Bar No. 000069

COOK & KELESIS, LTD.

517 S. Ninth Street

Las Vegas, Nevada 89101

Telephone: 702-737-7702

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*Attorneys for Defendants Sheldon J. Freedman, M.D.*

*And William D. Smith, M.D.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARK J. GARDBERG, ESQ., in his  
capacity as Receiver for, and acting on  
behalf of, FLAMINGO-PECOS SURGERY  
CENTER, LLC a Nevada limited liability  
company,

Plaintiff,

vs.

WILLIAM SMITH MD, an individual;  
PANKAJ BHATANAGAR MD, an  
individual; MAJORIE BELSKY MD, an  
individual; SHELDON FREEDMAN MD,  
an individual; MATHEW NG MD, an  
individual; DANIEL BURKHEAD MD, an  
individual; and DOE MANAGERS,  
DIRECTORS, AND OFFICERS 1-25, ROE  
BUSINESS ENTITIES 1-25;

Defendants.

CASE NO. A-17-750926-B  
CONSOLIDATED WITH CASE NO.:  
A-18-769693-C

DEPT. NO. XI

**ORDER GRANTING DEFENDANT  
SHELDON FREEDMAN, MD'S  
MOTION FOR SUMMARY  
JUDGMENT**

Hearing Date: July 19, 2021  
Hearing Time: CHAMBERS

This matter having come before the Court on Defendant, Sheldon Freedman, MD's Motion for Summary Judgment ("Motion") on July 19, 2021; the Court having decided the matter pursuant to Eighth Judicial District Court Administrative Order 21-04 without the necessity of oral argument; the Court having read and considered all pleadings and having entered a Findings of Fact and Conclusions of Law on August 5, 2021, the Court hereby determines that, Defendant is entitled to Judgment in his favor of the remaining causes of action as a matter of law.

1 Therefore:

2 IT IS ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

3 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021. Dated this 16th day of August, 2021

4 

5 DISTRICT COURT JUDGE

6 Submitted By:

7 COOK & KELESIS, LTD.

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9  
10 **58B 099 AFEF 38AC**  
**Elizabeth Gonzalez**  
**District Court Judge**

11 MARC F. COOK  
12 Nevada Bar No. 004574  
13 GEORGE P. KELESIS  
14 Nevada Bar No. 000069  
15 517 S. Ninth Street  
16 Las Vegas, Nevada 89101  
17 *Attorneys for Defendants Sheldon J.*  
18 *Freedman, M.D. and William D. Smith, M.D.*  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6 Flamingo-Pecos Surgery Center  
7 LLC, Plaintiff(s)

CASE NO: A-17-750926-B

8 vs.

DEPT. NO. Department 11

9 William Smith, M.D.,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting Summary Judgment was served via the court's  
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as  
16 listed below:

17 Service Date: 8/16/2021

18 Chris Mathews .	cxm@ilawlv.com
19 Iqbal Law PLLC .	info@ilawlv.com
20 Mohamed Iqbal Jr. .	mai@ilawlv.com
21 Dylan Houston	dhouston@grsm.com
22 Andrea Montero	amontero@grsm.com
23 Robert Schumacher	rschumacher@grsm.com
24 Marc Cook	mcook@bckltd.com
25 Docketing Clerk	docketing@mullinerlaw.com
26 Jill House	jhouse@mullinerlaw.com
27 Tim Mulliner	tmulliner@mullinerlaw.com
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1	Vincent Badalamenti	vbadalamenti@mullinerlaw.com
2	Todd Kennedy	tkennedy@kclawnv.com
3	Maximiliano Couvillier	mcouvillier@kclawnv.com
4	Cristina Pagaduan	cpagaduan@grsm.com
5	Sean Owens	sowens@grsm.com
6	Dione Wrenn	dwrenn@grsm.com
7	E-serve GRSM	WL_LVSupport@grsm.com
8	Shannon Fagin	sfagin@bckltd.com
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**ORDR**

**IQBAL LAW PLLC**

Mohamed A. Iqbal, Jr. (NSB 10623)

101 Convention Center Dr., Suite 1175

Las Vegas, Nevada 89109

1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)

[info@ilawlv.com](mailto:info@ilawlv.com); [mai@ilawlv.com](mailto:mai@ilawlv.com)

*Special Litigation Counsel for Mark J. Gardberg, Esq., in his capacity as Receiver for,  
and acting on behalf of, Flamingo-Pecos Surgery Center, LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARK J. GARDBERG, ESQ., in his capacity  
as Receiver for, and acting on behalf of,  
FLAMINGO-PECOS SURGERY CENTER,  
LLC a Nevada limited liability company;

Plaintiff,

vs.

William Smith MD et al.;

Defendants.

Case No.: A-17-750926-B

[consolidated with A-18-769693-C]

Dept. No.: XI

**ORDER GRANTING IN LIMITED PART  
PLAINTIFF'S MOTION TO EXTEND  
DISCOVERY**

Plaintiff's Motion to Extend Discovery came on for hearing on April 26, 2021 (the "Motion"). Pursuant to Administrative Order 21-03, the Court decided the Motion without oral argument. Having reviewed the Motion and the related briefing and being fully informed, and good cause showing, the Court hereby:

**ORDERS** the Motion is **GRANTED IN LIMITED PART and DENIED IN PART**; and, further, **FINDS**:

(1) Given the timing of the Motion, excusable neglect must be shown. The excusable neglect factors enumerated by the Nevada Supreme Court in *Mosely v. Eighth Judicial Dist. Court*, 124 Nev. 654, are similar to the *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 395 (1993) factors, and require that: (1) [the moving party] acted in good faith; (2) it exercised due diligence; (3) there is a reasonable basis for not complying within

**ORDER GRANTING IN LIMITED PART  
PLAINTIFF'S MOTION TO EXTEND DISCOVERY**



1 the specified time; and (4) the nonmoving party will not suffer prejudice.” *Mosely*, 124 Nev. at  
2 668.

3 Regarding Dr. Smith’s deposition, and good faith and diligence: the moving party acted in  
4 good faith, this case has been, outside of the five-month stretch at issue here (late October 2020 –  
5 late March 2021) and the delays from Dr. Smith’s unavailability (August 2019 – October 2020),  
6 diligently litigated by all of the parties, resulting in four of the original six defendants reaching  
7 monetary settlements with the Receiver. There was a reasonable basis for not complying within  
8 the specific time, and the nonmoving party, Dr. Smith, will not suffer prejudice;

9 (2) Plaintiff extended professional courtesy during Dr. Smith’s unavailability. Dr. Smith’s  
10 deposition testimony would serve the Court and all parties with the determination of the pending  
11 motions for summary judgment filed by Dr. Smith and Dr. Freedman, and thus advance judicial  
12 efficiency and the principle of determining matters on the merits; and

13 (3) The Court’s ruling is consistent with Administrative Order 21-03.

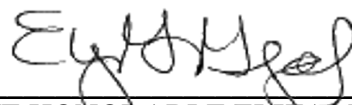
14 The Court hereby further **ORDERS** the deposition of Defendant Dr. Smith may be  
15 completed within 45 days of the date of the April 26, 2021 Hearing, unless counsel agree to a  
16 later completion date.

17 The Motion to Extend Discovery is **DENIED** as to their request to conduct additional  
18 written discovery, extend the expert disclosure deadline, and to extend the discovery cut-off date.  
19 As to those three requests, the Court finds that the four factors as set forth in *Mosely, supra*, have  
20 not been met and therefore, those requests are hereby **DENIED**.

21 **IT IS SO ORDERED.**

Dated this 20th day of May, 2021

22 May \_\_\_, 2021.

23 

24 THE HONORABLE ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE

25 **DC8 E20 9795 490A**  
26 **Elizabeth Gonzalez**  
27 **District Court Judge**

28 **ORDER GRANTING IN LIMITED PART**  
**PLAINTIFF’S MOTION TO EXTEND DISCOVERY**

1 Respectfully Submitted By:

2 IQBAL LAW PLLC

3 By: \_\_\_\_\_

4 Mohamed A. Iqbal, Jr. (NSB 10623)

5 101 Convention Center Dr., Suite 1175

6 Las Vegas, Nevada 89109

7 *Special Litigation Counsel for Mark J. Gardberg, Esq.,*

8 *in his capacity as Receiver for, and acting on behalf of,*

9 *Flamingo-Pecos Surgery Center, LLC*

10 Approved as to Form and Content:

11 COOK & KELESIS, LTD.

12 /s/ Marc P. Cook

13 Marc P. Cook, Esq.

14 Nevada Bar No. 4574

15 517 S. Ninth Street

16 Las Vegas, Nevada 89101

17 *Attorneys for Defendants Sheldon J. Freedman, M.D.*

18 *and William D. Smith, M.D.*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Flamingo-Pecos Surgery Center  
7 LLC, Plaintiff(s)

CASE NO: A-17-750926-B

8 vs.

DEPT. NO. Department 11

9 William Smith, M.D.,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 5/20/2021

16 Chris Mathews .

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17 Iqbal Law PLLC .

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18 Mohamed Iqbal Jr. .

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19 Dylan Houston

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20 Andrea Montero

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21 Robert Schumacher

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22 Marc Cook

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23 Docketing Clerk

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24 Jill House

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25 Tim Mulliner

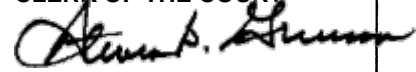
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Sean Owens	sowens@grsm.com
Dione Wrenn	dwrenn@grsm.com
E-serve GRSM	WL_LVSupport@grsm.com
Shannon Fagin	sfagin@bckltd.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 5/21/2021

Mohamed Iqbal	IQBAL Law PLLC Attn: Mohamed A. Iqbal 101 Convention Center Drive - Suite 1175 Las Vegas, NV, 89109
---------------	--



MARC P. COOK  
Nevada State Bar No. 004574  
GEORGE P. KELESIS  
Nevada State Bar No. 000069  
COOK & KELESIS, LTD.  
517 S. 9<sup>th</sup> Street  
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Telephone: 702-737-7702  
Facsimile: 702-737-7712  
Email: mcook@bckltd.com  
*Attorneys for Defendants Sheldon J. Freedman, M.D.  
And William D. Smith, M.D.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

MARK J. GARDBERT, ESQ., in his  
capacity as Receiver for, and acting on  
behalf of, FLAMINGO-PECOS SURGERY  
CENTER, LLC a Nevada limited liability  
company,

Plaintiff,

vs.

WILLIAM SMITH MD, an individual;  
PANKAJ BHATANAGAR MD, an  
individual; MAJORIE BELSKY MD, an  
individual; SHELDON FREEDMAN MD,  
an individual; MATHEW NG MD, an  
individual; DANIEL BURKHEAD MD, an  
individual; and DOE MANAGERS,  
DIRECTORS, AND OFFICERS 1-25, ROE  
BUSINESS ENTITIES 1-25;

Defendants.

CASE NO. A-17-750926-B  
CONSOLIDATED WITH CASE NO.:  
A-18-769693-C

DEPT. NO. XI

**NOTICE OF ENTRY OF ORDER  
REGARDING MOTION AND  
COUNTER-MOTION FOR  
SANCTIONS**

**Hearing Date: 06/12/2020  
Hearing Time: Chambers**

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that on the 23<sup>rd</sup> day of June, 2020 an Order Regarding Defendants' Motion for Sanctions against Plaintiff and Plaintiff's Counter-motion for Attorney's Fees was entered in the above-captioned action.

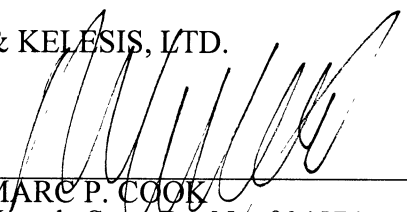
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A copy of the Order is attached hereto.

Dated this 23 day of June, 2020.

COOK & KELESIS, LTD.

By :

  
\_\_\_\_\_  
MARC P. COOK

Nevada State Bar No. 004574

GEORGE P. KELESIS

Nevada State Bar No. 000069

517 S. 9<sup>th</sup> Street

Las Vegas, Nevada 89101

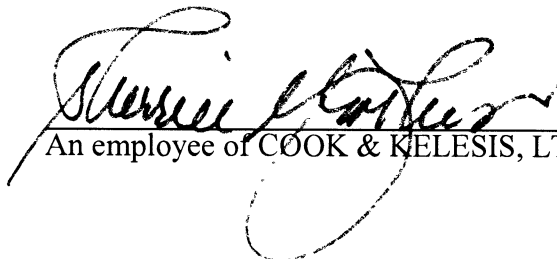
*Attorneys for Defendants Sheldon J. Freedman, M.D.*

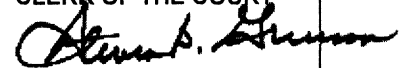
*And William D. Smith, M.D.*

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares under penalty of perjury that on June 23, 2020, I caused to be  
3 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER REGARDING**  
4 **MOTION AND COUNTERMOTION FOR SANCTIONS** by the method indicated below:

- 5 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s)  
6 set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed  
7 transmission record is attached to the file copy of this document(s).
- 8 ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage  
9 thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth  
10 below.
- 11 ☐ **BY HAND DELIVERY:** at Las Vegas, Nevada addressed as set forth below.
- 12 ☐ **BY EMAIL:** by emailing a PDF of the document(s) listed above to the email address(es) of  
13 the individual(s) listed below.
- 14 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery  
15 service company for delivery to the addressee(s) on the next business day.
- 16 ☒ **BY ELECTRONIC SUBMISSION:** submitted to the Eighth Judicial District Court, for  
17 electronic filing in accordance with NRCP 5(b), NEFCR Administrative Order 14-2 and  
18 NEFCR 9(e) and service upon the Court's Service List for the above-referenced case.

19   
20 \_\_\_\_\_  
21 An employee of COOK & KELESIS, LTD.  
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1       ORDR

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4                   **DISTRICT COURT**

5                   **CLARK COUNTY, NEVADA**

6  
7  
8       MARK J. GARDBERT, ESQ., in his capacity  
9       as Receiver for, and acting on behalf of,  
10       FLAMINGO-PECOS SURGERY CENTER,  
11       LLC a Nevada limited liability company,

12                               Plaintiff,

13       vs.

14       WILLIAM SMITH MD, an individual;  
15       PANKAJ BHATANAGAR MD, an individual;  
16       MAJORIE BELSKY MD, an individual;  
17       SHELDON FREEDMAN MD, an individual;  
18       MATHEW NG MD, an individual; DANIEL  
19       BURKHEAD MD, an individual; and DOE  
20       MANAGERS, DIRECTORS, AND OFFICERS  
21       1-25, ROE BUSINESS ENTITIES 1-25;

22                               Defendants.

CASE NO.   A-17-750926-B  
CONSOLIDATED WITH CASE NO.:  
A-18-769693-C

DEPT. NO.   XI

**ORDER REGARDING MOTION AND  
COUNTER MOTION FOR SANCTIONS**

Hearing Date: June 12, 2020  
Hearing Time: Chambers

23               Defendant William Smith's Motion for Sanctions filed August 14, 2019 and Plaintiff's  
24       Counter-motion for Attorney's Fees filed on August 26, 2019 having come on for  
25       consideration on June 12, 2020 on the Court's chambers calendar; the Court having  
26       considered all papers and pleadings on file, hereby makes the following findings of fact and  
27       conclusions of law, and Orders as follows:

28                               **FINDINGS OF FACT**

1       1.       On May 9, 2019 Defendant William Smith filed a Motion for Summary  
2       Judgment based on responses to Requests for Admissions that were either admitted  
3       voluntarily or admitted through order of the court.

4       2.       In opposing this motion, Plaintiff filed a Sur-reply on June 20, 2019 that, in  
5       form and substance, represented to the Court that the admissions should not be binding



1 because on April 24, 2019, subsequent to the admissions being admitted, Plaintiff received  
2 documents that contradicted the submissions.

3 3. In Plaintiff's Motion to Withdraw Admissions and the Reply to Defendants'  
4 Opposition to that motion, Plaintiff repeated the representation to the Court that new  
5 documents were provided to Plaintiff on April 24, 2019 which contradicted prior admissions.

6 4. In reading these arguments by Plaintiff, the Court understood Plaintiff to be  
7 arguing that April 24, 2019 was the first time these documents were produced and were  
8 reviewed for the first time by Plaintiff's counsel sometime thereafter.

9 5. The documents the Plaintiff represented to the Court were first received on  
10 April 24, 2019 were all produced significantly prior to that date. Certain documents were first  
11 produced to Plaintiff on June 27, 2017 by co-defendant Freedman and again produced by  
12 Defendant Smith on August 8, 2018. Both productions were in court filings that were  
13 contemporaneously served on Plaintiff's counsel.

14 6. The balance of the documents that Plaintiff represented to the Court as having  
15 been received on April 24, 2019 were emails that Plaintiff's counsel received on October 24,  
16 2018.

17 7. In its December 31, 2018 Omnibus Opposition to Defendants' Motion to  
18 Compel Plaintiff states, on page two, that its discovery responses were untimely because  
19 counsel was reviewing the emails received October 24, 2018. These were the same emails  
20 represented in Plaintiff's Sur-reply and Motion to Withdraw Admissions to have been first  
21 received on April 24, 2019.

22 8. During the December 31, 2018 hearing on Defendant's Motion to Compel,  
23 Plaintiff's counsel stated, "[w]e've gone through every single one of those 1,400 emails" – in  
24 referring to the same emails that Counsel subsequently represented had not been reviewed  
25 until after the April 24, 2019 production.

26 9. Further, Jack Juan's April 24, 2019 supplemental production itself identifies to  
27 Plaintiff's counsel that the parties in this case, "already have all of the emails in the prior  
28 thumb drive (b/c I previously gave you all the emails of this case)."

10 Accordingly, the Court finds that the misrepresentation in suggesting that  
11 documents were first received in April 2019, as a basis to oppose summary judgement and to  
12 withdraw admissions is a sanctionable misrepresentation.

11. The Court finds that Plaintiff misrepresented that a new production was provided on April 24, 2019 when those documents had all been previously been received and reviewed, and further, that Plaintiff had an opportunity to correct the error on the record of the court and failed to do so.

12. Therefore, the Court finds that this action warrants the correction of the September 30, 2019 Order to the extent that paragraph 4 of the Findings and Facts contained therein is to be deleted. The Court finds that the correction of the record is a sufficient sanction and denies Defendants' request for monetary sanctions and/or striking the Complaint.

13. The court further finds that based on the meritorious Motion for Sanctions, the Countermotion for Sanctions filed by Plaintiff is not supported by the facts and accordingly will be denied.

## CONCLUSIONS OF LAW

When granting sanctions the court shall consider the degree of willfulness of the offending party, the extent the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction awarded relative to the level of severity of abuse, the feasibility and fairness of an alternative, less severe sanction than dismissal of a case or striking pleading, whether the sanctions unfairly operate to penalize a party for the misconduct or his or her attorney and the need to determine both the party and future litigants from similar abuses. See, *Young v. Johnny Ribeiro*, 106 Nev. 88, 93, 787 P.2d. 777, 780 (1990) and *Foster v. Dingwall*, 126 Nev. 56, 63, 227 P.3d 1042, 1047 (2010).

The Court having considered these factors, declines to strike the Complaint or grant monetary sanctions but finds that the conduct warrants a correction of the record particularly in the September 30, 2019 Order to the extent that the paragraph in that order that was attributed to the misrepresentation to the Court, i.e., paragraph four, be deleted from the same.

The court further finds that no additional sanctions are appropriate at this time.

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**ORDER**

It is therefore ordered that Dr. Smith's Motion for Sanctions is granted in part and denied in part as outlined hereinabove, and that Plaintiff's Counter Motion for Sanctions is denied.

Dated this 23rd day of June, 2020

  
DISTRICT COURT JUDGE

**SACOM**

Todd E. Kennedy (NSB# 6014)  
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Las Vegas, Nevada 89135  
*tkennedy@blacklobellolaw.com*

*Attorneys for Mark J. Gardberg, Esq., in his capacity as Receiver for,  
and acting on behalf of, Flamingo-Pecos Surgery Center LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARK J. GARDBERG, ESQ., in his capacity as Receiver for, and acting on behalf of, FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company;  Plaintiff,  vs.  William Smith MD, Pankaj Bhatanagar MD, Marjorie Belsky MD, Sheldon Freedman MD, Mathew Ng MD, Daniel Burkhead MD, Manager MD, DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25;  Defendants.	Case No.: A-17-750926-B Dept. No.: XV  <b>SECOND AMENDED COMPLAINT</b>  (Exempt from Arbitration – exceeds \$50,000)
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COMES NOW Plaintiff Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting  
on behalf of, Flamingo-Pecos Surgery Center, LLC (“Plaintiff”), and hereby alleges in this Second  
Amended Complaint (“SAC”):

**PROCEDURAL HISTORY**

**A. The Appointment of the Receiver by the Court in Case No. A-16-733627**

1. On December 31, 2014, Flamingo-Pecos Surgery Center, LLC (“Flamingo”) filed a  
petition for reorganization in the U.S. Bankruptcy Court for the District of Nevada 2014 (*In re:*  
*Flamingo-Pecos Surgery Center, LLC dba Surgery Center of Southern Nevada, Case No. BK-S-*  
*18480-ABL*).

2. Two months prior to filing its petition, Flamingo abandoned a leasehold consisting of an  
ambulatory surgery center located in the Southwest area of Las Vegas – after accruing several

1 hundreds of thousands of dollars in unpaid rent, operating expenses, and other fees and costs, owed  
2 to the landlord, Patriot-Reading Associates LLC, a Delaware limited liability company (“Patriot”).

3 3. In the bankruptcy case, the Trustee subsequently moved to dismiss, noting that Flamingo  
4 filed merely to avoid being sued “and to burden the Trustee with protecting [Flamingo] assets and  
5 records.” The Bankruptcy Court granted the Trustee’s motion and dismissed Flamingo’s  
6 bankruptcy case on September 4, 2015.

7 4. Throughout its tenancy at Patriot’s property, and prior to, during, and after its failed  
8 bankruptcy, Flamingo was under the control of certain officers, directors and managers, who are  
9 now defendants in this instant action.

10 5. On March 23, 2016, Patriot sued Flamingo for breach of contract in case no. A-16-733627,  
11 *Patriot-Reading Associates LLC v. Flamingo-Pecos Surgery Center LLC*. Flamingo made no  
12 effort to satisfy its obligation to Patriot or to defend itself in the breach of contract action.

13 6. Flamingo, under the control of the defendants in this instant action, sold essentially all its  
14 tangible assets at auction after Patriot’s complaint was filed in March of 2016 and before the Court  
15 entered its Judgment (as defined in paragraph 8, *infra*) in May of 2016.

16 7. Default was entered against Flamingo on April 28, 2016.

17 8. A default judgment was entered on May 20, 2016 against Flamingo and in favor of Patriot,  
18 in the amount \$706,631.17 (the “Judgment”).

19 9. Flamingo failed to appear in the breach of contract action despite service of process and  
20 multiple notices.

21 10. Patriot moved for the appointment of a receiver over Flamingo to, among other things: (i)  
22 secure its assets, including impending restitution from a related criminal matter; (ii) pursue such  
23 other and further claims as may be warranted based on the embezzlement or any other improper  
24 distribution or taking of Defendant’s assets; and (iii) pay Flamingo’s lawful debts, including the  
25 Judgment owed to Patriot.

26 11. The Court granted Patriot’s Petition for the Appointment of Receiver following a hearing  
27 held on August 10, 2016, and issued an Order Granting Patriot-Reading Associates LLC’s Petition  
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1 for the Appointment of Receiver (the “Receivership Order”), which was entered on or about  
2 September 13, 2016. Timothy R. Mulliner was appointed as the receiver (the “Receiver” or “Initial  
3 Receiver”).<sup>1</sup>

4 12. Flamingo and the defendants to this instant action failed to appear, and failed to oppose  
5 Patriot’s petition, move for reconsideration of Patriot’s petition, or appeal the Receivership Order.

6 13. The Receivership Order found, among other facts and legal conclusions, that: (i) Flamingo  
7 “made no attempt to preserve its assets, pursue such claims and causes of action as may be  
8 warranted, or pay any of its lawful debts, including the Judgment”; (ii) there was a material risk  
9 that the value of Flamingo’s assets would be dissipated and/or lose further value; and (iii) pursuant  
10 to NRS 32.010, appointment of a receiver was necessary to carry into effect and aid the execution  
11 of the Judgment previously entered in favor of Patriot and against Flamingo.

12 14. The Receivership Order held that the Receiver *shall*:

13 (1) Take immediate possession of the Receivership Property (including, without  
14 limitation, any accounts held in Flamingo’s name), to hold and manage the  
15 Receivership Property to preserve it from loss, removal, material injury,  
16 destruction, substantial waste, and loss of income;

17 (2) Determine, subject to the terms of this Order, which if any of Flamingo’s  
18 accounts payable should be paid, in full or in part, so that there might be an orderly  
19 liquidation of the Receivership Property and payment of claims of and debts against  
20 Flamingo, including the Judgment;

21 (3) ***Pursue Flamingo’s claims and causes of actions against third parties,***  
22 ***including but not limited to Flamingo’s directors and officers;*** and

23 (4) Pursue Flamingo’s claims against personal property seized as part of criminal  
24 forfeiture proceedings against Flamingo’s former employee/office manager Robert  
25 W. Barnes. For the avoidance of doubt, the Receiver shall not be obligated to bring  
26 any such claims or actions as contemplated by this Section A and/or the other  
27 Sections of this Order, and the Receiver in his discretion may determine the extent  
28 to which, if at all, any such claims or actions may be beneficial to the effectuation  
of the terms of this Order.

Section A of the Receivership Order, pp. 2-3 of 14, ll. 20-26:2-11 (Emphasis  
added).

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<sup>1</sup> Where the reference is the position of “Receiver”, as appointed, empowered and  
authorized by the Receivership Order, Mr. Mulliner is cited as the “Receiver”; where the reference  
is to Mr. Mulliner’s specific tenure as the “Receiver”, he is cited as the “Initial Receiver”.

1 15. The Receiver is also “authorized and empowered” by the Receivership Order to, among  
2 other things:

3 (5) Take any and all steps the Receiver deems necessary to receive and collect any  
4 of Flamingo’s accounts, and, in connection therewith, issue demands and institute,  
5 continue, or otherwise resolve all proper legal actions on behalf of and to preserve  
the Receivership Property and the Receivership Estate;

6 [ . . . ]

7 (7) Bring and prosecute all proper actions for the collection of debts owed to  
8 Flamingo, and for the protection and recovery of the Receivership Property.

9 Sections B(5) and B(7) of the Receivership Order, p. 4 of 13, ll. 7-10:15-16.

10 16. Among other actions, the Initial Receiver filed a complaint against the criminal office  
11 manager for Flamingo, Robert J. Barnes (“Barnes”) on or about May 2, 2017, in case no. A-17-  
12 754867.

13 17. The Initial Receiver also filed the initial complaint in this matter against defendants on or  
14 about February 12, 2017.

15 18. Mark J. Gardberg (the “Receiver”) replaced the Initial Receiver pursuant to the Honorable  
16 Nancy Allf’s order entered on or about July 21, 2017 in A-16-733627-B, which amended the  
17 Receivership Order.

18 **B. The Proceedings in this Instant Action**

19 19. No answer has been filed in this matter; instead, three motions to dismiss were filed: Dr.  
20 Matthew Ng and Dr. Pankaj Bhatnagar’s Motion to Dismiss, Defendant Daniel Burkhead’s Motion  
21 to Dismiss Complaint, and Defendant Sheldon J. Freedman’s Motion to Dismiss Pursuant to NRC  
22 12(b)(5) and 12(b)(6) and for Attorneys’ Fees Pursuant to NRS 18.020 (collectively, the “Motions  
23 to Dismiss”).

24 20. The Receiver caused the First Amended Complaint to be filed on September 18, 2017. The  
25 First Amended Complaint replaced in its entirety the original February 2017 complaint.

26 21. This SAC replaces in its entirety the First Amended Complaint.

1 22. On September 26, 2017, the Court held a hearing on the Motions to Dismiss, and found  
2 good cause to order supplemental briefing. The various defendants' supplemental motions to  
3 dismiss are due on October 24, 2017; Plaintiff's opposition is due on November 7, 2017; and the  
4 replies in support of the supplemental motions to dismiss are due on November 21, 2017.

5 23. A hearing based on the supplemental briefing is calendared for November 29, 2017.

#### 6 **THE PARTIES**

7 24. Plaintiff Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting on behalf of,  
8 Flamingo-Pecos Surgery Center, LLC, a Nevada limited liability company, is a Nevada resident  
9 located and conducting business in Clark County, Nevada. Flamingo was organized and founded  
10 on or about January 9, 2002, subsequently merged with Hualapai Surgery Center LLC on or about  
11 October 12, 2011, and conducted business in Clark County, Nevada.

12 25. Defendant William Smith MD ("Defendant Smith") is an individual who resides and/or  
13 does business in Clark County, Nevada. At all times described herein, Defendant Smith was a  
14 manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

15 26. Defendant Pankaj Bhatnagar MD ("Defendant Bhatnagar") is an individual who resides  
16 and/or does business in Clark County, Nevada. At all times described herein, Defendant  
17 Bhatnagar was a manager, director and/or officer of Flamingo and owed certain duties to  
18 Flamingo.

19 27. Defendant Marjorie Belsky MD ("Defendant Belsky") is an individual who resides and/or  
20 does business in Clark County, Nevada. At all times described herein, Defendant Belsky was a  
21 manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

22 28. Defendant Sheldon Freedman MD ("Defendant Freedman") is an individual who resides  
23 and/or does business in Clark County, Nevada. At all times described herein, Defendant Freedman  
24 was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

25 29. Defendant Mathew Ng MD ("Defendant Ng") is an individual who resides and/or does  
26 business in Clark County, Nevada. At all times described herein, Defendant Ng was a manager,  
27 director and/or officer of Flamingo and owed certain duties to Flamingo.



1 30. Defendant Daniel Burkhead MD (“Defendant Burkhead”) is an individual who resides  
2 and/or does business in Clark County, Nevada. At all times described herein, Defendant Burkhead  
3 was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

4 31. Defendants Smith, Bhatanagar, Belsky, Freedman, Ng, Burkhead, Manager MD, Doe  
5 Defendants, and Roe Business Entities 1 through 100 are referenced individually and collectively  
6 as the “Defendants.”

7 32. A certain Defendant Manager MD (“Defendant Manager MD”) is an individual who  
8 resides and does business in Clark County, Nevada. At all times described herein, Defendant  
9 Manager MD was a manager, director and/or officer of Flamingo and owed certain duties to  
10 Flamingo; Defendant Manager MD is currently in bankruptcy and shall be named as a defendant  
11 to this action once Defendant Manager MD’s bankruptcy is no longer pending.

12 33. Certain doe defendant managers, directors and officers (the “Doe D&O Defendants”) are  
13 individuals who reside and do business in Clark County, Nevada. The true names of the Doe D&O  
14 Defendants 1 through 25 are presently unknown to Plaintiff, who therefore sues said defendants  
15 by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the  
16 Doe D&O Defendants are legally responsible for the events referred to herein. This SAC will be  
17 amended to include them when their true names and capacities become known.

18 34. The true names and capacities of defendants Roe Business Entities 1 through 100 are  
19 presently unknown to Plaintiff, who therefore sues said defendants by such fictitious names.  
20 Plaintiff is informed and believes, and therefore alleges, that each of the defendants designated as  
21 Roe Business Entities 1 through 100 are legally responsible for the events referred to herein. This  
22 SAC will be amended to include them when their true names and capacities become known.

### 23 **JURISDICTION & VENUE**

24 35. This Court has jurisdiction because the amount in controversy exceeds \$50,000, and  
25 because the parties are residents of and/or conduct business in Clark County, Nevada.

26 36. Venue in Clark County is proper because the defendants are residents of and/or conduct  
27 business in Clark County, and because the acts described herein occurred there.

## SUMMARY OF ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

37. The Receiver, an individual, pursues Defendants on behalf of Flamingo because Defendants individually and collectively damaged Flamingo through a series of actions and inactions occurring over the course of several years. As such, this action was effectuated to preserve, protect, and recover Flamingo's assets and property from a group of individuals who irreparably harmed Flamingo: *i.e.*, Defendants – Flamingo's own directors, officers, and managers charged with running, overseeing and growing its business.

38. The Receiver is authorized, empowered, and specifically tasked with prosecuting this suit (*e.g.*, see Section B(7) of the Receivership Order, p. 4 of 13, ll. 15-17: "Bring and prosecute all proper actions for the collection of debts owed to Flamingo, and for the protection and recovery of the Receivership Property." As defined therein, Receivership Property includes: "Flamingo and its assets, including all accounts, books, records, ***contract rights, restitution rights, claims and causes*** of action, and such other further assets to which Flamingo might be entitled"; Receivership Order, p. 2 of 13, ll. 12-15 (emphasis added)).

39. As alleged in further and specific detail within this SAC, the injury to Flamingo and the damages sought from Defendants by this SAC are not *per se* the damages, actions and injury caused by the criminal office manager Barnes; rather, the injury to Flamingo and the damages sought from Defendants stem from Defendants' breaches of their fiduciary duties, breaches of the entity's operating agreement, and gross negligence, willful misconduct, and reckless/intentional disregard, in allowing and enabling Barnes to steal from Flamingo over a span of several years and to such an extent that Flamingo was rendered insolvent and went out of business.

40. The injury to Flamingo and the damages sought arise from Defendants' own misconduct and breaches—Defendants' own failures in hiring and supervising Barnes, Defendants' own failures to audit, review, or even check Flamingo's finances and accounts, Defendants' own failures to pursue or recover embezzled amounts, Defendants' own failures to pursue, preserve and collect Flamingo's receivables, and Defendants' own failures to assert Flamingo's interests and right to restitution when Barnes' criminal matter was adjudicated.

1 41. Defendants failed to exercise business judgment during Flamingo’s demise and, moreover,  
2 Defendants intentionally acted and failed to act in direct breach of their duties of loyalty and duties  
3 of care to Flamingo and (when dissolution was inevitable) its creditors.

4 42. Indeed, Defendants perceived the deteriorating health of Flamingo, observed its deepening  
5 insolvency and failures to pay creditors, and were cognizant of Flamingo’s mounting debt and  
6 financial troubles. Rather than adhering to their obligations to Flamingo, which would have  
7 involved efforts to satisfy Flamingo’s creditors, and because Defendants perceived no personal  
8 benefit from meeting such obligations, they ignored those obligations, did nothing, committed  
9 waste, and did not care, as Flamingo slid from a profitable enterprise employing 90 people and  
10 treating scores of Nevada residents, to a gutted, insolvent shell that shuttered all three of its  
11 locations.

12 43. Defendants’ actions and inactions were not the product of careful evaluation, or reasonable  
13 decisions, or even the thinnest guise of business judgment; instead, they were the product of glaring  
14 omissions and ignorance, gross negligence, willful misconduct, and reckless/intentional disregard,  
15 and staggering breaches of their fiduciary duties of care and of loyalty.

16 44. Defendants were part of 27 practicing surgeons constituting insiders of Flamingo – a small  
17 limited liability company which was robbed over several years by an unsupervised, do-it-all office  
18 manager Barnes. The office manager stole millions from Flamingo over several years and yet  
19 Defendants were, apparently, too “busy” to notice.

20 45. Individually and collectively, Defendants, with gross negligence, willful misconduct, and  
21 reckless/intentional disregard, and in breach of their respective fiduciary duties to Flamingo:

- 22 a. hired an embezzler, Barnes, into an unsupervised position with the power to destroy  
23 Flamingo and shut down all of Flamingo’s business at three locations;
- 24 b. chose not to put a system in place to monitor said embezzler, enabling him to engage  
25 in criminal conduct with complete impunity for “at least three to five years”;
- 26 c. failed to monitor and supervise that embezzler, who left **obvious and brazen** warning  
27 signs (including, for example, middle-of-the-night withdrawals of \$25,000 and \$30,000  
28 from Flamingo’s corporate card to feed a gambling problem, forging documents, and  
tying Flamingo to “economically unfeasible agreements”); and

- d. failed to terminate, seek recourse from, or pursue that embezzler or ***complicit banking institutions***, even after learning he stole millions from Flamingo while Defendants – who owed duties to Flamingo – ***did nothing***.

46. Not only did Defendants fail to supervise Barnes or timely uncover his multi-layered looting, Defendants failed to immediately fire Barnes upon discovery – instead, they ***allowed the criminal to remain in his position for up to a year after discovery***.

47. Defendants took none of the steps one would reasonably take after discovering a criminal enterprise threatening one's own business. Defendants failed to:

- a. ***block*** Barnes from Flamingo's finances, or even supervise him; Barnes maintained his unsupervised access to and dominance over Flamingo's financial accounts, receivables, physical files, and even computer systems; Barnes "sabotaged" Flamingo's computer systems when he eventually left, and absconded with Flamingo's computer system, emptied his office, and took all the files;
- b. conduct an audit or investigation into the extent of Barnes' criminal acts and Flamingo's damages, despite Barnes being the "poison pill" that destroyed Flamingo's business – ***years*** later, Defendants still had no clue how much Barnes stole;
- c. pursue a civil action against Barnes;
- d. attempt to recover Flamingo's funds and assets; or
- e. move with haste or urgency – indeed, it took Defendants six (6) months ***after Barnes absconded*** to approach the FBI.

48. Moreover, Defendants intentionally prevented others from satisfying their fiduciary duties to Flamingo: directors screamed at managing member Tadlock to leave Barnes alone when he attempted to get Barnes to attend meetings and discuss Barnes' embezzlement; hindered Tadlock's efforts to investigate Barnes; ignored the fact that Barnes did not show up to meetings; and engaged in extensive and widespread obstruction.

49. The federal government sought for Barnes, and Barnes was given, a prison sentence based on, among other things, Barnes' embezzlement and theft from Flamingo.

50. Defendants separately failed to protect, preserve or pursue millions of dollars in Flamingo's receivables. These receivables continued to wither away to nothing – a textbook example of waste.

51. This waste – of millions of dollars owed to Flamingo – is made even worse by the fact that Defendants were put on notice and knew they should have pursued the receivables.

1 52. Indeed, Defendant Smith was questioned by incredulous counsel during a Rule 341  
2 meeting in February of 2015 as to why Defendants were not taking basic steps to collect on the  
3 receivables, at no cost (by, for example, hiring a collections' agency that worked for a percentage  
4 recovered). Defendants did nothing to save, preserve and protect Flamingo's assets, even after  
5 such notice. Flamingo's millions in receivables withered to nothing.

6 53. That Rule 341 meeting was triggered by Defendants' ill-fated shove of Flamingo into a  
7 bankruptcy that was eventually dismissed. Of course, prior to the bankruptcy filing, Defendants  
8 had allowed Flamingo to be destroyed and rendered an insolvent shell by Barnes' criminality over  
9 several years, and by Defendants' own acts and failures to act.

10 54. Separately, when Barnes' federal criminal proceeding came to the forfeiture and restitution  
11 stage, Defendants failed to submit any claims on behalf of Flamingo, the actual victim of Barnes'  
12 criminal acts, despite knowing of Flamingo's insolvency and rights to the funds, and that its  
13 creditors remained unpaid.

14 55. Accordingly, Flamingo is not listed as a recipient of assets forfeited by its larcenous former  
15 office manager – funds that it alone is entitled to.

16 56. ***Even worse***, the Restitution List evidences Defendants' ***naked self-interest***:

17 Dr. Daniel Burkhead/Burkhead Irrevocable Trust was awarded \$39,587.89  
18 Defendant Bhatnagar/Bhatnagar Family Trust was awarded \$81,187.89  
19 Defendant Ng was awarded \$31,787.89  
20 Dr. William Smith was awarded \$126,687.89  
21 Dr. Sheldon Freedman was awarded \$61,287.89

22 57. As such, Defendants not only ignored and grossly failed to protect Flamingo's interests,  
23 Defendants intentionally usurped those interests in favor of their own, by allowing the substitution  
24 of their own personal self-interest over Flamingo's.

25 58. Defendants were personally enriched by their disregard of their affirmative duties to  
26 Flamingo.

27 59. As such, Defendants were grossly negligent, and acted with willful misconduct and  
28 reckless/intentional disregard, and separately breached the fiduciary duties (including the duty of

care and duty of loyalty) Defendants each owed to Flamingo as managers, directors, and/or officers:

- a. before, during and after Barnes' criminal activity, in allowing Flamingo to be looted by Barnes' criminal operation over several years and doing nothing to protect Flamingo's interests upon discovery of Barnes' criminality;
- b. by failing to pursue or preserve millions in receivables – for work Flamingo had already completed and was entitled to – and failing to stop their utter waste; and
- c. by failing to protect and pursue, or even register, Flamingo's interests in Barnes' restitution action – resulting in the rightful victim (Flamingo) receiving no award, and Defendants receiving personal, ill-gotten awards.

60. Defendants also violated, *inter alia*, the Nevada law against distributions of LLC funds where the LLC is insolvent (NRS 86.343), and several other provisions of Chapter 86 enacted to protect an LLC's creditors.

61. Moreover, Defendants' improper distributions constituted fraudulent transfers of corporate assets under Chapter 112.

62. Defendants are also liable for constructive fraud under Nevada law.

63. Separately, Defendants breached the Operating Agreement with Flamingo, to Flamingo's detriment, and must face the consequences of, and cannot be indemnified for, such Defendants' gross negligence and willful misconduct.

64. Defendants were also unjustly enriched by Defendants' actions and failures to act.

65. The quantity and quality of the evidence meets the standards for each of Plaintiff's causes of action – including those requiring heightened pleading standards. Indeed, this SAC is supported by critical directors and/or managing members' party admissions – under oath – in multiple Rule 341 meetings and Rule 2004 Examinations, and by an amended judgement issued by the U.S. District Court for the District of Nevada.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: BARNES' HIRING AND THE UNSUPERVISED YEARS OF CRIME – DESPITE OBVIOUS WARNING SIGNS**

66. Defendants hired Barnes on or about October 5, 2006 to be Flamingo's office manager.

67. Managing member Charles H. Tadlock testified under oath that Barnes' hiring was a majority decision by the surgeons. See attached hereto as **Exhibit 1** a relevant portion of the

1 January 19, 2016 Charles H. Tadlock Rule 2004 Examination Transcript in *In re Charles H.*  
2 *Tadlock and Mary E. Tadlock*, 15-13135-abl, at p. 19, ll. 11-17; p. 24, ll. 6-8.

3 68. Tadlock testified under oath that the “entire group” talked to Barnes about coming to work  
4 for them, and everyone had an equal say. *Id.* at p. 24, ll. 3-5.

5 69. Barnes’ functions and responsibilities as Flamingo’s office manager extended to  
6 Flamingo’s full financial workings, accounts and books.

7 70. Defendants failed to conduct the necessary due diligence regarding Barnes and, with gross  
8 negligence, willful misconduct and reckless/intentional disregard, and in breach of their fiduciary  
9 duties to Flamingo, hired Barnes and placed a criminal in a position to easily steal from Flamingo.

10 71. Defendants hired Barnes into a position where his submissions, correspondence and  
11 communications with, and representations to Flamingo’s (a) vendors and creditors, including  
12 Flamingo’s landlords; (b) accountant(s), financial officers, and/or the board of directors; (c)  
13 patients, Medicare and Medicaid entities, and insurance companies, on invoices, accounts  
14 receivable, and reimbursements; and (d) lenders and financial institutions holding Flamingo’s  
15 accounts, would be unreviewed, unsupervised, unmonitored, unaudited, and/or unreconciled.

16 72. Defendants hired Barnes into a position where Flamingo’s accounts and funds would not  
17 be reviewed, supervised, monitored, audited, reconciled or safeguarded in any reasonable manner.

18 73. Defendants conducted no spot checks or audits of Barnes’ work and performance following  
19 Barnes’ hiring.

20 74. Defendants implemented no probationary, or trainee, period when Barnes was hired.

21 75. Defendants failed to appropriately train Barnes or review his work or performance  
22 following Barnes’ hiring.

23 76. Defendants failed to establish a procedure to review, supervise, monitor, audit, and/or  
24 reconcile Barnes’ performance as Flamingo’s office manager.

25 77. Defendants failed to appropriately review, supervise, monitor, audit, and/or reconcile  
26 Barnes’ performance as Flamingo’s office manager – even when things were clearly amiss.

1 78. Each of the following dozens of paragraphs, independently and collectively, evidence  
2 Defendants' gross negligence and reckless disregard and willful/intentional misconduct, and  
3 breaches of Defendants' duties of loyalty and duties of care to Flamingo.

4 79. Barnes would withdraw cash from Flamingo's corporate credit card(s) – in the middle of  
5 the night – in amounts of \$25,000 and \$30,000 at a time. *See* attached hereto as **Exhibit 2** a  
6 relevant portion of the February 5, 2015 Rule 341 Examination Transcript, Dr. William Smith and  
7 Counsel testifying for debtor in *In re Flamingo-Pecos Surgery Center dba Surgery Center of*  
8 *Southern Nevada*, 14-18480-ABL, at p. 7, ll. 13-21.

9 80. Barnes later admitted that he obtained approximately \$515,000 in casino cash advances  
10 using Flamingo's credit cards, for personal gambling. *See* attached hereto as **Exhibit 3** the Plea  
11 Agreement Under Fed. R. Crim. P. 11(c)(1)(A) and (B) in *U.S. v. Robert W. Barnes*, 2:16-cr-  
12 00090-APG-GWF, Document 6, at pp. 5-6, ll. 15-23, 1-3.

13 81. Barnes admitted that he used Flamingo's credit card to purchase a diamond and platinum  
14 ring for \$38,000 in February 2013. *Id.*

15 82. Barnes admitted that during one five-month period in 2013, he used Flamingo's credit card  
16 for concert tickets, hotels and expenses at Disneyland, expensive meals, and other personal  
17 entertainment. *Id.*

18 83. Barnes admitted to embezzling funds from related entities, including Epiphany Surgical  
19 Solutions and VIP Surgical Centers. *Id.* at p. 6, ll. 3-8.

20 84. Defendants did not act to prevent these blatantly illegal and inappropriate charges on  
21 Flamingo's corporate cards for several years.

22 85. Barnes forged documents.

23 86. Barnes illegally and without authorization entered Flamingo into promissory notes and  
24 lines of credit totaling \$1.7 million dollars – and absconded with the funds for personal use, while  
25 Flamingo was eventually sued by J.P. Morgan Chase in Case No. A-14-700424, JP Morgan Chase  
26 Bank NA vs. Flamingo-Pecos Surgery Center LLC, Eighth Judicial District Court, Dept. 24  
27 (currently closed). *See* attached hereto as **Exhibit 4** the January 8, 2015 Omnibus Declaration of  
28



1 William Smith, M.D. in Support of Debtor’s Interim Emergency Motions and Related Relief, Dkt.  
2 13 in *In re Flamingo-Pecos Surgery Center dba Surgery Center of Southern Nevada*, 14-18480-  
3 ABL, at pp. 3-4, ¶ 12.

4 87. Barnes issued false reports. Exhibit 1 at pp. 53-54, ll. 23-25, 1-2. Indeed, actual reports  
5 directly from Flamingo’s banks were different from the reports Barnes showed to Defendants and  
6 Flamingo’s other officers, directors and members. *Id.* at p. 30, ll. 3-5.

7 88. Barnes wrote checks to draw funds from accounts on which he had no authority and was  
8 not named. *Id.* at p. 64, ll. 4-13. Defendants either did not review the checks drawing down  
9 Flamingo’s funds or did not bother to inform themselves about why they were being issued.

10 89. Barnes brought suspicion on others to cover his tracks – for example, asserting to other  
11 directors, officers and managers, that managing member Tadlock was getting more than his fair-  
12 share. Barnes did this while Tadlock was out of pocket with multiple surgeries and was unaware  
13 of Barnes’ slander. Defendants, however, did nothing to investigate Barnes’ charges and to inform  
14 themselves of the true state of Flamingos’ financial woes. *Id.* at p. 32, ll. 8-23.

15 90. Defendants were aware of Barnes failing to pay Flamingo’s creditors – including landlords  
16 – large sums of money, for multiple years. Such creditors were eventually owed hundreds of  
17 thousands of dollars, while Barnes lied to the creditors about checks being in the mail, failed to  
18 communicate and respond to urgent correspondence, and generally gave Flamingo’s creditors the  
19 run around for several years. Yet Defendants did nothing.

20 91. Barnes was “not forthcoming” with the [financial] reports for ***18 months to two years***.  
21 Exhibit 1 at p. 27, ll. 17-20. Defendants did nothing.

22 92. Barnes cancelled board of directors’ meetings repeatedly. *See* attached hereto as **Exhibit**  
23 **5** a relevant portion of the July 15, 2015 Rule 341 Examination Transcript, Dr. William Smith  
24 testifying for debtor in *In re Flamingo-Pecos Surgery Center dba Surgery Center of Southern*  
25 *Nevada*, 14-18480-ABL, at p. 4, ll. 5-12. Again, Defendants did nothing.

26 93. In addition to the immediate and massive midnight heists from Flamingo’s corporate card,  
27 Barnes tied Flamingo to “economically unfeasible agreements” – criminal enterprises at every  
28

1 level, including with dirty sheets. Exhibit 2 at p. 6, ll. 3-5. Barnes profited from the cleaning of  
2 Flamingo's dirty sheets. The scheme in sum: Flamingo got charged 3X or 4X the Las Vegas rate  
3 to have the surgery center's sheets washed in Utah, and Barnes got a kickback.

4 94. Barnes' dirty sheets arrangement wasn't his only scheme related to Flamingo's vendors.  
5 "There are lots of examples." *Id.* at p. 6, ll. 12-13.

6 95. Barnes reached similar illicit kick-back arrangements with various creditors of Flamingo,  
7 stealing for himself discounts and rebates that should have inured to the benefit of Flamingo. *Id.*  
8 at p. 6, l. 7. Defendants either failed to notice or failed to act, as they did nothing for several years.

9 96. Barnes hired multiple accounting firms during his tenure – as soon as the accountants  
10 started having questions, he would **replace** the firm and tell Defendants – "oh, they're not doing a  
11 good job. We needed to go to the next one." Barnes did this with at least three firms. *Id.* at p. 9,  
12 ll. 15-21. Defendants continued to do nothing despite such blatant warning signs.

13 97. Defendant Smith testified under oath that Barnes' crime spree lasted for at least three to  
14 five years (*Id.* at p. 9, ll. 13-14) – meaning that Defendants failed to check Flamingo's bank and  
15 credit card accounts and statements, bills, invoices, receivables and accounting and tax documents,  
16 for several years – an eternity, especially in the small business world, and among the small group  
17 of shareholders.

18 98. Barnes admitted in subsequent criminal proceedings that he embezzled at least **\$1.3 million**  
19 over many years. Defendant Smith testified to "millions" in stolen funds. Exhibit 2 at p. 9, l. 10.  
20 Managing member Tadlock estimated **\$3.5 million**. See attached hereto as **Exhibit 6** a relevant  
21 portion of the March 14, 2016 Charles H. Tadlock Rule 2004 Examination Transcript in *In re*  
22 *Charles H. Tadlock and Mary E. Tadlock*, 15-13135-abl, at p. 103, ll. 12-20. Separately, Barnes  
23 stole approximately \$300,000 to \$350,000 from Epiphany, the management company for  
24 Flamingo and owned in majority part by Flamingo's managing member Tadlock.

25 99. During the many years of Barnes' crime spree, Defendants failed to supervise or monitor  
26 Barnes' submissions, correspondence and communications with, and representations to  
27 Flamingo's (a) vendors and creditors, including Flamingo's landlords; (b) accountant(s), financial  
28

1 officers, and/or the board of directors; (c) patients, Medicare and Medicaid entities, and insurance  
2 companies, on invoices, accounts receivable, and reimbursements; and (d) lenders and financial  
3 institutions holding Flamingo's accounts.

4 100. Defendants did not audit or reconcile Barnes' work, despite his position and power to  
5 destroy Flamingo's entire business. In fact, Barnes' theft and Defendants' actions and inactions  
6 directly led to Flamingo's downfall and ill-fated bankruptcy; at Flamingo's Rule 341 Meeting,  
7 Barnes was labeled the "poison pill", and the impact of his crime on Flamingo's business was  
8 readily and unambiguously admitted. "So the surgery center was always profitable if there wasn't  
9 somebody who was stealing millions of dollars." Exhibit 2 at p. 16, ll. 21-23. Despite his central  
10 role, Defendants did nothing.

11 101. Defendants did not conduct any performance reviews or rate or examine Barnes' work and  
12 conduct in his critical business functions.

13 102. Defendants did not audit or even review, with even the slightest care or effort, Flamingo's  
14 financial reports during the several years of Barnes' crime spree to determine why so much money  
15 was missing. And why no one – including Defendants and Flamingo's creditors – was getting  
16 paid from a busy surgery center.

17 103. Defendants did not check on Flamingo's funds, or even review Flamingo's accounts and  
18 statements, or Flamingo's contracts with vendors, creditors and lenders, with even the slightest  
19 care or effort – as Barnes robbed Flamingo blind via concurrent, brazen schemes.

20 104. Barnes' conduct, and Defendants' acts and failures to act to prevent and/or end such  
21 conduct, crippled Flamingo – forcing the layoffs of 90 employees, leaving just five (5) persons  
22 still employed. Exhibit 4 at p. 4, ¶ 13.

23 105. Despite the warning signs, and despite Barnes' failure to perform basic functions for well  
24 over a year (including but not limited to issuing financial reports), Defendants did not investigate,  
25 audit, examine or perhaps even bother about such failures.

1 106. In response to questions from the U.S. Trustee at Flamingo's ill-fated bankruptcy, Dr.  
2 Smith's only defense was: "most of the surgeons here are extremely busy, and we trusted him to  
3 do the day-to-day management." Exhibit 2 at p. 10, ll. 12-14.

4 107. Indeed, Defendants allowed Barnes to remain on the board "until he was fired." Exhibit 5  
5 at pp. 3-4:24-25, 1-4.

6 108. Barnes employed schemes, misrepresentations and outright lies to hide Flamingo's true  
7 financial condition and Defendants failed to detect any of them. Defendants exercised zero  
8 diligence and zero urgency and failed to engage in efforts to save Flamingo—their own business.  
9 In fact, Defendants did the opposite, as "two-thirds of the doctors gave up." Exhibit 2 at p. 7, ll.  
10 13-21.

11 109. Individually and collectively, Defendants were grossly negligent and acted with reckless  
12 disregard and willful/intentional misconduct, and breached their fiduciary duties of loyalty and  
13 duties of care to Flamingo, in hiring and failing to supervise, oversee and/or monitor Barnes for  
14 many years during Barnes' crime spree.

15 110. Defendants' actions and failures to act allowed and encouraged a criminal to effectuate and  
16 conduct his embezzlement and theft from Flamingo and resulted in substantial damages to and  
17 against Flamingo.

18 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: BARNES' NON-**  
19 **TERMINATION AND LINGERING RETENTION – AND DEFENDANTS'**  
20 **INACTIVITY AND INTENTIONAL MISCONDUCT – FOLLOWING DISCOVERY OF**  
21 **BARNES' CRIMINALITY**

22 111. Upon the discovery of Barnes' embezzlement and theft, Defendants took none of the steps  
23 one would expect to be taken in an existential emergency (one that caused all three of Flamingo's  
24 locations to shut down based on Barnes' actions).

25 112. Defendants are wildly inconsistent as to basic facts about Barnes' crime spree. Dr. William  
26 Smith under oath at a Rule 341 Meeting agreed with a puzzling and worrisome sequence of events:  
27 Barnes' embezzlement was discovered in 2012, but he was not fired until 2013. Exhibit 5, at p. 5,  
28 ll. 3-7. Separately, in a sworn declaration, Dr. Smith asserted that reports were received in June

1 or July of 2013 from Flamingo’s landlords and vendors that debts were going unpaid, and this led  
2 to the board confronting Barnes, who “immediately resigned.” Exhibit 4, at p. 3, ¶ 9. In fact,  
3 Flamingo’s landlord raised unpaid rent issues well before June 2013—in 2011 itself, and  
4 repeatedly throughout 2012—as evidenced by multiple written agreements.

5 113. Flamingo negotiated a certain Delinquent Rent Letter Agreement with said landlord  
6 beginning in 2011, and managing member Tadlock executed this agreement on January 3, 2012.

7 114. Flamingo subsequently received a demand letter from said landlord on July 6, 2012, and  
8 on July 24, 2012, managing member Tadlock guarantied Flamingo’s performance via executing a  
9 certain Amended Delinquent Rent Letter Agreement.

10 115. Tadlock, on behalf of Flamingo, also received an email on December 31, 2012 detailing  
11 substantial past due rents and attaching a rent invoice.

12 116. Managing member Tadlock describes the discovery of Barnes’s embezzlement completely  
13 differently – his office manager Tammy Schaefer discovered theft from an Epiphany account at  
14 Bank of America in 2013 or 2014. Exhibit 1, pp. 43-44, ll. 12-25, 1-6. Tadlock believes Barnes  
15 simply left, and “disappeared.” *Id.*, at p. 46, ll. 12-13. Barnes “took off” on a Saturday with “all  
16 of the computers and all of the written stuff for Epiphany and [Flamingo].” *Id.*, at p. 49, ll. 11-18.

17 117. Defendants – Flamingo’s officers, managers and directors who owed obligations and duties  
18 to Flamingo – are completely inconsistent about the central events and central character (the  
19 “poison pill”) who destroyed their business and stole millions of dollars.

20 118. What is undisputed – is that Defendants were willfully blind to Barnes’ criminality for  
21 several years, and that Defendants failed upon discovery to immediately stop Barnes and protect  
22 Flamingo.

23 119. Barnes admits to conducting his outrageous heists from 2010 to 2013 – meaning  
24 Defendants completely failed and slept on their basic obligations for many years. This constitutes  
25 grossly, willfully and intentionally negligent conduct and, separately, a breach of Defendants’  
26 fiduciary duties to Flamingo, of care and of loyalty.

1 120. Upon discovering Barnes' embezzlement and theft, Defendants individually and  
2 collectively failed – for an unreasonably lengthy period of time – to remove Barnes from his  
3 position as office manager, and to block Barnes' access to Flamingo's funds and assets, thereby:  
4 (a) allowing Barnes to continue his crime spree; (b) failing to limit Flamingo's potential losses;  
5 and (c) exacerbating Flamingo's actual losses.

6 121. Upon discovering Barnes' embezzlement and theft, Defendants individually and  
7 collectively failed to: (a) demand that Barnes return Flamingo's funds and assets; (b) pursue  
8 Barnes; and (c) file a civil complaint against Barnes, with such failures resulting in substantial  
9 damages against Flamingo.

10 122. Upon discovering Barnes' embezzlement and theft, Defendants individually and  
11 collectively failed to appropriately audit, investigate, and determine the extent of Barnes' crimes,  
12 resulting in substantial damages against Flamingo.

13 123. Defendants failed to address Barnes' continued control of Flamingo's finances for several  
14 months.

15 124. Defendants failed to implement and/or enforce IT protections and record retention  
16 policies after they discovered Barnes' crimes.

17 125. Defendants failed to investigate Barnes' finances. Exhibit 1, pp. 74-75, ll. 24-25, 1-7.

18 126. Defendants failed to hire accountants to conduct an internal investigation into Flamingo's  
19 losses.

20 127. Defendants failed to pursue Barnes to retrieve Flamingo's funds and other entities' funds.

21 128. After discovering Barnes' embezzlement and theft and until Barnes left, Defendants  
22 allowed Barnes to further harm Flamingo. Dr. Smith testified that Barnes either destroyed or took  
23 a lot of documents, including those related to board meetings. Exhibit 5, at p. 4, ll. 15-19.  
24 Managing member Tadlock confirms that "Barnes walked off with almost everything, the  
25 computers . . . [a]ll the financial records for Epiphany and for [Flamingo]." Exhibit 6, at p. 50, ll.  
26 17-21.

1 129. Speaking in July of 2015, Dr. Smith admitted that Barnes “sabotaged a couple of computers  
2 that had some information on [sic], so we have a hard time getting some of that down.” Exhibit 5,  
3 at p. 4, ll. 19-22. Barnes inflicted upon Flamingo extensive and long-lasting damage on his way  
4 out of the company, and the harm he caused was exacerbated by Defendants’ failures to protect  
5 Flamingo.

6 130. Defendants individually and collectively failed to protect and preserve Flamingo’s assets,  
7 funding and interests from Barnes’s criminality, and failed to take basic steps to protect and  
8 preserve Flamingo after Barnes left the company.

9 131. After Barnes left Flamingo, and for the *six months* that followed, Defendants did not hire  
10 anyone to investigate Barnes’ misconduct, leaving Flamingo in the dark as to the full extent of the  
11 damage. *Id.*, at p. 6, ll. 9-15.

12 132. Indeed, it took Defendants six (6) months *after Barnes absconded* to take even such basic  
13 steps as reporting his crimes to the FBI.

14 133. Not only did Defendants fail to take any actions to protect Flamingo’s interests, but certain  
15 Defendants on the Board of Directors intentionally interfered with managing member Tadlock’s  
16 efforts to investigate Barnes’ embezzlement. Tadlock claimed that directors screamed at him when  
17 he attempted to get Barnes to attend meetings and discuss Flamingo’s finances (Exhibit 1, at p. 28,  
18 ll. 2-15), and they “were shouting at [Tadlock] to leave [Barnes] alone” when Tadlock raised the  
19 issue of Barnes’ performance. *Id.*, at p. 28, ll. 12-15.

20 134. Defendants who were board members hindered Tadlock’s efforts to investigate Barnes,  
21 ignored the fact that Barnes did not show up to meetings, and engaged in general obstruction that  
22 lasted for more than 18 months. *Id.*, at p. 28, ll. 3-19.

23 135. According to managing member Tadlock, the banks where Flamingo’s funds were held  
24 allowed Barnes to write checks on accounts for which he had no authorization, and failed to take  
25 basic security precautions – negligence that potentially left the banks liable for Flamingo’s losses.  
26 Yet Defendants failed to pursue or even file a civil complaint against such institutions to hold them  
27 responsible for allowing Flamingo’s funds to be stolen.

1 136. Indeed, it appears that Defendants failed to even work with the banks and their internal  
2 fraud and/or recovery teams to identify Flamingo's losses and retrieve Flamingo's funds in lieu of  
3 initiating civil litigation. Defendants' intentional (and grossly negligent) inaction compounded the  
4 already-substantial damages to Flamingo caused by their other failures.

5 137. These actions and failures to act reflect Defendants' reckless indifference and "want of  
6 even scant care." Here, Defendants acted with no rational basis.

7 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: DEFENDANTS' GROSS**  
8 **NEGLIGENCE, INTENTIONAL MISCONDUCT AND BREACHES OF FIDUCIARY**  
9 **DUTY IN FAILING TO PURSUE MILLIONS OF DOLLARS IN RECEIVABLES OWED**  
10 **TO FLAMINGO – RESULTED IN COMPLETE WASTE**

11 138. Defendants separately failed to protect, preserve or pursue, over several years, millions in  
12 Flamingo's receivables for surgeries and medical treatment already provided by Flamingo.

13 139. Flamingo's receivables continued to wither away to nothing under Defendants' watch as  
14 officers, directors and managers of Flamingo. Defendants' gross negligence, willful misconduct,  
15 and reckless/intentional disregard for and breaches of their respective fiduciary duties to Flamingo  
16 not only amounted to a textbook example of waste, but damaged Flamingo's ability to attract and  
17 retain the qualified staff needed for Flamingo to remain viable.

18 140. This waste – of millions owed to Flamingo – was made even worse by the fact that  
19 Defendants were put on notice and knew they should have pursued the receivables.

20 141. First, Defendants failed to pursue, preserve, and capture millions of dollars in receivables  
21 when Barnes' criminality was discovered in 2012 or 2013.

22 142. Second, between the 2012/2013 discovery and Flamingo's Rule 341 Meeting on February  
23 5, 2015 (after Defendants shoved Flamingo into its ill-fated bankruptcy) – a vast stretch of time  
24 for a victimized small business – Defendants continued in their failure to pursue, preserve, and  
25 capture the receivables.

26 143. Third, after the first Rule 341 Meeting (in February of 2015) and second Rule 341 Meeting  
27 (in July of 2015) and despite being made aware of the importance of the receivables to Flamingo's  
28



1 estate and creditors, Defendants continued in their failures to pursue, preserve, and capture the  
2 receivables – until such amounts were rendered completely uncollectable.

3 144. The U.S. Trustee identified at Flamingo’s first Rule 341 Meeting on February 5, 2015, **\$2.9**  
4 **million** listed as personal property; when she asked what made up this amount – receivables or  
5 tangible cash, Dr. Smith testified that there was only a “small amount of money in the bank.”  
6 Exhibit 2, at p. 15, ll. 2-7. Accordingly, a substantial portion of the \$2.9 million listed in the  
7 schedules to Flamingo’s bankruptcy petition was comprised of Flamingo’s receivables.

8 145. As of that date in February 2015, Dr. Smith estimated that 20% of the receivables  
9 (approximately \$500,000 to \$600,000) would be collectable with a “good collection team really  
10 working it.” *Id.*, at ll. 15-19. Thus, Defendants’ failure to take any steps to preserve Flamingo’s  
11 receivables between their 2012/2013 discovery of Barnes’ criminality and the February 5, 2015  
12 questions under oath, resulted in a waste and abandonment of 80% of millions of dollars earned  
13 and rightfully owed to Flamingo.

14 146. The U.S. Trustee further questioned Defendants’ collection efforts on Flamingo’s behalf:  
15 “Has anyone started doing that or is that something you’re going to do?” Dr. Smith responded that  
16 such efforts were “on hold” . . . “[u]ntil we get the funding.” *Id.*, at pp. 15-16, ll. 22-25, 1-2.

17 147. The U.S. Trustee then questioned whether Defendants had considered agencies that take a  
18 percentage – and received a frank admission of Defendants’ gross negligence and breach of  
19 fiduciary duty: “that is not our focus.” *Id.* at 17-18, ll. 22-25, 1-10.

20 148. Defendants’ ridiculous position that millions of dollars in receivables owed to Flamingo  
21 were not the focus of Defendants, and that such efforts were on hold for cost reasons (***when***  
22 ***collection models with zero upfront costs are readily available***), triggered another attorney to  
23 jump in – counsel for one of Flamingo’s creditors (“Creditor’s counsel”). Creditor’s counsel  
24 focused on Defendants, including but not limited to Defendant Smith, failing to take the simplest  
25 steps to protect Flamingo’s (Debtor’s) estate:

26 Creditor’s counsel: [I]f there are assets out there, okay, a couple of million, that  
27 could be worked by a ***collection company that might charge you X amount of***  
28 ***dollars for what they collect, why wouldn’t you want to go ahead and start doing***  
***that now*** so that you can collect those assets –

1 Debtor's counsel: We're going to if we ever –  
2 Creditor's counsel: But why should it be contingent? *Why can't you do that now*  
3 is my question.  
4 U.S. Trustee: *Yeah*.  
5 Debtor's counsel: It's not contingent. It's just –  
6 Creditor's counsel: Well, it is. Because what you're saying is [sic] that it should  
7 be contingent upon whether the success of your plan. I mean, why if there are assets  
8 out there right not, *why wouldn't you want to marshall [sic] those for the benefit*  
9 *of the estate and the creditors* --  
10 Debtors' counsel: We're going to.  
11 Creditor's counsel: -- *when it doesn't cost any money?*

12 Exhibit 2, at pp. 20-21, ll. 6-25, 1-3 (emphasis added)

13 149. Defendant Smith responded by referencing a billing company that was doing that – “and  
14 then because they were not get [sic] paid, they stopped doing that.” *Id.*, at p. 21, ll. 4-6. Defendant  
15 Smith's admission here constitutes additional, separate, evidence of yet further gross negligence,  
16 willful misconduct, and reckless/intentional disregard, and of Defendants' breaches of their  
17 respective fiduciary duties to Flamingo. Defendants failed even the simplest of obligations – and  
18 the immediate first step – *of hiring and maintaining* entities to preserve, pursue and collect  
19 receivables belonging to Flamingo. And this failure continued for several years.

20 150. At the very least, the February 5, 2015 Rule 341 Meeting put Defendants on notice  
21 regarding the pursuit of the remaining receivables, as both the U.S. Trustee and creditor's counsel  
22 focused on the receivables and urged Defendants to prevent further waste

23 151. Remarkably, even after the first Rule 341 Meeting, *Defendants still did nothing* regarding  
24 the remaining receivables—which withered away to nothing.

25 152. When asked six months later, during the July 15, 2015, second Rule 341 Meeting, what he  
26 had personally done since the end of 2014 to try and recover the accounts receivable, Defendant  
27 Smith admitted under oath: “I have personally done nothing.” Exhibit 5, at p. 8, ll. 6-10.

28 153. Despite notice and the urgings and the questioning from the U.S. Trustee and multiple  
creditors' counsel, Defendants failed to preserve, pursue, and collect on the remaining receivables.

154. Defendants' intentional actions and inactions resulted in the utter waste of millions of  
dollars of what Flamingo's assets—and independently constitute gross negligence, willful  
misconduct, and reckless/intentional disregard, and breaches of Defendants' fiduciary duties.

155. Defendants are directly responsible for and caused Flamingo's loss of millions of dollars in receivables.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: DEFENDANTS'  
INTENTIONAL FAILURE TO PROTECT FLAMINGO'S INTERESTS AND  
DEFENDANTS' PERSONAL ENRICHMENT THROUGH BREACHES OF THEIR  
FIDUCIARY DUTIES**

156. Barnes' criminal case in the U.S. District Court for the District of Nevada arrived at the restitution stage, where \$1.3 million dollars – which belonged to Flamingo and was stolen by Barnes – was subject to claims and would be apportioned into separate awards pursuant to court order. *See* attached hereto as **Exhibit 7** the March 28, 2017 Amended Judgment in a Criminal Case in *U.S. v. Robert W. Barnes*, 2:16-cr-00090-APG-GWF, Document 41, at pp. 14-15 (the "Restitution List").

157. Defendants failed to advocate for and protect Flamingo's interests at the restitution stage of Barnes' criminal case. Indeed, Flamingo appears nowhere on the Restitution List.

158. Despite having notice from the U.S. District Court for the District of Nevada of the Restitution List, Defendants failed to make any claims on behalf of Flamingo, even though Defendants knew Flamingo was the victim of Barnes' criminality, knew Flamingo was insolvent as a result, and knew that Flamingo's creditors remained unpaid.

159. Defendants' intentional actions and inactions here represent a failure to protect Flamingo's interests – but Defendants went even further, seeking to personally enrich themselves, their families, and their investments by further breaching of their fiduciary duties to Flamingo.

160. Defendants made claims (or at least allowed claims to be made) on their behalf, while taking no such steps on behalf of Flamingo. Accordingly, the Restitution List contains no claim for or even a mention of Flamingo – only Defendants' ***naked self-interest***:

Defendant Bhatnagar/Bhatnagar Family Trust was awarded \$81,187.89

Defendant Ng was awarded \$31,787.89

Dr. William Smith was awarded \$126,687.89

Dr. Sheldon Freedman was awarded \$61,287.89

Dr. Daniel Burkhead/Burkhead Irrevocable Trust was awarded \$39,587.89

*Id.* at 14-15.

1 161. The Restitution List identifies substantial sums awarded to, among others, the defendants  
2 named in this action – at a time when Defendants knew such sums rightfully belonged to Flamingo  
3 and that Flamingo was a gutted, post-failed-bankruptcy shell incapable of satisfying its obligations  
4 to its creditors.

5 162. Not only did Defendants ignore and fail their obligations to pursue, protect and collect on  
6 Flamingo's interests, Defendants *intentionally usurped those interests in favor of their own*  
7 *personal interests*, by allowing the substitution of their own personal self-interest over Flamingo's.

8 163. Among other causes of action, Defendants' breaches of their duties of loyalty to Flamingo  
9 are blatant and obvious here. Defendants' actions here also (a) justify, for the effectuation of  
10 justice, a constructive trust cause of action; (b) constitute unjust enrichment under Nevada law;  
11 and (c) separately breach multiple provisions of NRS Chapter 86, especially with respect to the  
12 dissolution of a Nevada LLC and the protections afforded to creditors.

13 **FIRST CAUSE OF ACTION:**  
14 **GROSSLY NEGLIGENT HIRING AGAINST ALL DEFENDANTS**

15 164. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 163 above, as if set  
16 forth herein.

17 165. Defendants had a duty to Flamingo to: (a) conduct reasonable background check and due  
18 diligence on Barnes prior to hiring Barnes; and (b) protect Flamingo from harm resulting from  
19 Flamingo's employment of Barnes.

20 166. Defendants hired Barnes without conducting a reasonable background check and due  
21 diligence to ensure he was fit for the position of Flamingo's office manager.

22 167. Defendants knew or should have known that Barnes had dangerous propensities and/or  
23 would display, initiate and perpetuate criminality.

24 168. Defendants breached Defendants' duties to Flamingo with respect to hiring, including the  
25 duty to protect Flamingo from the harm resulting from Flamingo's employment of Barnes.

26 169. Defendants' breaches of Defendants' duties to Flamingo in this regard resulted in  
27 substantial damages to and against Flamingo, in an amount greater than \$50,000.

170. Defendants watched Flamingo sink into an insolvent death spiral and did nothing.

**SECOND CAUSE OF ACTION:  
GROSSLY NEGLIGENT SUPERVISION AGAINST ALL DEFENDANTS**

171. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 170 above, as if set forth herein.

172. Defendants had a duty to Flamingo to supervise, train, and discipline Barnes during his employment as Flamingo's office manager, and to protect Flamingo from harm resulting from Flamingo's employment of Barnes.

173. Defendants failed to supervise, train or discipline Barnes during his employment, and failed to protect Flamingo from harm resulting from Flamingo's employment of Barnes – thereby breaching Defendants' duties to Flamingo.

174. Defendants' breaches of Defendants' duties to Flamingo in this regard resulted in substantial damages to and against Flamingo, in an amount greater than \$50,000.

**THIRD CAUSE OF ACTION:  
GROSSLY NEGLIGENT RETENTION AGAINST ALL DEFENDANTS**

175. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 174 above, as if set forth herein.

176. Defendants had a duty to protect Flamingo regarding Barnes' continued employment as Flamingo's office manager, especially after Barnes' embezzlement and theft was discovered.

177. Defendants failed to remove Barnes and, with gross negligence, willful misconduct, and reckless/intentional disregard, retained Barnes as Flamingo's office manager, allowing Barnes to continue his embezzlement and theft – thereby breaching Defendants' duties to Flamingo and inflicting substantial harm upon Flamingo.

178. Defendants' breaches of Defendants' duties to Flamingo in this regard resulted in substantial damages to and against Flamingo, in an amount greater than \$50,000.

**FOURTH CAUSE OF ACTION:  
DEFENDANTS' BREACHES OF DEFENDANTS' FIDUCIARY DUTY OF CARE TO  
FLAMINGO**

1 179. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 178 above, as if set  
2 forth herein.

3 180. As managers, directors and/or officers of Flamingo, Defendants had a fiduciary duty of  
4 care to Flamingo.

5 181. As detailed in this SAC and evidenced by numerous and ongoing examples, for several  
6 years, Defendants completely neglected this duty, before the discovery of Barnes' embezzlement  
7 (when Defendants' failures allowed Barnes' theft to continue unabated), upon the discovery of  
8 Barnes' embezzlement (when Defendants' failures exacerbated the harm inflicted upon Flamingo  
9 by Barnes), and for multiple years following the discovery of Barnes' embezzlement (when  
10 Defendants' failures resulted in lasting harm to Flamingo, which was ruined and went out of  
11 business).

12 182. Defendants individually and collectively breached Defendants' fiduciary duty of care to  
13 Flamingo by, among other things, failing to:

- 14 a. oversee, supervise, monitor and discipline Flamingo's office manager, who was  
15 embezzling and stealing from Flamingo;
  - 16 b. supervise, care for, monitor or even review Flamingo's books, accounts, and finances  
17 while Barnes was Flamingo's office manager;
  - 18 c. expeditiously remove Barnes from the position of Flamingo's office manager upon the  
19 discovery of Barnes' embezzlement and theft;
  - 20 d. audit, investigate and/or determine the extent of Barnes' embezzlement and theft to  
21 protect Flamingo's interests;
  - 22 e. pursue Barnes on behalf of Flamingo to recover Flamingo's assets, funding and  
23 interests from Barnes;
  - 24 f. pursue third-parties, including banks holding Flamingo's funds, to recover Flamingo's  
25 assets and funds;
  - 26 g. pursue and collect on millions of dollars in receivables owed to Flamingo;
- 27  
28

- 1 h. take appropriate, reasonable and necessary steps to protect Flamingo's interests vis-à-  
2 vis Barnes and certain Defendants; and
- 3 i. protect and pursue, or even register, Flamingo's interests in Barnes' restitution action  
4 – resulting in the rightful victim (Flamingo) receiving no award, and Defendants  
5 receiving personal, ill-gotten awards.

6 183. Defendants' breaches of the duty of care also included the failure to account for and  
7 preserve Flamingo's funds and assets.

8 184. Defendants' individual and collective breaches of Defendants' fiduciary duty of care to  
9 Flamingo resulted in substantial damages to and against Flamingo, in an amount greater than  
10 \$50,000.

11 **FOURTH CAUSE OF ACTION: DEFENDANTS' BREACHES OF DEFENDANTS'**  
12 **FIDUCIARY DUTY OF LOYALTY TO FLAMINGO**

13 185. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 184 above, as if set  
14 forth herein.

15 186. As managers, directors and/or officers of Flamingo, Defendants had a fiduciary duty of  
16 loyalty to Flamingo.

17 187. As detailed in this SAC and evidenced by numerous and ongoing examples, for several  
18 years, Defendants completely neglected this duty, before, upon, and well after the discovery of  
19 Barnes' embezzlement.

20 188. Defendants individually and collectively breached Defendants' fiduciary duty of loyalty to  
21 Flamingo by, among other things, failing to submit any claims on Flamingo's behalf in Barnes'  
22 criminal case's restitution proceedings, and – instead – intentionally usurping Flamingo's interests  
23 in favor of their own, by allowing the improper substitution of Defendants' own personal self-  
24 interest over Flamingo's, and receiving awards of funds rightfully belonged to Flamingo.

25 189. Defendants' individual and collective breaches of Defendants' fiduciary duty of loyalty to  
26 Flamingo resulted in substantial damages to and against Flamingo, in an amount greater than  
27 \$50,000.

1                   **FIFTH CAUSE OF ACTION: DEFENDANTS' BREACHES OF THE OPERATING**  
2   **AGREEMENT**

3       190.   Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 189 above, as if set  
4       forth herein.

5       191.   Defendants and Flamingo are parties to an existing, valid contract, the operating agreement.

6       192.   Defendants breached the terms of the operating agreement.

7       193.   Defendants' breaches of the operating agreement were unexcused.

8       194.   All terms and conditions precedent to Defendants' duty to perform were fulfilled by  
9       Flamingo or were excused.

10      195.   As detailed in this SAC, Flamingo was severely and irrevocably damaged by Defendants'  
11      breaches of the operating agreement, in an amount greater than \$50,000.

12                   **SIXTH CAUSE OF ACTION: WASTE, AGAINST ALL DEFENDANTS**

13      196.   Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 195 above, as if  
14      set forth herein.

15      197.   As detailed in this SAC, among other things Defendants failed to pursue, preserve, and  
16      collect on millions of dollars in receivables owed to Flamingo, and failed to protect other assets  
17      and property of Flamingo.

18      198.   In so doing, Defendants committed acts and permitted acts constituting waste of  
19      Flamingo's property at a time when Defendants were rightfully in possession of Flamingo's  
20      interests and property.

21      199.   Defendants' acts caused permanent and lasting injury to the property and to Flamingo, to  
22      the prejudice of Flamingo and Flamingo's creditors, in an amount greater than \$50,000.

23      200.   Flamingo is entitled to treble damages under Nevada law, pursuant to NRS 40.150 and  
24      *Price v. Ward*, 25 Nev. 203 (1899).

25                   **SEVENTH CAUSE OF ACTION: DEFENDANTS' BREACHES OF NRS CHAPTER 86**

26      201.   Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 200 above, as if  
27      set forth herein.



1 202. NRS Chapter 86 applies the formation, operation, and dissolution of Nevada limited  
2 liability companies – and thus to Flamingo.

3 203. As detailed in this SAC, Defendants’ actions and inactions breached multiple provisions  
4 of NRS Chapter 86, including without limitation: failure to maintain a registered agent (NRS  
5 86.231), failure to hold in trust all the property and assets of a defaulting company (NRS 86.274),  
6 failure to properly distribute profits and contributions, and making distributions improperly when  
7 Flamingo was insolvent (NRS 86.343), and failure to properly dissolve Flamingo (NRS 86.521).

8 204. Defendants’ multiple breaches of NRS Chapter 86 caused substantial damages to Flamingo  
9 and to Flamingo’s creditors, in an amount greater than \$50,000.

10 **EIGHTH CAUSE OF ACTION: IMPOSITION OF A CONSTRUCTIVE TRUST**  
11 **AGAINST ALL DEFENDANTS**

12 205. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 204 above, as if  
13 set forth herein.

14 206. A confidential, fiduciary relationship exists and existed between Flamingo and Defendants.

15 207. As detailed in this SAC, Defendants’ actions and inactions damaged Flamingo (e.g.,  
16 Defendants ignored Flamingo’s rightful claims to the restitution amounts in Barnes’ criminal  
17 proceeding and made claims (or allowed claims to be made on Defendants’ behalf) leading to  
18 direct personal awards of funds, to the detriment of Flamingo.

19 208. Retention of legal title by Defendants to such personal awards and other property of  
20 Flamingo, against Flamingo’s interests, would be inequitable under the circumstances.

21 209. The imposition and existence of a trust – where Defendants must submit all such personal  
22 awards and property belonging to Flamingo – is essential to the effectuation of justice.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff demands and prays for relief as follows:

- 25 a. For an award of compensatory damages in an amount far in excess of \$50,000;  
26 b. For pre- and post-judgment interest, as applicable;  
27 c. For an award of costs and reasonable attorneys’ fees;

- 1 d. For treble damages;  
2 e. For the imposition of a constructive trust; and  
3 f. For such other and further relief as the Court deems just and proper.

4 Dated this 10<sup>th</sup> day of October 2017.

5 Respectfully Submitted,

6 By: /s/ Todd E. Kennedy  
7 Todd E. Kennedy (NSB# 6014)  
8 BLACK & LOBELLO

9 *Attorneys for Mark J. Gardberg, Esq., in his*  
10 *capacity as Receiver for, and acting on behalf of,*  
11 *Flamingo-Pecos Surgery Center LLC*

12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY that I am an employee of BLACK & LOBELLO, and that on this  
14 10<sup>th</sup> day of October 2017, I caused to be served a true and correct copy of the foregoing: **SECOND**  
15 **AMENDED COMPLAINT** in the following manner:

16 **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-  
17 referenced document was electronically filed on the date hereof and served through the Notice of  
18 Electronic Filing automatically generated by the Court's facilities to those parties listed on the  
19 Court's Master Service List.

20 **For Mathew Ng:**

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23 Valerie Larsen (vllarsen@hollandhart.com)  
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By: /s/ Todd E. Kennedy  
An employee of BLACK & LOBELLO

## **EXHIBIT 1**

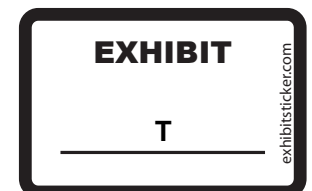
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re: )  
CHARLES H. TADLOCK and MARY E. ) Case No.  
TADLOCK, ) 15-13135-ABL  
Debtors-in-Possession. )

2004 EXAMINATION OF CHARLES TADLOCK, M.D.

Taken at the Offices of Iqbal Law PLLC  
714 South Fourth Street  
Las Vegas, Nevada

On Tuesday, January 19, 2016  
At 1:01 p.m.



Reported by: Jane V. Efaw, CCR #601, RPR

1     Appearances:

2     For Creditor Patriot-Reading Associates LLC:

3             MOHAMED A. IQBAL, JR., ESQ.  
4             Iqbal Law PLLC  
5             714 South Fourth Street  
6             Las Vegas, Nevada 89101  
7             (702) 750-2950

8     For Debtors-in-possession:

9             THOMAS E. CROWE, ESQ.  
10            Thomas E. Crowe Professional Law Corporation  
11            2830 South Jones Boulevard  
12            Suite 3  
13            Las Vegas, Nevada 89146  
14            (702) 794-0373

15     Also Present:

16             ABRAHAM WANG

17                             \* \* \* \* \*

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I N D E X

WITNESS	PAGE
CHARLES TADLOCK, M.D.	
Examination by Mr. Iqbal	4

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Schedule C - Property Claimed as Exempt	41
Exhibit 2	First Amended Disclosure Statement	77

1     Thereupon --

2                                 CHARLES TADLOCK, M.D.

3     was called as a witness by the Creditor, and having  
4     been first duly sworn, testified as follows:

5  
6                 MR. CROWE:   Good afternoon.   This is the  
7     2004 Exam of Debtor Charles H. Tadlock in Case  
8     15-13135-ABL.   It's being conducted pursuant to an  
9     Ex Parte Motion, Docket Number 230, and an Order from  
10    the court, Docket Number 231.   My name is Mohamed  
11    Iqbal.

12

13                                 EXAMINATION

14    BY MR. IQBAL:

15                 Q.     Good afternoon, Dr. Tadlock.   I represent  
16     Creditor Patriot-Reading Associates, LLC.   And I'd  
17     like to pause here and get an appearance from your  
18     counsel.

19                 MR. CROWE:   Tom Crowe appearing for  
20     Dr. Tadlock.

21    BY MR. IQBAL:

22                 Q.     Dr. Tadlock, so the court reporter can have  
23     a clean record, I will try not to talk too fast or  
24     cut you off when you're answering, and I request the  
25     same courtesy when I'm asking you questions.   Does



1     that seem fair?

2           **A.     Certainly.**

3           Q.     As you just verbalized, we also need verbal  
4     responses at all times because gestures or nods  
5     cannot be captured outside of a video examination.

6           As I told you before we got on the record,  
7     and I'll tell you now, we can take a break at any  
8     time you'd like. Just please let me know and as long  
9     as there isn't a question pending. If there is a  
10    question pending, I request that you answer the  
11    question, and then we can go off the record. Does  
12    that seem fair?

13          **A.     Certainly.**

14          Q.     Is there anything preventing you today from  
15    giving truthful testimony in this examination?

16          **A.     No. I have to mention the fact that I'm on**  
17    **multiple drugs, including Valium, a couple of**  
18    **narcotics, and several other drugs. So my memory may**  
19    **not be the best.**

20          Q.     We'll just ask for what you can remember.  
21    No one's a computer. I'm not looking for any  
22    specific dates or anything like that. And if we're  
23    looking for an approximation, I'll ask you for an  
24    approximation.

25          Now, these medications that you mentioned,

1     you're taking them on a daily basis?

2           **A.     Yes.**

3           Q.     So this is not out of the ordinary for you  
4     to take those every day?

5           **A.     No.   I've bumped up recently because of the**  
6     **pain getting worse, but other than that, no.**

7           Q.     Can you please spell your last name for the  
8     record, sir?

9           **A.     T, as in Tom, a-d-l-o-c-k.**

10          Q.     Have you been deposed before, Dr. Tadlock?

11          **A.     Yes, multiple times.**

12          Q.     Could you give me a rough estimate of how  
13     many times you've been deposed?

14          **A.     Dozens.**

15          Q.     How many of those dozens of times when  
16     you've been deposed have you been a party to the  
17     action?

18          **A.     Relatively few.**

19          Q.     If you can recall, can you tell us which  
20     cases that you've been deposed in that you had been a  
21     party?

22          **A.     Primarily when I was rear-ended in an**  
23     **automobile accident.**

24          Q.     And when was that, sir?

25          **A.     That was in 2008.   November, roughly, 25th.**

1 Q. And that was when the accident occurred?

2 A. That's when the accident occurred, in which  
3 I was injured.

4 Q. And then you filed a personal injury  
5 complaint?

6 A. Yes.

7 Q. And what is the status of that action now?

8 A. As I'm aware, it's completely finished.

9 Q. And you received a settlement?

10 A. I received a settlement, correct.

11 Q. And do you recall the amount of that  
12 settlement?

13 A. They tendered both policies. I don't  
14 remember the exact sum. After you get done with  
15 attorney's fees and specialists' fees and everything  
16 else. They got me.

17 Q. And it will be in the schedules?

18 A. In the schedules. And you've already gone  
19 over those and are aware of the number.

20 MR. IQBAL: I just want to put on the record  
21 that Abraham Wang, who is the manager for  
22 Patriot-Reading, LLC, the creditor, has just walked  
23 into the room and will just be observing.

24 BY MR. IQBAL:

25 Q. Now, aside from your personal injury

1 litigation, have you been a named plaintiff or  
2 defendant in any other actions?

3 **A. Not for many years.**

4 Q. When was the last time?

5 **A. I sued a surgery center for improperly**  
6 **buying me out, I think was the last one.**

7 Q. And when was that approximately?

8 **A. 2004 maybe or '05. Somewhere in there.**

9 Q. And what was the result of that litigation?

10 **A. I won.**

11 Q. Can you recall roughly how much in damages  
12 or what kind of award you won?

13 **A. Yes. But I'm not allowed under court order**  
14 **to reveal it.**

15 Q. And then the other dozens of times that  
16 you've been deposed but not a party to the action,  
17 were you an expert witness in those?

18 **A. Usually it was on my own patients. I don't**  
19 **generally do expert witnessing. I don't like doing**  
20 **it. I had done it a couple of times but not very**  
21 **often and not for years.**

22 Q. And we talked about the dozens of  
23 depositions. How many times have you testified in  
24 court?

25 **A. Only a couple.**

1 Q. And those were related to?

2 A. A lawsuit against one of my PA's. As a  
3 treating physician twice on the same patient. I  
4 think that's it.

5 Q. In a medical negligence context?

6 A. What was it about? You got me. I don't  
7 remember. It's been too many years.

8 Q. Did you do anything to prepare for the exam  
9 today?

10 A. No, except for looking at the sheets that  
11 you sent over to my attorney. I read those fairly  
12 quickly an hour or two ago.

13 Q. You motioned over. Just for the record, I  
14 believe it's our objection to the disclosure  
15 statement?

16 MR. CROWE: It's actually your opposition  
17 and my reply.

18 MR. IQBAL: Okay.

19 THE WITNESS: I don't think I read the  
20 reply. Just opposition.

21 BY MR. IQBAL:

22 Q. Now, just to get some foundational facts out  
23 of the way. When were you born, sir?

24 A. 2/27/1958.

25 Q. And where did you grow up?

1           A.     Guatemala until I was about 6 on and off. I  
2     was actually born in San Francisco and went back to  
3     Guatemala and back to the United States,  
4     San Francisco, and then Modesto, and then Tucson,  
5     Arizona, and then back to California for medical  
6     school at Stanford for about nine years, including my  
7     residency and everything else.

8           Q.     And when did you finish your residency at  
9     Stanford?

10          A.     Oh, it was 1989. And I moved up to  
11     Mendocino, California. I was recruited by a hospital  
12     in 1989, '90. It was losing its Medicare  
13     accreditation.

14          Q.     And you worked at that hospital as an  
15     employee?

16          A.     No. I worked fee for service on top of  
17     which I was paid a stipend as a chief of ICU,  
18     anesthesia, and then eventually pain management.

19          Q.     And did you have a separate practice,  
20     separate from working at the hospital?

21          A.     For pain management, yes. Everything else  
22     was at the hospital.

23          Q.     And so you started your own practice pretty  
24     much out of residency, but you were also working at  
25     the hospital?

1           A.     Correct.

2           Q.     When did you start -- when did you move to  
3 Las Vegas?

4           A.     I believe it was 1997.

5           Q.     And did you join up with an existing  
6 hospital? Did you start your own practice? What did  
7 you do?

8           A.     No. A group called ACI was the largest  
9 anesthesia group in Nevada. They had been trying to  
10 get me to move off of my 8 acres on the ocean in  
11 Mendocino for many years. And when my daughter was  
12 erroneously told and we were told that she had  
13 learning disabilities, I finally decided that I had  
14 to get in a bigger city. So I took them up on their  
15 offer to come out here and work with them instead.

16          Q.     So you started working with ACI in 1997.  
17 And how long was that engagement?

18          A.     Oh, it ended around 2000 or 2001, 2002.  
19 Somewhere in there. When they realized that they  
20 couldn't really bill correctly for pain management.  
21 I think they said something to me about not having  
22 correctly billed a pain pump in the three years I've  
23 been doing them. It was a pleasant parting. They  
24 went their way. I went my way.

25                 Plus, I had been hospitalized with atrial

1     **fibrillation trying to do full-time practice plus**  
2     **pain management on top of it.**

3           Q.     And so you said it was an amicable  
4     dissolution. And what did you do after ACI in 2001  
5     or 2002?

6           A.     Somewhere in there I started my own  
7     practice, or actually continued it because I was  
8     already doing it with ACI, in pain management.

9           Q.     When you say your practice, you're referring  
10    to Charles H. Tadlock, Ltd?

11          A.     M.D., Ltd, yeah.

12          Q.     And just for convenience sake, is it okay if  
13    we just refer to that as the "ltd"?

14          A.     That's fine with me.

15          Q.     Has that been your main practice since 1987  
16    when you started it after ACI?

17          A.     No, because prior to that I was a member of  
18    ACI. So they have their own everything. They're a  
19    major group. So they did their own billing,  
20    management, the whole nine yards.

21          Q.     So the ltd came after that?

22          A.     Came after that.

23          Q.     So 2001, 2002?

24          A.     Somewhere in there, yeah. It might have  
25    been 2003. It was a long time ago.



1 Q. And the ltd, did you hire your wife right  
2 away, or when did she start working?

3 A. Oh, my wife has been working with me since  
4 back in Mendocino helping me in pain management. So  
5 all the way back.

6 Q. So since that time, every business that  
7 you've been involved, every pain management business,  
8 she's been an employee of the business?

9 A. Yeah. Actually, we can go back all the way  
10 to Stanford. She was an employee of Stanford when I  
11 was doing OB/GYN. And she was chief on nights in  
12 nursing obstetrics.

13 Q. So we have the ltd that started after ACI.  
14 Was this your sole medical practice after ACI, or did  
15 you join up with other groups?

16 A. No. I believe that's the sole medical  
17 practice.

18 Q. So 100 percent of your revenue, net revenue,  
19 came from the ltd after ACI?

20 A. Negative. I had income from surgery centers  
21 as well.

22 Q. What surgery centers did you work with after  
23 ACI?

24 A. I believe that's already on the record.  
25 I've given the locations and everything. And I'm not

1 going to be able to do it from the top of my head.  
2 There were several in Arizona. There's one in  
3 Arizona. One in St. George, Utah. I had one in  
4 Utah, one in Arizona, and two or three, depending on  
5 how you look at it, in Las Vegas.

6 Q. Okay. That's helpful. The one in Arizona,  
7 was that in Kingman?

8 A. Yes.

9 Q. And when roughly -- and, again, you're not a  
10 computer. I'm not expecting precise answers here.  
11 Roughly what time did you start working with the  
12 surgery center in Kingman, Arizona?

13 A. Early 2000's.

14 Q. So kind of right after ACI, give or take a  
15 few years?

16 A. Right after ACI.

17 Q. When did you stop working with the surgery  
18 center in Kingman?

19 A. I had some problems with my retina. I had  
20 missed a meeting. I can't recall if it was before or  
21 after my accident. I'm going to say in 2010 maybe.  
22 But that could be off a couple years.

23 Q. Not a problem. And the surgery center in  
24 St. George, Utah?

25 A. I was only there a year. And what year it

1     **was I have no clue.**

2           Q.     Did you find yourself at one point  
3     practicing in Las Vegas, practicing in Arizona, and  
4     also practicing in Utah?

5           **A.     Yes.**

6           Q.     And would you say the majority of revenue  
7     came from your ltd in Las Vegas, or was it kind of  
8     evenly split among the different practices in the  
9     different states?

10          **A.     Well, it depended on the month and the year.**  
11     **I know there was one point we came within two weeks**  
12     **of closing the Las Vegas practice due to lack of**  
13     **malpractice coverage. That really depended on the**  
14     **year. Some years one place was better. Some years**  
15     **the other place was better. Medicine's been in the**  
16     **thralls of gigantic changes.**

17          Q.     So you mentioned -- we talked about Kingman.  
18     We talked about St. George. You said you were only  
19     at the St. George, Utah location for about a year.  
20     Do you know if that was roughly around 2010 or before  
21     your accident?

22          **A.     I think it was before my accident.**  
23     **Honestly, all those things have already been given to**  
24     **you. The dates and things are all available to you**  
25     **exactly.**

1 Q. Actually, the petition only goes back a  
2 certain number of years. And so, unfortunately, this  
3 information from the 2000's is not on the petition.

4 Now, with respect to the surgery centers  
5 here, you worked with Flamingo Pecos?

6 A. Yes.

7 Q. What's the connection? Epiphany, Flamingo  
8 Pecos. Was Flamingo Pecos a subsidiary of Epiphany?

9 A. No. Epiphany was the management portion of  
10 Flamingo Pecos. It was the origination of Flamingo  
11 Pecos. And it had taken over for another company,  
12 Regent, from the surgery centers that we had across  
13 the street and then moved it to Plaza Surgery Center.  
14 And we took over Plaza and moved everything into  
15 Plaza. We debated keeping both sides on the street,  
16 but it's crazy to have surgery centers across the  
17 street from each other. So we closed the one down.

18 Q. And then Plaza turned into --

19 A. Then Plaza was on one side of the town. All  
20 the doctors were wanting to go to the other side of  
21 the town, so we started considering doing one on the  
22 outside of town.

23 Q. Okay. And that's when you put together  
24 Flamingo Pecos?

25 A. No. Actually, it was primarily Barnes that

1 put together Flamingo Pecos. I primarily did the  
2 Plaza surgery center. Flamingo Pecos was really  
3 Barnes' baby.

4 Q. And I want to talk about Flamingo Pecos, and  
5 you just mentioned Robert Barnes. So whose proposal  
6 or whose idea was it to create Flamingo Pecos?  
7 Barnes?

8 A. Barnes.

9 Q. Did he approach you?

10 A. Yes, and multiple other members.

11 Q. These other members, I'm assuming, other  
12 surgeons, they worked with you at Regent and Plaza?

13 A. Some did, some didn't.

14 Q. And a few minutes ago you were talking about  
15 Regent and then Plaza moving across the street and  
16 having both across from each other and not being  
17 plausible and shutting down. You kept mentioning  
18 "we." I want to clarify. When you say "we" with  
19 respect to Regent and Plaza, who are you talking  
20 about, "we"?

21 A. Well, Regent -- I don't know what their  
22 entire name is -- but Regent is a surgical center  
23 management company whom we bought out.

24 Q. By "we" you mean the ltd?

25 A. Not, not the ltd. The surgical center

1     bought out that management; put in, it would be  
2     Surgical Solutions, of which most of the members at  
3     that time became partners to one extent or another.

4           Q.     And when Regent bought out --

5           A.     Yeah, we bought Regent out.

6           Q.     Okay. Epiphany Surgical Centers, initially  
7     how many surgeons were there?

8           A.     I have no idea.

9           Q.     And just a guess. Less than ten, more than  
10    ten?

11          A.     More than ten, less than 30. Something like  
12    that. In the meantime, we had started, under Regent,  
13    another surgery center at Goldring. 2020 Goldring.

14          Q.     So when you're talking management, surgery  
15    center management, say in the form of Regent, were  
16    you deriving revenue from the surgical practice and  
17    also the management practice?

18          A.     No, not under Regent.

19          Q.     Were you deriving revenue from the surgical  
20    practice and the management practice under Epiphany?

21          A.     Yes. Under Regent and Epiphany I was chief  
22    of anesthesia and made sure that they got their JCAHO  
23    accreditation or whichever accreditation they were  
24    doing at the time.

25                   I've been doing that for years, too.

1     **Actually, I've been chief somewhere pretty much my**  
2     **entire career until about the last year when my**  
3     **health has deteriorated too much.**

4           Q.     So Robert Barnes suggested forming Epiphany  
5     going to the west side?

6           A.     **Correct. He was originally hired by Regent**  
7     **for running.**

8           Q.     And I'll get to Barnes specifically. Right  
9     now I want to talk about Flamingo Pecos. But we'll  
10    have a number of questions on Barnes.

11                  So Barnes approached you and a few of the  
12    other surgeons about joining and creating Epiphany.  
13    Who ultimately said yes to him? More than ten  
14    surgeons, as you had said?

15           A.     **Pretty much -- I cannot recall the exact**  
16    **number of people that voted for him, but it was a**  
17    **majority.**

18           Q.     And were there any minutes or memos from  
19    those discussions that took place between Barnes and  
20    you and several other surgeons? Did you guys have  
21    formal meetings?

22           A.     **Yeah. We had formal meetings, meetings**  
23    **occasionally; however, the secretary for those**  
24    **meetings was Barnes.**

25           Q.     Okay. So he prepared those minutes?

1           **A.     Correct.**

2           Q.     Do you have any idea where those documents  
3     are now?

4           **A.     No.**

5           Q.     How many times did you meet before the vote  
6     was taken and everyone said yes to Barnes?

7           **A.     I don't know that everyone said yes to**  
8     **Barnes. There may have been some people that voted**  
9     **against it. I don't recall the exact number. There**  
10    **was relatively few against.**

11          Q.     Was it a long process, or was it, you know,  
12    one meeting and all the surgeons said yes?

13          **A.     It was a period of years.**

14          Q.     Where Barnes was recruiting you and a number  
15    of surgeons to start Epiphany?

16          **A.     Actually, I had the original idea doing of**  
17    **Epiphany in Kingman. Barnes decided to bring**  
18    **Epiphany in here, to Las Vegas, and to start the**  
19    **surgery center over at Flamingo Pecos. In the**  
20    **meantime, we had also done one -- it had to be voted**  
21    **on by the existing membership at 2020 Goldring.**

22          Q.     And Barnes was involved in that as well?

23          **A.     Not very much. Somewhat. I believe they**  
24    **hired another administrator for that one.**

25          Q.     How did you meet Robert Barnes?



1           **A.    He was brought in by Regent.**

2           Q.    By Regent.  Who specifically at Regent knew  
3 him?

4           **A.    I don't know.**

5           Q.    Did you interview Robert Barnes when you  
6 joined Regent?

7           **A.    No, I interviewed Regent before we took**  
8 **Regent.**

9           Q.    And before you took Regent, did you  
10 interview Barnes?

11          **A.    No.  I don't believe that he was -- that he**  
12 **had been hired by Regent.  There were several**  
13 **administrators prior to Barnes.**

14          Q.    So how was he hired?

15          **A.    He was a Regent hire.**

16          Q.    Who made the decisions at Regent regarding  
17 HR and hiring?

18          **A.    I don't really know.**

19          Q.    Was there a CEO of Regent?

20          **A.    Yes.**

21          Q.    Do you recall who that was?

22          **A.    I'm horrible at names.  It's Tom something**  
23 **or another.  If you look on the website, I think it**  
24 **pretty much stayed.**

25          Q.    Regent still exists?

1           A.     Still exists, and it's still with the same  
2     general folks.

3           Q.     So the CEO is Tom, and you don't know the  
4     last name?

5           A.     Tom somebody or another. I can't remember  
6     Tom's last name.

7           Q.     Would it, to the best of your recollection,  
8     have been this Tom CEO figure who hired Barnes?

9           A.     I don't know. I wasn't present at that  
10    meeting, so...

11          Q.     So when you purchased Regent -- I just want  
12    to clarify. Barnes was or was not there at the time  
13    you purchased Regent?

14          A.     He was there at the time we purchased  
15    Regent.

16          Q.     Okay. And then he worked with Regent, and  
17    you had purchased Regent. Did you at some point  
18    start talking to Barnes about Epiphany?

19          A.     Yes. The entire group did. Whether he was  
20    going to come along with us or just go with Regent.  
21    Regent wanted to keep him.

22          Q.     And you just stated that Regent wanted to  
23    keep him.

24          A.     As far as I'm aware, yeah.

25          Q.     When you started Epiphany, did you formally

1 offer him a job with Epiphany to pull him from  
2 Regent?

3 A. I formally offered him to be able to buy in  
4 shares in Epiphany as an incentive to get Epiphany  
5 going.

6 Q. Do you recall the arrangement?

7 A. No. Not the exact arrangement.

8 Q. And when was the offer roughly made for him  
9 to buy in shares in Epiphany? Was it during  
10 Epiphany's formation in 2009 or 2010?

11 A. The first thing I did was cut the Kingman  
12 contract, and then after that, we bought out Regent.  
13 Which wasn't actually primarily my idea. It was the  
14 other folks who were tired of it.

15 And then at that juncture, we decided to go  
16 ahead and use the already existing management company  
17 to go ahead and do it. And Mr. Barnes expressed  
18 interest in staying and becoming the operating  
19 officer for the company.

20 Q. For Epiphany?

21 A. Correct.

22 Q. Were there any other candidates, or it was  
23 just Mr. Barnes for this position?

24 A. No. I did not have a lot of selection or  
25 say in who we could get or who we couldn't get at

1     that juncture. It was basically up to the group of  
2     surgeons who were doing cases to make the selection.

3           Q.     So you did not have a say in Robert Barnes  
4     being hired at Epiphany?

5           A.     No more than any of the other folks did.

6           Q.     Who would you say had the primary say in  
7     hiring Robert Barnes?

8           A.     It had to be a majority decision.

9           Q.     Did you vote against hiring him?

10          A.     No.

11          Q.     And what was Barnes' official position with  
12     Epiphany?

13          A.     Well, with Epiphany, he was essentially the  
14     operating officer. He did day-to-day tasks. I was  
15     basically -- my major position with Epiphany was to  
16     try to recruit the surgeons and try to get them to  
17     actually do cases.

18          Q.     I understand that you were recruiting  
19     surgeons, but what was your official title with  
20     Epiphany?

21          A.     CEO.

22          Q.     CEO, okay. You were CEO, but ultimately the  
23     decision to hire Barnes was a group decision?

24          A.     Yeah. He was the administrator of the  
25     surgery centers. In order to become administrator of

1 the surgery centers, you have to have the vote of the  
2 existing surgeons.

3 Q. As the operating officer, who did he report  
4 to?

5 A. He reported to the entire group.

6 Q. The group, you mean all 10 to 20 to 30  
7 surgeons?

8 A. He reported, actually, to more than that  
9 because they would be the Kingman surgeons and the  
10 Las Vegas surgeons and to me. And eventually the  
11 Plaza surgeons.

12 Q. How often was his performance evaluated?

13 A. In the beginning I was meeting with him  
14 weekly, and in the last couple of years he started  
15 not showing up.

16 Q. So in the beginning you were meeting with  
17 him weekly. What were your weekly meetings  
18 consisting of?

19 A. I was going over how well the different  
20 surgery centers are doing.

21 Q. And you'd look at account ledgers and  
22 information, or would he just simply verbally tell  
23 you?

24 A. Both.

25 Q. These weekly meetings and the records that

1 he presented you with, both in discussion and report  
2 form, do you have any idea where those reports are  
3 now?

4 A. No, and I think at this point I've got to  
5 mention the fact that the FBI has told me to keep my  
6 mouth shut on all the rest of it, so that I really  
7 feel limited in discussing any further anything to do  
8 with Robert Barnes.

9 Q. When did the FBI tell you to keep your mouth  
10 shut?

11 A. Oh, gosh. It's been two years now. They  
12 said I needed to not discuss it with anyone because  
13 it's an ongoing investigation.

14 Q. Okay.

15 A. With regard to that and the banks.

16 Q. Right. Barnes, in terms of his HR record,  
17 he didn't have any formal evaluations?

18 A. No, he was evaluated. Actually, even the  
19 last year he was evaluated. Well, he had to do  
20 formal reports to the boards of each of the surgery  
21 centers, and he had to do meetings with me, and he  
22 had to do -- go over all of the income with the  
23 accountants, which -- because of the fact that I was  
24 the largest surgeon with the most years with most of  
25 the surgery centers, no one felt comfortable with me

1     **also using my accountant. That may have proved to be**  
2     **an error, but I used a different accountant.**

3           Q.     Now, the formal reports you just talked  
4     about, do you still have access to those?

5           A.     **No. They were in the office.**

6           Q.     Did you read the reports?

7           A.     **Certainly.**

8           Q.     Anything stick out to you as inappropriate  
9     or fishy or didn't add up mathematically?

10          A.     **I contacted the FBI, that did.**

11          Q.     Let's get back to that. Let's finish that  
12     thought. When did you contact the FBI?

13          A.     **Two or three years ago. I had five spine**  
14     **surgeries, and Mr. Barnes was never forthcoming with**  
15     **regard to information that he had previously been**  
16     **forthcoming with, and then he disappeared.**

17          Q.     So this period of not being forthcoming, how  
18     long did that last?

19          A.     **Worsening probably over 18 months or two**  
20     **years.**

21          Q.     When he wasn't forthcoming for months and  
22     months and months, and then more than a year and up  
23     to two years, did you do anything?

24          A.     **Sure. I brought it to the board's**  
25     **attention, and I was getting complaints from other**

1     **board members.**

2           Q.     What did the board do?

3           A.     When I told Barnes that he needed to come in  
4     and discuss it, I would then get screamed at by the  
5     board members that I was chasing him off. Even the  
6     board members who had sent me texts saying that they  
7     weren't happy with the fact that he was gone too long  
8     and not answering questions would suddenly decide  
9     that I was being too mean to Barnes.

10          Q.     During this 18 months when he was not being  
11     forthcoming and he wasn't showing up to meetings, you  
12     were raising his performance with other board  
13     members, and they were shouting at you to leave him  
14     alone?

15          A.     Correct.

16          Q.     For 18 months?

17          A.     Longer.

18          Q.     Other than raise his recent behavior with  
19     the board, did you do anything else?

20          A.     No. I was busy having six -- I don't know  
21     if it was five or six -- well, five major spinal  
22     surgeries, so it wasn't my major focus at the time.  
23     It was whether I was going to be able to walk or not.  
24     So I pretty much turfed it to Dr. Smith, who was the  
25     board chief and a member of Epiphany.



1 Q. Did you formally hand over the obligation of  
2 overseeing Barnes to Dr. Smith, or was it informal?

3 A. It was informal. Dr. Smith had the second  
4 most shares, and had been the chief of the board.

5 Q. When you were receiving the formal reports  
6 from Barnes and they were okay, and then they were  
7 not okay, what did you notice about them that was not  
8 okay?

9 A. You have to realize that frequently Bank of  
10 America were present at those meetings or  
11 subsequently, Wells Fargo, and subsequently, I think,  
12 Citibank. And I was being told by all of them that  
13 we were doing extremely well.

14 Then I was out for surgery, had my last  
15 surgery done and came back out of it. And suddenly I  
16 was being told that the surgery center had to be  
17 closed, meaning the west side one, which is the one  
18 he's involved in, and we need to retract back just to  
19 the east side one. And that made no sense to me.

20 Q. That was a whole lot. So I want to try and  
21 split that up a little bit.

22 So you talked about your last surgery.  
23 Before your last surgery, all the reports and  
24 everything you were reviewing were okay? Or before  
25 your series of five or six surgeries -- when did this

1    happen?

2           A.    At the time I looked at them they looked  
3    okay.   Subsequently, when I got actual reports  
4    directly from the bank as opposed to going through  
5    Barnes, they weren't the same.   And I'm shutting up  
6    now because I don't want the FBI coming after me.

7           Q.    I appreciate that, sir.   But some of the  
8    information on Barnes and Bank of America is in your  
9    schedules, and that's why I'm asking that question.

10          A.    I understand that, and you know, if you want  
11   to get the FBI in here and ask them, then you can ask  
12   them if they have all that information, and much  
13   better than I have it because a lot of the stuff I  
14   looked at, as far as I'm able to tell, was false.

15          Q.    I'm just trying to get a year range because  
16   we're squeezing a lot of years into these statements,  
17   and I just want to clarify.

18                That really terrible year when you had the  
19   five or six surgeries, when was that, sir?

20          A.    I didn't have five or six in one year.   I  
21   had one in 2008.   I had one in about 2010.   And then  
22   I had back surgery in there somewhere.   And then I  
23   started getting cauda equina syndrome and losing my  
24   feeling in my legs, and couldn't lift my left leg, so  
25   they did emergency surgery.   Then they had to go back

1     three months later and do another emergency surgery  
2     on the same spot.

3           Q.     So that was 2012?

4           A.     2013, probably, I think.  It's really kind  
5     of jumbled because there was a lot going on.  But I  
6     think it was 2013.

7           Q.     Thank you for that timeline.  So prior to  
8     2012, 2013, you were looking at reports from Barnes,  
9     and they seemed okay, correct?

10          A.     Correct.

11          Q.     And then after your last surgery in 2013,  
12     you came out, and that's when people told you, We're  
13     going to have to shut down our west side office?

14          A.     Well, actually, there were people yelling at  
15     me that I was absconding with funds or doing  
16     something bad.  And three doctors were assigned by  
17     the board to review me and the actions of the board,  
18     and they reviewed me and said there was nothing wrong  
19     with me.  Then I got in an argument with them about  
20     closing the west side and refused to have anything to  
21     do with it, and Barnes disappeared.

22          Q.     Okay.  That's quite a lot.  So who accused  
23     you of absconding with funds?

24          A.     It wasn't quite that gross.  I'm summarizing  
25     it.  But you'll have to take a look at the board

1 minutes. I don't recall exactly who it was, but  
2 three doctors wished to take a look at it, and they  
3 found nothing wrong with either Barnes, the notes or  
4 anything else. Then I had my surgery, and I came  
5 back.

6 Q. So this was before your last surgery in  
7 2013?

8 A. Yeah, I think so.

9 Q. Who raised the preliminary alarm that  
10 something's not right which led to you being accused?

11 A. Barnes.

12 Q. Barnes raised the alarm that the accounts  
13 were not right?

14 A. Barnes raised the alarm that I was somehow  
15 getting more than my fair share. Something like  
16 that.

17 Q. Oh, okay. Okay.

18 A. I didn't know it at the time.

19 Q. Okay.

20 A. I'm having the surgery. Realize, I'm not  
21 able to walk, literally.

22 Q. Right, right. And this is in 2012 or 2013?

23 A. Somewhere around there.

24 Q. So until this point in time, the formal  
25 reports that you'd been reading seem okay?

1           **A. Including when I had Bank of America there**  
2           **with me looking at them.**

3           Q. Correct, right. So until that time --

4           **A. And then Wells Fargo.**

5           Q. Right. So from 2010, when Epiphany gets off  
6 the ground, till 2012, 2013, you have formal  
7 meetings. You're looking at formal reports from  
8 Barnes. They look okay. Some of those meetings  
9 include Bank of America and Wells Fargo and other  
10 bank officers, and they're approving of the reports  
11 that you're looking at, correct?

12          **A. Correct.**

13          Q. Then you have this series of terrible  
14 surgeries. And focusing on 2012-2013, when you were  
15 gone, Robert Barnes essentially accused you of taking  
16 money, and you didn't know it at the time?

17          **A. Correct.**

18          Q. Any reason why he would just pick you out of  
19 all of the surgeons to accuse of taking money?

20               MR. CROWE: Objection. It calls for  
21 speculation on his part.

22 BY MR. IQBAL:

23          Q. Well, anything you can think of.

24          **A. I was half the income of the surgery**  
25          **centers. I was the original -- it was my idea to**

1 start the first one. Okay? Many surgeons had looked  
2 at it and said, No, it's not worth doing it when it  
3 was at the midterm hospital. So I started the thing.  
4 I was making everybody tons of money. People started  
5 to get jealous. I think Barnes was deflecting  
6 interest in him at that point, and I wasn't around to  
7 defend myself.

8 Q. How long were you gone? How many corporate  
9 board meetings did you miss?

10 A. Well, for one summer, pretty much all of  
11 them. I mean, I had open back surgery with a two  
12 centimeter disk. I don't know if you're aware what  
13 that means. That means bigger than most people's  
14 canals. So I should be paraplegic, but I have a, as  
15 they put it, a congenital capacious canal. I have a  
16 huge disk that the radiologist read as being  
17 post-trauma, which is why they gave up on the  
18 lawsuit.

19 And then I couldn't lift my leg. I couldn't  
20 lift my foot. I still have no reflexes on the left  
21 side. I fall down easily. So I was busy doing that.

22 After I had the one surgery, I got a little  
23 bit better for about a month, and then I started  
24 getting worse. I took another one, and I started  
25 crying in the surgery center from the one over on

1     that side, because it looked just as bad as it did  
2     before.

3             So then they took me back. Meanwhile,  
4     they've taken a rib out, put two pedicle screws, and  
5     then a X-Lift, which subsequently somebody died  
6     having the same surgery. Then they brought me back  
7     within three months, and one in the same spot, and  
8     then put two pedicle screws on the other side.

9             At that juncture I was warned that I wasn't  
10    going to be working for very much longer. Which I  
11    had been warned in 2008 already. I already met the  
12    definition for a hundred percent disability just on  
13    my neck surgeries. And with the back, forget it. It  
14    was over.

15            Q.    So during this terrible time in 2012, 2013  
16    when you're just out of it and getting multiple  
17    surgeries, were you practicing at that time?

18            A.    I tried to go back to work within a couple  
19    of weeks, but my numbers were clearly much lower than  
20    they had been before.

21            Q.    And at that time Barnes was accusing you of  
22    having taken money, but no one directly confronted  
23    you?

24            A.    Exactly what he was accusing me of, I'm not  
25    sure. And I'm not sure you can get that out of the

1 other folks, either, because it was very nebulous.

2 But it was like, Charles is the bad guy and  
3 taking over the place and won't let me run things the  
4 way I want, and blah blah blah, when I wasn't doing  
5 squat.

6 Q. And you weren't even aware of it because you  
7 were out having surgery?

8 A. No. The first hint I had of it was when  
9 Mr. Smith sent me a text saying that he thought  
10 Barnes seemed to be taking a lot of time off. And I  
11 texted Barnes, you know, We need to go over your time  
12 off and what your contract says it should be.

13 I then got a call directly from Smith on the  
14 phone saying, Why are you yelling at Barnes and  
15 causing him to be ready to leave. I'm going, Wait a  
16 second. You just sent me a text complaining about  
17 him. And then I started getting that from a whole  
18 lot of people.

19 Q. That was after your last surgery in 2013?

20 A. No. That was before it. That's in between  
21 them. I had a rash of them there in one year. Like  
22 three within a period of a little over a year.

23 Q. Okay. So he's taking time off, and when you  
24 confronted him, Dr. Smith called you back. During  
25 this time, did anyone from the board formally audit



1     you? I guess I'm referring to the three doctors.

2           **A. Yes, the three doctors.**

3           Q. Was this at that time or after that time  
4     when they audited you?

5           **A. No, it was about the same time. It might**  
6     **have been a month or two later. One was an ENT**  
7     **surgeon. One was a new guy. I'd have to see the**  
8     **names in order to be able to figure out who it was.**

9           Q. That's fine.

10          **A. Honestly.**

11          Q. It's no problem.

12                 With his time off, then, and things he was  
13     doing, was his salary ever reduced?

14          **A. No.**

15          Q. Was he ever given a low performance  
16     evaluation or any demerits or anything like that?

17          **A. Let me back up on that last one. He made**  
18     **1 percent of whatever we did in distributions. That**  
19     **was, I think it was 1 percent. It might have been**  
20     **1-1/2 or something. It's depending on the surgery**  
21     **center. And he did get that, if we didn't get**  
22     **distributions, which we were not. So yeah, his**  
23     **income was tied to the performance.**

24          Q. Now in 2010, 2011, 2012, the reports seem  
25     fine, but when you checked later and you looked at

1 the bank's reports, they were different than Barnes'  
2 reports. Correct?

3 A. Yeah. I really don't want to have the FBI  
4 throw my ass in jail. The FBI has looked at it and  
5 has told me that clearly there was some collusion  
6 with regard to the bank, a banker, one or more, and  
7 Barnes that then transferred to another bank, which  
8 Barnes then transferred to. And that's the most I'm  
9 going to say.

10 Q. Let's talk about you and your integrity  
11 being questioned. Were you hurt when -- you know,  
12 you're working really hard. You're the one who's  
13 made all these people money, and they're coming to  
14 audit you. Did that bother you? I mean, it's a  
15 rhetorical question.

16 A. Of course. Sure, it's a question. Of  
17 course it bothered me, but I'm used to it.

18 Q. What do you mean, you're used to it?

19 A. Doctors get jealous when other doctors --  
20 they think the other doctors are making more money  
21 than they are or are doing better. You know, I've  
22 had similar things happen before, so it didn't --  
23 like automatically a light came on and go, Oh, it was  
24 Barnes.

25 Q. So the other surgeons there, the immediate

1 inclination was to look towards you and blame you?

2       **A. Yeah, I'd say that's probably correct**  
3 **because as I said, I was 50 percent of the income for**  
4 **most of the surgery centers I went to. So when mine**  
5 **dropped off, everybody got mad at me despite the fact**  
6 **that I had really good reason for my numbers**  
7 **dropping.**

8       Q. Right, right. That seems a bit heartless  
9 when a guy has open back surgery to be upset about --

10       **A. The surgeons who performed the surgery were**  
11 **getting mad at me.**

12       Q. Before this 2012-2013 period when you had  
13 the surgeries and you had these accusations thrown at  
14 you, how would you characterize the cooperation among  
15 the Epiphany surgeons during that difficult time in  
16 2012, 2013?

17       **A. I would say they reluctantly came along.**  
18 **Primarily because I was making them so much money**  
19 **that they just go, Holy shit, he's making us so much**  
20 **money, we're going to have to go with him.**

21       Q. The board meetings, were they amicable, or  
22 were there arguments, disagreements?

23       **A. When there are big checks, they were**  
24 **amicable. But when there were no checks, they**  
25 **weren't amicable.**

1 Q. Until this time in 2012, 2013 when you're  
2 really laid up with the major surgery, were you  
3 attending board meetings regularly during that time?

4 A. You're making it seem as if 2012-2013 that I  
5 was incredibly worse off than I had been before. You  
6 have to realize that in 2008, I actually fired your  
7 next door neighbors because they weren't taking me  
8 seriously when I said, Hey, my neck is bad. I'm  
9 going to have to quit working because of this. And  
10 they were pooh-poohing going, Oh, somebody thinks  
11 he's going to make money from being rear ended  
12 because of an accident.

13 I'm like, No, I have a spike going in my  
14 neck. It hurts like hell, and I'm not going to be  
15 able to work like this very much longer. Then it got  
16 worse. And I was about to have the second neck  
17 surgery, when the leg went. So I had to have them do  
18 the leg; of course it took precedence.

19 So now I'm two years, three years down the  
20 line, and we get to the second neck surgery a couple  
21 years late, and that didn't go so well.

22 MR. IQBAL: Okay. Why don't we go off the  
23 record and take a break.

24 (A brief recess was taken.)

25 MR. IQBAL: Okay we're back on the record.

1 I've just handed counsel and the examinee what we're  
2 marking as **Exhibit 1** and handing a copy to the court  
3 reporter.

4 (Thereupon **Exhibit 1** was  
5 marked for identification.)

6 BY MR. IQBAL:

7 Q. Sir, I just handed you three pages. At the  
8 top it references the case number, case 15-13135-ABL,  
9 and it's denoted as Document 117. Do you recognize  
10 what I've handed you?

11 **A. Yes.**

12 Q. And what is it, sir?

13 **A. It's the Schedule C, property claimed as**  
14 **exempt.**

15 Q. And did you prepare this Schedule C?

16 **A. In combination with my attorneys.**

17 Q. Does this look like a fair representation of  
18 what was filed?

19 **A. Yeah. And I haven't ready every single**  
20 **line, but it looks correct.**

21 Q. I can represent we just went onto the docket  
22 and printed out the three pages.

23 On the third page, sir, there is a Charles  
24 and Mary Tadlock Family Trust, and a few lines down,  
25 it states -- and I'm quoting here -- "Includes a

1 potential claim against Bank of America and Robert  
2 Barnes valued at the discounted amount of \$150,000."

3 A. Do you have a question?

4 Q. Yes, I do. I just wanted to reference  
5 exactly where my question's coming from.

6 Do you know how that \$150,000 amount was  
7 calculated?

8 A. Well, probably based on the amount of money  
9 that was taken out -- it's probably on the low  
10 side -- directly out of the account for Epiphany  
11 Surgical Centers. However, I have -- given my  
12 condition, I believe the last I looked, I gave up on  
13 going after that.

14 Q. And why did you give up going after it?

15 A. Because the FBI is taking so bloody long to  
16 get its conclusion done, and I can't win without  
17 their info or a shit load of money to investigate,  
18 and I've already spent 5,000 and owe another 5,000 to  
19 the forensic accountants that went over it. And no  
20 attorney will take it for less than 10 or 15 thousand  
21 upfront.

22 So given the fact that I'm at the point in  
23 my life where I'm no longer going to be making money,  
24 that just doesn't seem like a very good bet. I don't  
25 think Barnes has anything left.

1 Q. And this 150,000 number --

2 A. I don't know who came up with that.

3 Q. Okay. Was it the forensic accountants?

4 A. As a discounted amount of 150,000? I doubt  
5 it was the forensic accountants. I don't know who  
6 came up with that. I honestly just don't know.

7 Q. Okay, that's fine. That's a perfectly good  
8 answer. If you don't know, you don't know.

9 A. Yeah.

10 Q. You did mention the forensic accountants.  
11 When did you hire the forensic accountants?

12 A. Right after I heard my office manager crying  
13 when she opened up the Bank of America slips for the  
14 surgery center, and she came down to my office  
15 saying, this doesn't -- there's clearly stuff that  
16 shouldn't be on here.

17 Q. And when was that?

18 A. That was in the summer, 2013, maybe.

19 Q. Okay. And so your --

20 A. It may have been 2014. I'm not sure.

21 Q. And your office manager was the one who  
22 discovered Barnes' fraud?

23 A. Correct. She told me, and I told everybody  
24 else.

25 Q. And her name?

1           **A.     Tammy Schaefer.**

2           Q.     And until Tammy Schaefer came to you crying  
3     about the Bank of America account, there was no  
4     indication that Robert Barnes had been taking any  
5     money?

6           **A.     No.   I was depending on the accountant and**  
7     **the three doctors who were supposed to have just**  
8     **reviewed the entire thing just as I went into**  
9     **surgery, and all of them said it was fine.   I had met**  
10    **a few months previously with -- the accountant's name**  
11    **I don't recall at the moment -- but it's Marjorie**  
12    **Belsky's accountant, not mine, because they didn't**  
13    **want me to have too much power by having my**  
14    **accountant.**

15          Q.     Who's "they"?

16          **A.     The board.**

17          Q.     You were part of the board, correct?

18          **A.     Correct.   The board didn't want me to have**  
19    **my accountant running it.   They already thought I had**  
20    **too much power.**

21          Q.     So just in terms of timeline, Tammy Schaefer  
22    discovers funds missing from the Bank of America  
23    account and things on the Bank of America account --

24          **A.     Sometime there, yeah.**

25          Q.     -- things on the Bank of America account



1     that should not have been there. She informed you,  
2     and you immediately informed the board?

3           **A.     Correct.**

4           Q.     And at that time -- it was either the summer  
5     of 2013 or 2014 -- at that time you immediately told  
6     the board, and they hired another accountant to --

7           **A.     They hired --**

8           Q.     They hired another accountant to look into  
9     what happened with the Bank of America account?

10          **A.     I think they hired an attorney to look into**  
11     **the Bank of America account.**

12          Q.     And you recommended using your accountant to  
13     look at the Bank of America account, and they said  
14     no?

15          **A.     No.     Actually, I took my accountant to look**  
16     **at my account. It looked like it had been fudged**  
17     **with. Because theoretically, shouldn't it have**  
18     **been -- since I was being told we were making no**  
19     **money, and since the money that goes into the account**  
20     **is the money from the management fee, and even waving**  
21     **that because we were supposedly making no money, and**  
22     **I find out there was money being put in there, and**  
23     **Barnes was withdrawing it, and Bank of America had**  
24     **not been able to find any card or any other reason**  
25     **that he should be able to withdraw money from that**

1     **account.**

2           Q.     Who was telling you that there was no money  
3     during this time?

4           A.     Barnes was telling me there was no money,  
5     and I was seeing Bank of America accounting  
6     statements from Barnes that said there was no money  
7     in it. At least it looked like it to me. I mean, it  
8     looked like just the basic Bank of America statement.

9           Q.     Right. And so Bank of America was the  
10    primary institution where the accounts for Epiphany  
11    were?

12          A.     Correct. And then we were asked -- when  
13    Barnes disappeared, I asked again over a period of a  
14    couple months for Bank of America to actually give  
15    me, directly from them, directly to my hand, copies  
16    of the statements. That turned out to be very  
17    difficult.

18          Q.     And when you reviewed the statements --  
19    ultimately you received them from Bank of America --  
20    they were different than the statements that Barnes  
21    had given you?

22          A.     Well, I received statements from them with  
23    amounts taken out, but not who the payers were --  
24    payees, I guess it is -- and then I went back to  
25    them, yelled at them some more, took another couple

1 months, so then I got the payees, and then I hit the  
2 ceiling and got in the accountants.

3 Q. Okay. But this was several months after  
4 Tammy Schaefer indicated to you that there was a  
5 problem. That's why you started the process of  
6 asking Bank of America?

7 A. Correct. Usually with Bank of America, I  
8 can ask can I get the stuff done later that day, and  
9 they were really dragging the feet.

10 Q. And during this time, you had also informed  
11 the board?

12 A. Correct. I didn't call every single person,  
13 but I called the board members and Dr. Smith, who was  
14 the head of the board.

15 Q. What did the board do at this time?

16 A. The board hired an attorney to look into it,  
17 and the board had the attorney go to the FBI and to  
18 the police.

19 Q. During your 341 exam, you mentioned that  
20 approximately three to five million was taken. Was  
21 that three to five million from the Bank of America  
22 account?

23 A. No, that's an estimate that their attorney  
24 made. I'm not sure where he's getting that from.

25 Q. Did they do an audit that was released to

1 the board members and the members of Epiphany  
2 slash --

3 A. I was having surgeries and physical therapy.  
4 If they did, I don't know about it. He came up with  
5 a number at one of the meetings I did go to. But  
6 they were having meetings later and later in the day,  
7 like at 7:00 and 7:30 at night. I got to the point  
8 where I couldn't walk at 7:30 at night, so I gave up.  
9 I was falling down a lot.

10 Q. So just to clarify, the 150 thousand figure  
11 in your Schedule C, you don't know how that was  
12 calculated?

13 A. No. I have no idea how it's calculated. I  
14 can't remember anymore because it's been so long  
15 exactly how much was stolen out of that account, but  
16 I don't see any real hope of getting any of that  
17 back.

18 Q. At these board meetings, the ones that you  
19 did attend, was there a full attendance by the other  
20 board members?

21 A. No.

22 Q. Were they monthly?

23 A. Sometimes they were more than monthly after  
24 Barnes disappeared.

25 Q. Let's get the specifics. Now, when Tammy

1     came to you, was crying, and showed you the Bank of  
2     America account and what had happened to it, was  
3     Barnes already gone by that point, or was he still  
4     working?

5           **A.     I believe he was already gone by that point.**

6           Q.     So by the time you discovered the fraud,  
7     Barnes was already gone?

8           **A.     Correct.**

9           Q.     What do you mean by "gone"?  He simply left,  
10    and he did not come back again?

11          **A.     On a Saturday he took off with all of the**  
12    **computers and all of the written stuff for Epiphany**  
13    **and the surgery center, and there was literally --**  
14    **and a couple of the portable computers, everything**  
15    **was gone.  From what I'm told.  I were wasn't there,**  
16    **but I'm told that pretty much everything had**  
17    **disappeared, and they were trying to get backups and**  
18    **things to get some information.**

19          Q.     And this was before Tammy discovered the  
20    issues with the Bank of America account?

21          **A.     Right.  It was always under suspicion, but**  
22    **when I saw the --**

23          Q.     Okay.  When you say "always under  
24    suspicion," what do you mean by that?  When did your  
25    suspicion first start?

1           **A.     When he left and said nothing.**

2           Q.     So until he left, there was no issues with  
3     respect to Epiphany's finances, and then all of a  
4     sudden he leaves, and then Tammy discovers later that  
5     he had stolen money from the Bank of America account?

6           A.     I think the way it really happened was that  
7     I had a conniption fit that they were planning on  
8     closing the east side -- excuse me -- the west side  
9     in favor of the east side. That made no sense to me  
10    because most of the surgeons were over there. And at  
11    that juncture, I had enough pool to get enough people  
12    who also agreed with me that it was clear it wasn't  
13    going to occur without a fight, and at that point,  
14    Barnes disappeared.

15          Q.     Do you recall around what time -- this  
16    dispute between keeping both locations and the one  
17    location, do you recall when that happened?

18          A.     Somewhere in the summer. I was in between  
19    those surgeries.

20          Q.     Somewhere in the summer, the same summer  
21    when Tammy discovered the --

22          A.     Yeah, it later in the summer. It was  
23    actually almost fall by the time we actually got  
24    anything from Bank of America. We requested it  
25    immediately, but, you know, they were initially very

1    **helpful, and suddenly it was like a light switch,**  
2    **stopped.**

3        Q.    Got it. So that summer was a critical  
4    summer because Barnes disappears, there's a  
5    discussion of which location we're going to keep, and  
6    then after that, chronologically, is when you  
7    discovered the problems with the Bank of America  
8    account, correct?

9        A.    **Correct. To the best of my memory, yeah.**

10       Q.    When there was discord among Epiphany and  
11    the surgeons wanting to change locations or move to  
12    one location, you said there were a few surgeons with  
13    you, keeping both locations open, and then there were  
14    surgeons on the other side of the debate?

15       A.    **Yes.**

16       Q.    And this debate happened during that same  
17    summer, either the summer of 2013 or 2014, and you  
18    were in and out between surgeries, so it's not  
19    exactly clear, correct?

20       A.    **Yeah.**

21       Q.    Okay. Did any members or surgeons --

22       A.    **I think it was the summer 2013.**

23       Q.    2013?

24       A.    **I think so. I'm not absolutely sure.**

25       Q.    That's fine. Did any members or surgeons

1 leave Epiphany due to the discord or the disputes  
2 about which location to go with?

3 **A. The ENT surgeon tried.**

4 Q. What do you mean, tried?

5 **A. I mean he started suing Epiphany to get his**  
6 **money back from Epiphany, but he got thrown out.**

7 Q. And I want to clarify, "he got thrown out."  
8 Do you mean his case got thrown out?

9 **A. The court, his case got thrown out.**

10 Q. Was he still a member of Epiphany, or did he  
11 resign?

12 **A. No, he's still a member of Epiphany.**  
13 **Whether he resigned or not, you're going to have to**  
14 **ask him. But at this point, it's a moot issue**  
15 **because Epiphany essentially no longer exists.**

16 Q. Right. And the name of this surgeon, sir?

17 **A. I don't remember the name. You can ask my**  
18 **wife. She probably remembers it.**

19 Q. That's fine. That's fine.

20 **A. If you give me a list of doctors, I can**  
21 **figure it out.**

22 Q. He sued Epiphany in court here in Clark  
23 County, and did Epiphany hire counsel?

24 **A. Yes.**

25 Q. Do you recall --



1           **A.    No.    I've had so many attorneys over the**  
2           **years, I can't remember who handled that one,**  
3           **honestly.**

4           Q.    Got it.   But it was ultimately successful  
5           for Epiphany?

6           **A.    Yeah.   Within a very short time.**

7           Q.    Okay.   Now, how is your relationship with  
8           Dr. Smith?

9           **A.    I mean, reasonably good, given the fact**  
10          **that, you know, at least I can walk.**

11          Q.    And he did the surgery on your back?

12          **A.    All three of them.**

13          Q.    I want to talk about Flamingo Pecos.   Is it  
14          true to say that Flamingo Pecos was the majority of  
15          your revenue or income after 2010 until the problems?

16          **A.    No.**

17          Q.    The majority of your income and revenue was  
18          from the ltd?

19          **A.    Oh, yeah, definitely.**

20          Q.    Do you have a rough approximation of what  
21          revenue or profit you took from Flamingo  
22          Pecos/Epiphany?

23          **A.    Well, Flamingo Pecos and Epiphany are two**  
24          **different things.   Flamingo Pecos is a surgery**  
25          **center.   Epiphany is the management company.**

1           The amount they took out of the management  
2   company was small because we weren't taking  
3   distributions based on Barnes telling us we weren't  
4   making any money. The money from the Plaza Surgery  
5   Center was being poured into the new surgery center  
6   on the west side. So we weren't taking any  
7   distributions. I think there was one distribution of  
8   \$50,000 total in December of 2012, to the best of my  
9   recollection. And that was it. And I got -- I don't  
10   know -- 15 percent of that or something, and that was  
11   it.

12           So, no, I was not getting very much money at  
13   that point.

14           Q. Out of Epiphany?

15           A. Out of Epiphany.

16           Q. Got it. I appreciate you clarifying. And  
17   Flamingo Pecos, which was the new center on the west  
18   side, you were performing surgeries there?

19           A. Correct. I moved all mine over there to  
20   allow one of the orthopedic surgeons to have the  
21   entire operating rooms at the east side.

22           Q. Now, did the draws and revenue you received  
23   from Flamingo Pecos, did that come directly to you,  
24   or did that go to the ltd?

25           A. It would have gone to Epiphany Surgical

1     **Centers. We weren't getting any of it because all of**  
2     **the money was going, according to Barnes, into the**  
3     **east side.**

4           Q.     Right, right. No, I understand that.

5           A.     **This isn't the west side. The new side.**

6           Q.     I understand that the management portion of  
7     it you weren't receiving --

8           A.     **Any portion of it. We weren't getting**  
9     **distributions. We weren't getting management. We**  
10    **weren't getting anything.**

11          Q.     Right. But strictly speaking about your  
12    individual personal practice of medicine in Flamingo  
13    Pecos, you were being paid by Flamingo Pecos;  
14    correct, for doing surgeries there?

15          A.     **No. Only if we made a profit.**

16          Q.     And did Flamingo Pecos ever make a profit?

17          A.     **No.**

18          Q.     Did anyone ask questions why Flamingo Pecos  
19    wasn't making a profit?

20          A.     **Yeah.**

21          Q.     Who asked those questions?

22          A.     **I did.**

23                 MR. IQBAL: Just so the record reflects that  
24    the examinee pointed to himself.

25    BY MR IQBAL:

1 Q. So who did you ask these questions to?

2 A. Robert Barnes.

3 Q. And what did he say to you?

4 A. He said that the expenses were much higher  
5 than he thought that they would be. The amount that  
6 we were paying was much higher. And he gave a whole  
7 litany of excuses and kept saying that the next month  
8 it would be better.

9 Q. How long did he say this for?

10 A. Months.

11 Q. Did you ever ask for supporting documents or  
12 accounts to see that what he was saying was true?

13 A. Yes. With the help of Marjorie Belsky.

14 Q. And was this accountant echoing what Barnes  
15 was saying and saying, the expenses are too much, and  
16 next month we'll be better?

17 A. Bank of America was echoing it. And Wells  
18 Fargo was echoing it. And even when we switched over  
19 to -- Lord, what's the other bank's name. They all  
20 echoed it. But they were looking at -- that's why  
21 it's a federal case. They were not looking at  
22 correct information, it was my belief.

23 Q. So Barnes was issuing false reports, and the  
24 banks were echoing it and parodying his line that,  
25 Next month will be better, and our expenses are too

1 high right now?

2 A. Yeah. I'd say that's a fair assessment.

3 Q. And this accountant -- and you identified as  
4 the accountant for Marjorie Belsky -- this accountant  
5 was also echoing the same line?

6 A. Back at that point she was -- he was. Later  
7 he said that there were things that were raising red  
8 flags, but he never went over them with me. He said  
9 he went over them with Barnes.

10 Q. And what did Barnes tell him, if you know?

11 A. Well, he says later that he had been told by  
12 Barnes that everybody knew about it, and there was no  
13 problem with it. Even though the money apparently  
14 was going to Barnes.

15 Q. I think you'll be thankful for this. Let's  
16 move away from Barnes for a bit, okay, and talk about  
17 Flamingo Pecos.

18 A. Well, I was going to say, that's about all I  
19 can say anyway.

20 Q. I appreciate that.

21 The Flamingo Pecos operation, how many  
22 people at its peak were employed by Flamingo Pecos?

23 A. Not a clue. As I've told you before, by the  
24 point in time that Flamingo Pecos was up and running,  
25 my primary drive was to figure out how to get myself

1     **better. And I was never the primary person on**  
2     **Flamingo Pecos.**

3           Q.     Who was the primary person?

4           A.     Barnes.

5           Q.     Okay.

6           A.     And actually the neurosurgeons, too, because  
7     they wanted a big place where they could put their  
8     neurosurgical cases.

9           Q.     So the decision to get the west side  
10    facility and move in, was that a board decision?

11          A.     Yes.

12          Q.     Did you vote in favor of moving to the west  
13    side?

14          A.     Yes.

15          Q.     How was it decided that you would sign the  
16    guarantee on the west side location?

17          A.     Bill Smith had done the east side, and the  
18    vote had been taken that the others would guarantee  
19    whoever actually signed it, because the banks didn't  
20    want to have a bunch of signers. They needed to have  
21    one or two or something, and that's how I ended up  
22    doing it. But I was supposed to be backed up by  
23    everybody else.

24          Q.     Did they back you up?

25          A.     No.

1 Q. Did you ask for them to back you up when you  
2 were sued?

3 A. Yup.

4 Q. Yes?

5 A. Yes.

6 Q. And what was their response?

7 A. Your problem.

8 Q. Is it fair to say that every surgeon who was  
9 part of Flamingo Pecos did surgeries out of that west  
10 side location?

11 A. No. There were a couple who stayed on the  
12 east side. I would have stayed on the east side. I  
13 would have stayed there except one of the orthopods  
14 kept having conniption fits about my interfering with  
15 his cases, even though he was doing his piddling  
16 three or four, and I'm doing, even when I was bad,  
17 five.

18 So I moved over there just to -- it's not in  
19 the right location for me.

20 Q. Right. When you moved over to the west side  
21 location, it had already been running?

22 A. Yeah. When I moved there, it had already  
23 been running for a couple months, several months.

24 MR. IQBAL: Let's go off the record.

25 (A brief recess was taken)

1 BY MR. IQBAL:

2 Q. So back on the record.

3 So Flamingo Pecos -- you had just indicated  
4 that not all of the members of Flamingo Pecos did  
5 surgeries on the west side, and you just told us  
6 about how you actually moved your practice from the  
7 east side because another practitioner on the east  
8 side was saying you're crowding his practice.

9 A. Correct.

10 Q. So when you went over to the west side  
11 location where Flamingo Pecos is right next to  
12 Summerlin, was that facility already running when you  
13 did your first surgery at the Flamingo Pecos?

14 A. Yes.

15 Q. And how were the economics; how was Flamingo  
16 Pecos doing, or at least what was Barnes telling you  
17 when you were getting the year-end reports?

18 A. It was doing very poorly.

19 Q. Did the board ever discuss why it was doing  
20 very poorly or do an investigation before Tammy  
21 found --

22 A. Yes. That's why we appointed the three  
23 doctors to go over and see what was going on.

24 Q. Okay. So these three doctors were appointed  
25 before Tammy found out what was happening at Bank of



1 America and before Barnes disappeared?

2 **A. Correct.**

3 Q. Okay.

4 **A. Like several months.**

5 Q. When did these three doctors approach you?

6 And you're in and out of surgeries, you know, as we  
7 talked about --

8 **A. They didn't really approach me because by**  
9 **the time they actually got their shit together, I was**  
10 **flat on my back trying to recover. And then I only**  
11 **got up for about a month, and then I was flat on my**  
12 **back getting another one done. So they never really**  
13 **talked to me. And one of them was the guy that tried**  
14 **to sue me, who knew better than to try to talk to me.**

15 Q. And who was that individual?

16 **A. The ENT surgeon. I don't remember his name.**  
17 **If you want to take a break, I'll go ask my wife.**

18 MR. CROWE: We can provide that for you  
19 later if you want.

20 MR. IQBAL: That's fine.

21 BY MR. IQBAL:

22 Q. So the same ENT surgeon who sued Epiphany  
23 also sued you personally?

24 **A. No, he just sued Epiphany.**

25 Q. He just sued Epiphany.

1           **A.     Yeah.   He was trying to say that he never**  
2           **really bought shares, or some such baloney.   It was**  
3           **so ridiculous.   It got thrown out of court.**

4           Q.     When these three doctors were assigned to  
5           look into your finances, and you were flat on your  
6           back, and as you just said, by the time they got to  
7           you you were out, how long was their investigation,  
8           if you can recall?

9           **A.     Okay, correction.   They weren't really**  
10          **looking into my finances, they were looking in the**  
11          **finances of the surgery center to see if anybody was**  
12          **getting some unfair amount or whatever.   Or had, you**  
13          **know, indiscriminately done something.**

14          Q.     Okay.   Got it.   And they came back with a  
15          verdict of, Everything's fine?

16          **A.     Yeah.**

17          Q.     And at that time was Barnes still there, or  
18          had he disappeared by this time?

19          **A.     No, he was still there.**

20          Q.     He was still there, okay.   Do you know how  
21          long their investigation was or what they looked  
22          into?

23          **A.     No.   I had bigger fish to fry.**

24          Q.     And you stated that Flamingo Pecos was not  
25          profitable during any year of its existence?

1           A.    I was told it wasn't profit in any year of  
2   its existence.

3           Q.    And you were told this by Barnes?

4           A.    Correct.

5           Q.    Did you take any of the year-end reports or  
6   any of the formal reports that he gave you during the  
7   weekly meetings, and did you ever take them to your  
8   accountant and say, Hey, look at these?

9           A.    No. I went over them with the banks.  
10   You've got to realize that the banks had multiple  
11   people that had signed on loans. So they were  
12   following this very closely and requiring multiple of  
13   us to do annual income statements and all this other  
14   stuff. And it was up to me to get the doctors to  
15   actually give them the income information, which they  
16   would never do, so they turned to me to get it, okay?

17          Q.    Okay.

18          A.    Which I did, eventually. But usually it's  
19   by the end of the year that they got the stuff from  
20   six months before.

21                So, yeah, they got it. The other thing that  
22   drove me nuts is, how did Bank of America miss this?  
23   How did Wells Fargo miss this? I mean, Bank of  
24   America particularly. They have all my accounts.  
25   Right? They have all of Epiphany's accounts, and

1     they have all the surgery center's accounts. How  
2     could they be missing it?

3           Q.     What was their answer?

4           A.     Originally their answer was that it looked  
5     like somebody was doing something with the accounts  
6     that was changing them from what they really were,  
7     and then they shut up. They said they were going to  
8     give me my money back for the Epiphany account,  
9     because the checks that were written on the Epiphany  
10    and what was drawn out were drawn out by someone that  
11    did not have the right to do it.

12          Q.     Right.

13          A.     It wasn't me.

14          Q.     Right. So this Epiphany account that they  
15    initially said they were going to give you your money  
16    back, how much was that amount that they were going  
17    to give you back?

18          A.     They said that they would be able to -- I  
19    forget what they call it. It wasn't a cram. It was  
20    something. Clawback. That was it. That it would be  
21    a clawback. That was the guy who was doing my  
22    accounts at the time. And then he disappeared, and  
23    they put somebody else in charge of my account who  
24    wouldn't say anything to me.

25          Q.     But that initial individual who ultimately

1 disappeared, he said you would be able to claw back  
2 the money that was taken out of the Epiphany account?

3 A. Right. Correct. Because he looked at it  
4 and he saw that is wasn't -- I was the only signatory  
5 to that account. It's not actually correct. It was  
6 set up so that it -- we went eventually to a two --  
7 two people could sign it. And it was, I think Bill  
8 Smith and me and Barnes. Maybe it was just me and  
9 Barnes. But at one point, my office manager and I  
10 both recall that we had changed it.

11 That -- all that paperwork had disappeared.  
12 The only thing that was there was my original  
13 signature on opening the account, and they could find  
14 nothing that showed that anybody else had a right to  
15 get any money out of that account. Yet they let  
16 money go out of the account.

17 They also told me that anything over 6,000,  
18 by their own regulations, had to be checked by a  
19 higher-up at Bank of America. That clearly was not  
20 done, either.

21 And the FBI -- and this is where I'll step  
22 with the FBI discussion -- told me that this is the  
23 worst they had seen in years.

24 Q. So when this initial Bank of America  
25 individual said, We're going to try and claw back the

1 money taken from the Epiphany account, did he give  
2 you an approximate number?

3 A. No. He didn't give me an approximate  
4 number. He said he would take a look at it and see.  
5 But the approximate number would have been the entire  
6 amount in the account. I looked at the account, and  
7 it should have been at zero for the entire time.  
8 When I look back at it, there's been a lot of money  
9 going through that account, and none of it went to  
10 me.

11 Q. So when you say -- when you looked at the  
12 account and there had been a lot of money going out  
13 of that account, can you approximate "a lot of  
14 money"?

15 A. In the order of a quarter of a million,  
16 300,000, 350. I can't remember the exact amount. It  
17 was a lot.

18 Honestly -- I know this sounds crazy to  
19 you -- but when you can't walk and you're having  
20 trouble peeing, it's not really the biggest thing on  
21 your mind.

22 Q. That's understandable, sir, because you're  
23 just focused on living and making sure --

24 A. Being alive.

25 Q. -- you're going to get better. Yeah.

1           **A.     Yeah.**

2           **Q.     Yeah.   Absolutely.**

3                   So that 300 or \$350,000 number, that was  
4     your money, or that was Epiphany's money?

5           **A.     That was Epiphany's money, but I'm 68 or 69**  
6     **percent owner of Epiphany Surgical Solutions.  There**  
7     **are a couple Epiphany's.  One where I just keep my**  
8     **private stuff, and then Epiphany Surgical Solutions,**  
9     **which was the management company.  That was Epiphany**  
10    **Surgical Solutions' money.  That should have been**  
11    **distributed and was not.**

12          **Q.     Okay, a couple more questions there.  The 69**  
13    **percent ownership of Epiphany Surgical Solutions, who**  
14    **are the other owners of Epiphany Surgical Solutions?**

15          **A.     I think we've already turned that over to**  
16    **you guys.**

17          **Q.     Right.**

18          **A.     But I can't remember all of them.  Smith**  
19    **owns about 20 percent.  And then --**

20          **Q.     A Michael Phillip --**

21          **A.     Yeah, and he owns about 1 percent or less.**  
22    **There are a bunch of small owners because they just**  
23    **got a small percent as being owners in the original**  
24    **thing.  Some people bought up, most did not.**

25          **Q.     Okay, that's helpful.  Then you just**

1 mentioned there were other private or personal  
2 Epiphany entities. This Epiphany Surgical Solutions,  
3 that was what a couple of surgeons or a number of  
4 surgeons had ownership interest. You mentioned a  
5 private Epiphany?

6 A. No, no. What I said was, my own shares I  
7 kept in Epiphany Surgical Centers, okay?

8 Q. Okay.

9 A. Although for a while, Smith screwed up and  
10 was supposed to be doing his own, and he was supposed  
11 to have his attorney draw one up. I had mine drawn  
12 up, and he didn't get around to it for Kingman. And  
13 the checks came to me, and I just forwarded it to  
14 him. It essentially was my account. It had nothing  
15 to do with anything else, and it's also defunct.

16 Q. Did that entity file for bankruptcy?

17 A. Did that entity file for bankruptcy? No.  
18 It hasn't filed for bankruptcy. It has no assets.

19 Q. Any creditors or liabilities?

20 A. I believe not. There was really nothing  
21 there but shares.

22 Q. So all the members, all the surgeons who  
23 were involved in Flamingo Pecos, they never made any  
24 money during the two or three or four years of its  
25 existence before it filed for bankruptcy?



1           A.    No.   Prior to starting the west side, we  
2   were doing quite well.

3           Q.    How long was Flamingo Pecos on the east  
4   side?

5           A.    All totaled, I think it was maybe 2000 -- or  
6   we started, I think, to try to open in 2002 or 2003,  
7   and it was slowed down by the trouble of getting  
8   malpractice, and then most of the people who started  
9   had left town. And then we got it started up  
10  somewhat after that. So maybe 2004, something like  
11  that.

12          Q.    So there was a history of Flamingo Pecos  
13  being successful --

14          A.    Doing very well.

15          Q.    -- and profitable for years?

16          A.    Yes.

17          Q.    Then through Regent, Robert Barnes gets  
18  involved, and then you folks move over to the west  
19  side, correct?

20          A.    Correct.

21          Q.    And Robert Barnes, I believe, was the one  
22  who negotiated the lease with the west side location?

23               MR. CROWE: I have to interject. You've  
24  asked this question five times.

25               MR. IQBAL: Which question?

1 MR. CROWE: It's asked and answered. About  
2 Barnes and the sequence of events, and you've covered  
3 it five different times.

4 MR. IQBAL: Well, there's a number of facts  
5 that are coming out. I'm just trying to --

6 MR. CROWE: I'm just entering an objection  
7 for the record.

8 BY MR. IQBAL:

9 Q. Okay. Did Barnes join you before Flamingo  
10 moved to the west side?

11 A. Yes. Flamingo didn't move to the west side,  
12 Flamingo was always on the west side.

13 Q. What was the entity that was successfully  
14 running on the east side since 2004, 2005?

15 A. What was the name of the entity? At that  
16 point it was -- was it Flamingo Pecos, LLC? I think  
17 it was Flamingo Pecos. I have to go look.

18 Q. That's fine. So it was essentially the same  
19 entity that went over to the west side?

20 A. Eventually, yeah.

21 Q. Okay.

22 A. It was started by a different entity, and  
23 then Flamingo Pecos decided to join it.

24 Q. So here's just a new question: When  
25 decisions were made in Flamingo Pecos whether to pay

1 rent or not or make major financial decisions, were  
2 you consulted because you were on the board?

3 **A. If I happened to be there, yeah.**

4 Q. If you were not there, you were not  
5 consulted?

6 **A. No. All actions with regard to that had to**  
7 **be board actions.**

8 Q. So the board was deciding on a given basis  
9 this month, whenever they were meeting, We have  
10 enough money to pay rent or We don't have enough  
11 money to pay rent, correct?

12 **A. As far as I know, yeah.**

13 Q. When Flamingo Pecos was in arrears by  
14 hundreds of thousands of dollars, were you notified?

15 **A. Eventually, yeah, but we weren't really**  
16 **notified to the extent -- it shouldn't have been in**  
17 **arrears because the money was coming in sufficient to**  
18 **have paid it. It went out in the wrong direction,**  
19 **which we didn't know.**

20 Q. And at the time you thought it wasn't making  
21 money because that's what you were told?

22 **A. Yes, and I was being told that with several**  
23 **bankers present, who also were telling me, Don't**  
24 **worry about it. It's doing really well. It will**  
25 **come back as soon as it catches up.**

1 Q. Were you involved in the decision to abandon  
2 the west side location for Flamingo Pecos?

3 A. Was I involved in the...

4 Q. When Flamingo Pecos abandoned the property,  
5 and very soon after it declared for bankruptcy, were  
6 you involved in that decision?

7 A. Actually, I was against abandoning either  
8 side.

9 Q. And the board voted on it?

10 A. The board voted on it, and then I can't  
11 remember what I voted on it after they had the  
12 debate. I may have voted for it just because I  
13 didn't want to piss everybody off. But I was against  
14 closing either side.

15 Q. Now, because Barnes had already left by that  
16 time -- and this was November of 2014 -- those  
17 minutes are still --

18 A. Yeah. Presumably Smith has them, yeah. I  
19 quit in there fairly quickly because I couldn't -- I  
20 mean, like now, I really need to go lay down, get a  
21 heating pad on me. I can't go on for long periods of  
22 time. And they were doing it at the end of the day.  
23 I've done nothing else today except this, and it's  
24 already going too long.

25 So I was pretty much out of it by the time

1     they made the decision to actually close everything  
2     down. I believe, to the best of my knowledge, I had  
3     already resigned from the board.

4           Q.     Before the west side location was abandoned?

5           A.     It was actually abandoned. I think I had  
6     already resigned from the board, yeah. I think so.  
7     It was in that neighborhood.

8           Q.     So you weren't involved in the decision for  
9     Flamingo to file for bankruptcy?

10          A.     No. I was just being told that it was.  
11     That was long after I was no longer on the board.

12          Q.     Did you approach the FBI, or did the board  
13     approach the FBI, or did the attorney for the company  
14     approach the FBI?

15          A.     The board and the attorney approached the  
16     FBI, and I was there.

17          Q.     And you were interviewed?

18          A.     Yes.

19          Q.     Once or multiple times?

20          A.     Once. Although I think they called me a  
21     couple times.

22          Q.     And as far as you're aware, is that  
23     investigation still continuing?

24          A.     The last that I heard -- it may have been as  
25     long as a year ago -- it was still continuing, and I

1 was told to cool my jets, and that they'd go after  
2 Bank of America for the money that was lost in my  
3 personal account. The FBI turned very slowly, but  
4 it'd get there.

5 Q. Get where? I'm sorry.

6 A. It would get around to it eventually.

7 Q. Okay.

8 A. And it would take quite a while.

9 Q. Did you sue Bank of America for the \$350,000  
10 that was taken out of your account?

11 A. No. The accountants keep telling me to do  
12 that, but in order to be able to do that, I would  
13 have to spend a fortune on discovery. Barnes, if  
14 you've seen what he was spending money on, I doubt  
15 has any of the money left.

16 Hence there's very little reason to do it  
17 because you're not going to get anything back from  
18 Barnes, so now you have to go after Bank of America  
19 directly. And I don't have any stuff from me to  
20 them. Personally I don't how I can prove that B of A  
21 was involved. But that's what the FBI says. So I'm  
22 waiting for them to actually come back with  
23 something.

24 Q. Did you folks, you or the board or anyone,  
25 do an investigation into Barnes' finances, or just

1 assumed that he doesn't have any money left?

2 A. No, I don't have the cash or -- look, at  
3 this juncture, my finances are such that I'm going  
4 negative every month. So there is no way I'm going  
5 to start a large battle. I've been through large  
6 battles. Never lost one. But I know how much they  
7 cost.

8 Q. I'm not talking about now. I should  
9 clarify. After you found out about the fraud, did  
10 you investigate Barnes or do an audit or hire a PI or  
11 anything to go after Barnes?

12 A. The only thing I did was get a forensic  
13 accountant to go over the Epiphany Surgical Solutions  
14 account since the rest of it would require board  
15 action, not me unilaterally.

16 And I actually called the other members of  
17 Epiphany, at least enough of them to get several more  
18 votes besides mine. Although theoretically I have  
19 enough votes to pretty much do it anyway, to go over  
20 it. I personally paid for it without getting  
21 anything from anybody else. But the others have made  
22 it quite clear that they do not want to -- if I'm  
23 willing to go after it, fine, but they're not going  
24 to be willing to help.

25 Q. So they made it clear to you that they don't

1 want to chase Barnes or any of the money that he  
2 took?

3 **A. I wouldn't go that far. They're waiting for**  
4 **the FBI to get back and tell them because their**  
5 **attorneys said the same thing, because I was there,**  
6 **which was, let the FBI do the heavy lifting.**

7 Q. During this time, 2012, 2013, 2014, until --  
8 before the eviction from the west side location, you  
9 were on the board of Flamingo Pecos?

10 **A. I don't know if -- I can't remember if I was**  
11 **on the board during the eviction or not, honestly. I**  
12 **think by then I may have been already -- I was either**  
13 **out or on the way out.**

14 Q. Okay, that's fine. And when you say you  
15 quit the board, do you mean the Epiphany board or the  
16 Flamingo Pecos board? Is it one in the same?

17 **A. The Epiphany board is theoretically**  
18 **different. Our board, or the Epiphany board**  
19 **meetings, nobody shows up, so they really end up**  
20 **being the same thing.**

21 Q. All right. Let's talk about the ltd. Have  
22 you been taking monthly draws from the ltd?

23 **A. No.**

24 Q. When was the last time you took a monthly  
25 draw from the ltd?



1           **A.     December.**

2           MR. IQBAL:   Now I'm handing the court  
3   reporter what's been marked as **Exhibit 2** and handing  
4   it to counsel.   This is the amended disclosure  
5   statement.

6                       (Thereupon **Exhibit 2** was  
7                       marked for identification.)

8   BY MR. IQBAL:

9           Q.    Sir, I just handed you something that we did  
10   two to a page just to save some paper, but it's  
11   identified at the top as Document 235 in the same  
12   case that we're having this proceeding on.   Case  
13   15-13135-ABL.   It states page 1 of 81 at the front.  
14   Do you recognize what I've given you?

15           **A.     Yes.**

16           Q.    And what is it?

17           **A.     Exactly what you said it was.   I just read**  
18   **across the top of the headline as you were reading**  
19   **it.**

20           Q.    Is this the disclosure statement that was  
21   filed by your counsel, to the best of your  
22   recollection?   You don't have to read every page.

23           **A.     Yeah, it looks like it is.**

24           Q.    And again, the only change we made was to  
25   put two pages on one to save a little bit of paper.

1           If you turn to page 16. Now, that's going  
2   to be 16 in the document, not the actual 16th page of  
3   the document.

4           **A. Correct.**

5           Q. And you see on the left side, which is  
6   page 15, "Liquidation Value," and on the right side  
7   on page 16 you have a chart. Correct?

8           **A. Yes.**

9           Q. Where you have two asterisk points, "Charles  
10   H. Tadlock M.D., ltd," it says "Current value,  
11   50,000"?

12          **A. Yeah. They did that against my will.**

13          Q. Against your will?

14          **A. Yeah. I don't think it's worth 50,000. I**  
15   **don't think it's worth anything.**

16          Q. Who told you to put 50,000?

17          **A. They had to come up with some number, and**  
18   **that was a number that was tossed around. But**  
19   **honestly, there are so many problems with it that --**  
20   **first there's nobody willing to buy it. I tried to**  
21   **sell it. Secondly, right at this moment we don't**  
22   **even have a PA. I can only work a few hours a month.**

23

24           I've checked with everyone in town that I  
25   know of. No one successfully sold a pain practice

1 for any amount of money, and certainly not one that  
2 doesn't even have a PA as of the 29th, when my PA  
3 quits. So I don't think it's worth 50.

4 Q. Do you know how that number was calculated  
5 or it was kicked around? I'm just trying to  
6 understand the process?

7 A. Yeah, I understand that basically on the  
8 basis of the fact that I can work and make up to  
9 about that amount of money before it starts affecting  
10 my disability. If I make more than that amount, then  
11 I'm actually losing money because it affects my  
12 disability. So I'm certainly not going to make more  
13 than that, and honestly, I haven't been making that  
14 over the last year.

15 Q. So there's no accounting calculation or  
16 principals how you came up with this current value?  
17 You came up with the current value based on what you  
18 potentially could make?

19 A. In the old days, you could get somewhere  
20 between 0.5 and one times the net amount that you're  
21 making out of a practice.

22 Q. Right.

23 A. So that would be about one times the net out  
24 of the practice.

25 Q. Okay.

1           A.     So that's why they went with 50. That's  
2     what I thought the net would be at that time, I mean,  
3     when we came up with the 50. It turns out I was  
4     wrong.

5           Q.     So when you turn to page 25 --

6           A.     Uh-huh.

7           Q.     -- and you look at -- and it says "Schedule  
8     of monthly cash flows for five future years." And if  
9     you look at number 1, "Salary." So that's  
10    Mrs. Tadlock, and that's coming from the ltd.  
11    Correct?

12          A.     Right, but something's happened since that  
13    period of time, which is, I'm told Mrs. Tadlock is  
14    probably eligible for disability also, so she will  
15    probably be going on disability after she sees her  
16    doc.

17          Q.     I'm just talking about at the time that this  
18    was written.

19          A.     Right. At the time that this was written,  
20    that's about what we thought it was going to go.

21          Q.     So at the time this was filed -- and that  
22    was about a month ago, right? It was entered  
23    December 21st. At that time she had a salary of  
24    4,400 per month, and you had an income from the same  
25    ltd of 5,350, correct?

1           A.     This says "maximum amount of income." There  
2     may have been a month that I made 5,350, but I think  
3     last year I only made -- I don't know -- 7 or 8  
4     thousand from direct payments to me.

5           Q.     When you add up the two, it comes out to  
6     \$9,750 a month. And at the time that this was  
7     entered into the docket, the projected cash flow from  
8     the ltd was 9,750 or about 10,000 a month, correct?

9           A.     Yeah. If I were getting that much, which I  
10    haven't been, yeah.

11          Q.     Right. I'm basing it on your wife's  
12    salary -- and I understand that circumstances have  
13    changed.

14          A.     Correct.

15          Q.     But for the purpose of my next few  
16    questions, we're just going to focus on the  
17    disclosure statement, as if it's December 21st.

18                 So at the time that the disclosure statement  
19    is entered, it is 4,400 for her salary, and that's  
20    coming out of the ltd, and the maximum amount of  
21    income from the ltd of 5,350 for you. So that comes  
22    out to 9,750, correct?

23          A.     Correct.

24          Q.     And here it says "maximum amount," but on  
25    page 16 -- I'm sorry -- on page 18, if you turn to

1 page 18, at the last full paragraph, it says -- and  
2 I'm quoting here -- "Dr. Tadlock believes that the  
3 medical practice can produce at least \$5,350 on a  
4 monthly basis from treatment of patients by  
5 personnel. Charles H. Tadlock M.D. ltd."

6 **A. Yeah, that was my best estimate at the time.**

7 Q. So I'm a little bit unclear because on page  
8 18 it says "at least \$5,350," but on page 25 it says  
9 "maximum of \$5,350."

10 **A. Well, like I said, I can't really go over**  
11 **that amount because if I do, then I've got to**  
12 **decrease the 20,750 because it was a disability**  
13 **payment. Furthermore, I'm getting worse, and it's**  
14 **quite likely that I'm not going to be able to work as**  
15 **much as I thought I was going to be, because even in**  
16 **the last month I've worsened.**

17 Q. Are there other medical professionals doing  
18 surgeries at the ltd besides you that would be  
19 bringing in revenue?

20 **A. No. I had a PA who was doing -- mostly**  
21 **seeing patients, but he quit as of the 29th.**

22 Q. So outside of you, there's nobody, no other  
23 source of revenue for the ltd?

24 **A. Correct.**

25 Q. As of right now?

1           **A.     Well, as of the 29th.**

2           Q.     As of the 29th, okay.  You had a payroll --  
3     if we look at page 79, you had a payroll -- and this  
4     only goes to the first 11 months of 2015 -- you had a  
5     payroll -- if you look on, I'm sorry, page 80 -- of  
6     \$406,000?

7           **A.     Yes.  That was including the first nine**  
8     **months when I had a contract for Ealy, and it was**  
9     **bringing in approximately \$50,000 a month for Ealy.**  
10    **And that doesn't exist anymore.  They fired me as of**  
11    **August.**

12          Q.     Do you know why they fired you?

13          **A.     Yeah, they got somebody else that would do**  
14    **it cheaper.**

15          Q.     This payroll of 400 some thousand over 11  
16    months, how many employees did the ltd have until  
17    2015?  And I understand that it's changing now, but  
18    in 2015 with this payroll, how many employees did it  
19    have?

20          **A.     About a dozen.**

21          Q.     Are you including yourself?

22          **A.     It's about a dozen.  Whether I'm in there or**  
23    **not, it's about a dozen.  It might be a baker's**  
24    **dozen.**

25          Q.     With your wife and then office staff?

1           A.    Yes.

2           Q.    And the PA?

3           A.    And the PA, maybe 13 or 14.  There's not  
4 very many.  Several people have resigned or have been  
5 fired in the last couple of weeks.

6           Q.    Okay.  In the last couple of weeks you just  
7 said several people have resigned, and we talked  
8 about the PA.  And you also said several people had  
9 been fired.  Who's been fired?

10          A.    Well, one person's been fired.  I never even  
11 got to know his name because he was there for such a  
12 short time.  One of the front office people.  And two  
13 of the people who had been there with me a long time  
14 were told that they should start looking for jobs  
15 somewhere else because I was deteriorating.

16          Q.    For this revenue, 800 some thousand in 2015,  
17 how many surgeries were you doing a month to generate  
18 that revenue?

19          A.    Okay.  What you have to understand is it  
20 wasn't the surgeries, per se, that was generating the  
21 revenue with Ealy, where you can't do very many  
22 surgeries.

23          Q.    Okay.

24          A.    Back in the day I was able to do 50 or 60 in  
25 a day of shots, basically, and a few larger



1 surgeries. Now I'm down, I never -- I shouldn't say  
2 never -- probably 15 is my max. I may have gotten 16  
3 at one time or something.

4 Ealy was a pleasure because Ealy couldn't  
5 move as fast as I could, despite the fact that I'm a  
6 cripple. However, the surgery centers, for the most  
7 part, can, and I'm never going to get up to those  
8 numbers again.

9 So if it comes to some agreement with this,  
10 and I try to save the practice, and if not, then I  
11 close it. Because I'm done.

12 Q. Now, you mentioned the Ealy contract. That  
13 was a big component of revenue?

14 A. Half a million, 800,000.

15 Q. And the rest of it was from patients that  
16 you personally saw?

17 A. No.

18 Q. The PA?

19 A. The PA was probably the majority of the rest  
20 of it. I don't know how much of it was my doing, my  
21 few patients. You know, obviously I think I did one  
22 day, in September I did two or three days. And I  
23 haven't done really more than five or six half days  
24 in any month. And frankly, I regret doing those.

25 Q. When you look at the profit and loss sheet

1 for the ltd, there's no receivables. Do you have  
2 receivables, or do you have any kind of receivables?

3 **A. There's no receivables?**

4 MR. CROWE: Receivables don't go on the P&L.  
5 You're talking about a balance sheet?

6 MR. IQBAL: Yes. I'm asking about  
7 the -- well, let me take a step back.

8 BY MR. IQBAL:

9 Q. Do you have receivables? Do you have an  
10 estimate for how much is owed to you for services  
11 that you performed in 2015?

12 **A. No. I actually forgot to ask Tammy that. I**  
13 **was going to. But I did ask her how long it would**  
14 **last, and she said two or three months with the**  
15 **current outgo. So it will be gone before -- when I**  
16 **say the practice really is worth nothing, I include**  
17 **the receivables because you have to do several things**  
18 **in order to shut down a practice. One, you have to**  
19 **have somebody there still answering the phone in case**  
20 **somebody wants their records. You have to have**  
21 **somebody still actually trying to get the insurance**  
22 **companies to pay them, which gets harder and harder,**  
23 **and you have to keep the records available to people**  
24 **for seven years.**

25 So the amount that's in the receivables I

1     guarantee you is not going to be able to do all that.

2           Q.     And that's something Tammy would know, but  
3     you don't know off the top of your head?

4           A.     Yeah, I have no idea, and Tammy would  
5     probably have to look.

6           Q.     That's fine, that's fine. So just to be  
7     clear, circumstances have changed from when this  
8     disclosure statement was filed because of your wife's  
9     unfortunate injury, and she may be on disability, and  
10    your condition has worsened, correct?

11          A.     Correct. Yeah, I sent a text today to  
12    Smith, who was telling me to go get another MRI. But  
13    I really don't want you to because if I get one, it's  
14    going to tell me I need to go have another surgery,  
15    and I don't want another surgery. And I'm not sure  
16    another surgery would help me.

17          Q.     I hear you. So would you put the  
18    liquidation value of the business at zero then?

19          A.     Yeah, pretty close. I think they put \$4,000  
20    for the car. The car has got 227,000 miles or  
21    something like that on it. It's worthless. The  
22    practice is pretty much worthless. The only way it  
23    can be saved, in my opinion, is if we spend the next  
24    year to trying to break even while we bring somebody  
25    else in new.

1 Q. Okay.

2 A. And so far we've been having no success with  
3 that at all.

4 Q. You're still trying to bring on somebody?

5 A. I'm trying as of this minute.

6 Q. That's fair enough. Now, with you saying  
7 the \$50,000 number on page 16, it's close to zero,  
8 then would that affect -- what we're talking about  
9 today currently with the prospects for your wife and  
10 your worsening condition, would you say that the  
11 schedule of monthly cash flows for the five future  
12 years is also off?

13 A. Unless I can find somebody else to come in,  
14 it's going to be zero because I'm going to close. My  
15 office manager warned people last week they were  
16 probably going to close. I've given two months worth  
17 of prescriptions to most of the patients with a "do  
18 not fill" under the assumption that next month, I'm  
19 going to be sending them a letter saying, Sorry,  
20 we're closed.

21 I'm trying not to close. I'll make that  
22 very clear to you, in case I don't, and you say, Ah,  
23 you're a liar. I'm trying to find a way to keep it  
24 open.

25 But as of right now, it isn't. And even if

1 I were to find somebody, what you have to realize is,  
2 whoever I find is going to suck up all the money for  
3 at least the next couple of years because I'm down to  
4 maybe ten or fifteen percent of what I was doing  
5 before. Before I had literally operations in three  
6 to four states, depending on the year, and I was  
7 generating two and a half million dollars a year just  
8 by myself.

9 That's going to be very difficult for  
10 anybody coming into the practice to do under the  
11 current situation. And not even mentioning all the  
12 crap going on about Obamacare. There may not be any  
13 practices in a few months because Minnesota and  
14 Wisconsin just cut reimbursement to pain practices by  
15 Medicare by 75 percent. So guess what? There's no  
16 more pain practices in Minnesota and Wisconsin.

17 I don't know if that's going to happen here  
18 or not. If it does, that's definitely going to raise  
19 a red flag.

20 Q. On page 79, if we go back to 79 and we look  
21 at -- the ltd hasn't been involved in any litigation?

22 A. I don't know if the ltd -- if I got sued by  
23 that idiot ENT by ltd or not. I'm going to say I  
24 can't answer that, but I've had malpractice lawsuits  
25 over the years. One was by my PA. But not any --

1     **no, I don't think so.**

2           Q.     I'm talking about 2015.

3           **A.     No.**

4           Q.     Nothing?  Nothing in 2015?

5           **A.     No, I think that ENT was gone by then.**

6           Q.     It says \$61,260.50 on page 79 of the  
7     disclosure statement for legal fees.  Why would the  
8     ltd have \$61,000 in legal fees?

9           **A.     That would be you, and probably the tail end**  
10   **of the ENT suing me.**

11          Q.     But I believe we talked about the ENT being  
12   a couple years ago and being resolved?

13          **A.     Yeah.  I still owe some money.  I still owed**  
14   **them some money, I think.  As far as the other, I**  
15   **also have Gordan Richardson who goes after people for**  
16   **me who are in arrears.  And Arizona is \$300,000 in**  
17   **arrears with me for access.  So I'm assuming some of**  
18   **that is Gordon.**

19          Q.     Just to be clear, then, the ltd is -- and  
20   you mentioned "you" when we were talking about legal  
21   fees.  I presume you're talking about the action over  
22   the guarantee, correct, where you were sued over the  
23   \$400,000 guarantee?

24          **A.     Well, I'm also being attacked for the fact**  
25   **that I'm behind on the rents.  So I had to spend**

1 money on a couple different attorneys for National  
2 Bank, which just acquired the loan from Bank of  
3 America.

4 Q. Right. They sued you in state court?

5 A. No. I was trying to get out of them taking  
6 over the property and negotiating with them and to  
7 get it down to a reasonable amount. But they're  
8 pretty much like Bank of America. Take it, or pow  
9 pow, no matter how little it's worth.

10 MR. CROWE: Just to speed this up, you did a  
11 loan modification last year, right?

12 THE WITNESS: Right. There might be the  
13 loan modification, yep.

14 BY MR. IQBAL:

15 Q. But the ltd is paying your personal legal  
16 fees?

17 A. My personal legal fees?

18 Q. Yes. Because this is your bankruptcy,  
19 right? The ltd is not in a bankruptcy --

20 A. No, but --

21 Q. -- so I'm just trying to figure out how the  
22 61,260 came about.

23 A. Gordon Richardson and a different  
24 attorney -- and I forget who the other one is --  
25 tried to go after Arizona for \$300,000 in arrears and

1 access, and they're now telling me that it's  
2 impossible to get anything back from access because  
3 it's the state, and they don't have to pay you, even  
4 though they agreed to it. The fact that they agreed  
5 to it does not mean you're going to get paid.

6 So, actually, that's a fairly small amount.  
7 My legal fees are usually twice or three times that  
8 amount. It's on the low side.

9 Q. Just to be clear, this ltd, these legal  
10 fees, are for legal work associated with the ltd?

11 A. I believe so, yeah. They should be.

12 Q. And you personally pay your legal fees  
13 separate from the ltd?

14 A. Correct.

15 Q. When you look on page 80, you have plane  
16 expenses. Why would the plane expenses be on the  
17 ltd's profit and loss when the plane is owned by  
18 Icarus LLC?

19 A. It's a lease. \$12,000 a month from my ltd.  
20 It's been in existence for ages. It's like since the  
21 early 2000s with a different plane. It got upgraded  
22 when I went to the jet prop from the Saratoga for  
23 \$12,000 a month, as per my accountants and attorneys.

24 Q. So the ltd is paying Icarus to lease the  
25 plane?



1           A.     Correct. And a hundred percent of the  
2     Icarus use has been business. This year hasn't even  
3     taken off, which means it really is a hundred percent  
4     business.

5                     But I was audited a few years back by the  
6     federal government because I was putting down, I  
7     think, 94 percent or 92 percent or something, and the  
8     rest of it was private, and they gave me money back  
9     because it's a hundred percent private. I only use  
10    the damn thing to run around to do work. Okay?

11           Q.     Okay. Is there an agreement between the ltd  
12    --

13           A.     Yes.

14           Q.     -- and Icuras LLC? Okay. What other  
15    businesses --

16           A.     Excuse me. Can I interrupt? Green &  
17    Robertson also had a bunch of attorney fees as well.

18                     MR. CROWE: Do you want to take a break?

19                     THE WITNESS: No, I'm okay. I'm good with  
20    this. I'm just getting close. If we're going to go  
21    much longer, we're going to have to put the rest of  
22    it off for another day.

23                     MR. IQBAL: Can we go off the record for a  
24    second?

25                                 (Off the record.)

1 MR. IQBAL: On the record.

2 MR. CROWE: I am going to object to you  
3 asking questions about things that are pointless.  
4 Conversion doesn't matter. Dismissal doesn't really  
5 matter, either, because that would be outside of  
6 bankruptcy. We're in a bankruptcy case. This is a  
7 Rule 2004 examination.

8 MR. IQBAL: Right.

9 MR. CROWE: Okay. And it has to relate to  
10 the administration of this case.

11 MR. IQBAL: I understand, and I'm going to  
12 be asking questions about businesses that are on the  
13 docket. I'm going to be asking questions about  
14 property that's on the docket, that's in the  
15 disclosure statement, which would be relevant,  
16 correct? If it's in the disclosure statement and it  
17 either goes to the liquidation value or it goes to  
18 the monthly cash flow, wouldn't that be relevant?

19 MR. CROWE: Mohamed, the only real  
20 non-exempt assets here are the ltd, as you've phrased  
21 it, and the jewelry, which we appraised. So I'm just  
22 having -- I just want to let you know, I mean, I have  
23 real difficulty spending hours going through exempt  
24 assets.

25 MR. IQBAL: I'm not going over exempt

1 assets. I want to ask about the house in California.  
2 I want to ask about the house here.

3 MR. CROWE: Except it's in a Cupert for more  
4 than ten years.

5 MR. IQBAL: But if it's over-secured and it  
6 is worth a million dollars more than what it's listed  
7 as, then there could be some information --

8 MR. CROWE: Even your Zillow numbers didn't  
9 come out to \$2 million more, right? Even if you're  
10 going to do a million dollars with Zillow, if you  
11 want to present Zillow to that judge, I guarantee  
12 you, it's not going to work well.

13 MR. IQBAL: No. Okay, just to be clear,  
14 we're not going to present Zillow numbers. We're  
15 going to do a request -- we're going to do a notice  
16 of request for an evidentiary hearing so we can get  
17 an appraisal. And so --

18 MR. CROWE: It's an exempt asset. Under  
19 Nevada law, it's in a trust. It's exempted. It  
20 doesn't matter if it's worth \$10 million. It's  
21 exempt.

22 THE WITNESS: Correct.

23 MR. CROWE: It's in a Cupert. It's more  
24 than 10 years old. There's no possible way under the  
25 bankruptcy code that you can go back beyond ten

1 years. The only reason the 10 year period flies in  
2 the doctor's role where it is, that if it's within  
3 ten years, then there's an argument that could be  
4 made that could deny him his discharge. The time for  
5 that has also expired.

6 I'm just telling you, we're going to put an  
7 objection to every single question as it relates to a  
8 non-relevant asset. But go ahead.

9 THE WITNESS: Why don't you go review the  
10 law before you ask me questions on something that --

11 MR. IQBAL: I have reviewed the law, and  
12 there's something called the absolute priority rule,  
13 and --

14 MR. CROWE: Which doesn't apply in a case of  
15 individual debtors.

16 MR. IQBAL: Actually it can.

17 MR. CROWE: I does not.

18 MR. IQBAL: There's a case law that says  
19 that it can.

20 MR. CROWE: You tell Judge Landis that  
21 tomorrow.

22 MR. IQBAR: Okay.

23 MR. CROWE: Every time he confirms a plan,  
24 Judge Landis will go through every single element,  
25 even if it's not even contested, all right? Every

1 time he relates back to the Schacht decision from  
2 Judge Mark Hill, okay, he follows that religiously.  
3 That's the one basically that says in the case of  
4 individual debtors, that rule does not apply. That  
5 will all be property of the state re-vested in the  
6 debtor upon its operation.

7 I'm just telling you this: I think we  
8 should continue it. The doctor is not feeling well.  
9 It will probably be better to continue it. We'll  
10 agree to continue it.

11 MR. IQBAL: Yes.

12 MR. CROWE: But I'm just alerting you that  
13 we have.

14 MR. IQBAL: Well, I'm only going to ask  
15 about --

16 MR. CROWE: -- tremendous reservations.

17 THE WITNESS: Just continue it. I'm already  
18 on enough medications on board as well as that. I  
19 shouldn't be testifying anyway. And frankly, you  
20 need to go review the law.

21 MR. IQBAL: I have reviewed the law. I was  
22 going to ask you --

23 THE WITNESS: I've had half a dozen  
24 attorneys who have reviewed Cupers. Unless you're  
25 right and all half a dozen of them are wrong, which I

1 really doubt, then that stuff is exempted.

2 MR. IQBAL: Well, I don't want to continue  
3 when you're hurting, as a human being to human being.  
4 So I don't want to continue to ask you questions.  
5 And I don't want -- when we do continue, I'm not  
6 going to ask you non-relevant questions. I'm going  
7 to ask you stuff that's in the amended disclosure  
8 statement about assets of the estate. Okay?

9 Non-exempt assets, I have questions on those, and I  
10 want to ask you those. But as a human being, I'm not  
11 going to ask you when you're hurting. Okay? And I'm  
12 not going to --

13 THE WITNESS: Then you're never going to be  
14 able to ask.

15 MR. CROWE: Here's the other thing --

16 THE WITNESS: Please review it before you do  
17 that.

18 MR. CROWE: The supreme court has made it  
19 clear that if an exemption is filed, no matter how  
20 bizarre it might be, okay, and it's not objected to  
21 within the time frame, it's exempt property.

22 MR. IQBAL: I'm not talking about the exempt  
23 property. I'm talking about the RV --

24 MR. CROWE: In this case, property of art is  
25 exempt, and if we -- it would be exempt.

1 MR. IQBAR: -- the RV and other things that  
2 are not exempt. And those are the questions I have.

3 MR. CROWE: I know, but they have no equity.

4 MR. IQBAL: Okay, under the rules for 2004,  
5 am I allowed to ask about the RV? Yes. Right?

6 MR. CROWE: Sure.

7 MR. IQBAL: That's what I want to ask.  
8 Under the 2004 rules, can I ask about the plane?  
9 That's what I was going to go to.

10 MR. CROWE: Absolutely, sure.

11 MR. IQBAL: So those will be what the topics  
12 are when we continue.

13 THE WITNESS: Have fun with it because it's  
14 a hundred percent used for --

15 MR. IQBAL: I'm not trying to go outside the  
16 scope of the 2004. I'm telling you right now what  
17 I'm going to be asking about; the RV and the plane,  
18 when we come back.

19 THE WITNESS: Have fun with that. It's a  
20 waste of time.

21 MR. CROWE: Well, you're within your rights  
22 to ask about anything, honestly, but I'm just trying  
23 to appeal to you that it really has no relevance.

24 MR. IQBAL: The non-exempt assets? I can't  
25 ask about that?

1 MR. CROWE: They're upside down.

2 THE WITNESS: Yeah, they're negative.

3 MR. IQBAL: Okay. So I simply just have to  
4 take what's written on its face? I can't ask  
5 questions about the RV?

6 MR. CROWE: No, you can look in my motion  
7 that was granted that set the value of the thing.

8 MR. IQBAL: Okay. I can't ask about the  
9 house?

10 MR. CROWE: And they have an unsecured debt.  
11 Look, you can ask about anything you want, I'm just  
12 trying to explain to you that it's not really  
13 relevant to anything that can be included in the  
14 disclosure statement. Right? I mean, creditors want  
15 to know, okay, what are the assets that I can get at,  
16 right? I mean, isn't that the question?

17 MR. IQBAL: Right.

18 MR. CROWE: I'm just posing that.

19 MR. IQBAL: And I'm asking about stuff  
20 that's not exempt.

21 THE WITNESS: Keep pushing it, and I'm going  
22 to give up. Those salvaged are going to be ltds, and  
23 fuck you. Okay? You don't get it. I'm this close  
24 to completely surrendering. So if you want the RV,  
25 go pick it up. You just make the payments on it.



1 MR. IQBAL: I don't want the RV.

2 THE WITNESS: The airplane also. Take it.

3 MR. IQBAL: I don't want to take it. I just  
4 want to ask you questions about it.

5 MR. CROWE: When do you want to continue  
6 with this?

7 MR. IQBAL: When are you available?

8 THE WITNESS: I'm not available until next  
9 month.

10 MR. CROWE: Okay. Then we're in early  
11 February then.

12 THE WITNESS: Probably toward the tail end.  
13 I'll have to get back to you as to when I'm available  
14 because I'm not even sure if I'm going to have a  
15 practice then.

16 MR. CROWE: Why don't we set our sights on  
17 early February. Maybe two weeks from now or  
18 something. Do you want to try for that?

19 MR. IQBAL: Does that work for you?

20 THE WITNESS: I don't know. I have to go  
21 ask my office manager, and I'll get back to you.

22 MR. CROWE: I'll call you. We'll talk and  
23 set it up.

24 THE WITNESS: You're talking me -- this is  
25 silly, what you're actually talking me into doing.

1 Because this is just fucking ridiculous. The law is  
2 clear on Cupers. It's been clear since, you know, I  
3 originally looked at it 25 years ago. You're asking  
4 me crap. You can ask whatever you want. I'm in a  
5 bad mood because I'm hurting. So if I wasn't  
6 hurting, I wouldn't be so cranky, but the truth of  
7 the matter is, all you're really going to do is drag  
8 me back here and hurt me some more for no good  
9 reason, so...

10 MR. IQBAL: Well, for the record, we're not  
11 trying to hurt you. We're just trying to ask  
12 questions about stuff we can ask in a 2004.

13 THE WITNESS: Yeah, I know. I get it, and  
14 I'll come over here and --

15 MR. IQBAL: No, we'll pick a place where you  
16 don't have to take the steps.

17 THE WITNESS: That would be nice. I called  
18 your office and asked them to have it available to me  
19 to have a wheelchair. And I notice it's not here. I  
20 can't even get up the thing. So I really am finding  
21 it rather bizarre that --

22 MR. IQBAL: Who did you call, sir? Because  
23 I was not informed that you needed a --

24 THE WITNESS: I don't recall exactly who it  
25 was I talked to, but I made it very clear that since

1     you weren't on the first floor, and I wasn't sure  
2     where your office was up here, that I may not -- like  
3     if you were on the other side of the building, it  
4     would be a real problem.

5                 MR. IQBAL: I understand. Next time we'll  
6     have it on the first floor. Thank you. We can go  
7     off the record now.

8                         (Thereupon the taking of the 2004  
9                         Examination was concluded at 3:23  
10                        p.m.)

11                        \*       \*       \*       \*       \*

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CERTIFICATE OF DEPONENT

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\* \* \* \* \*

I, CHARLES H. TADLOCK, M.D., deponent  
herein, do hereby certify and declare the within and  
foregoing transcription to be my 2004 Examination in  
said action; that I have read, corrected and do  
hereby affix my signature to said 2004 Examination.

---

CHARLES H. TADLOCK, M.D., Deponent

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
 ) SS:  
3 COUNTY OF CLARK )

4 I, Jane V. Efaw, CCR No. 601, do hereby certify:

5 That I reported the taking of the 2004  
6 Examination of the witness, CHARLES H. TADLOCK, M.D.,  
7 at the time and place aforesaid;

8 That prior to being examined, the witness was by  
9 me duly sworn to testify to the truth, the whole  
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand notes  
12 into typewriting and that the typewritten transcript  
13 of said 2004 Examination is a complete, true and  
14 accurate transcription of said shorthand notes taken  
15 down at said time, and that a request has been made  
16 to review the transcript.

17 I further certify that I am not a relative or  
18 employee of counsel of any party involved in said  
19 action, nor a relative or employee of the parties  
20 involved in said action, nor a person financially  
21 interested in the action.

22 Dated at Las Vegas, Nevada, this \_\_\_\_ day of  
23 \_\_\_\_\_, 2016.

24

25 \_\_\_\_\_  
Jane V. Efaw, CCR #601

## EXHIBIT 2

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: )  
 )  
Flamingo-Pedos Surgery )  
Center, LLC dba Surgery )  
Center of Southern ) BK No. 15-13135-abl  
Nevada ) Chapter 11  
 )  
Debtor-in-Possession, )

AUDIO TRANSCRIPTION

341 MEETING OF CREDITORS

HELD February 5, 2015

TRANSCRIBED BY: Kathy Hoffman

APPEARANCES

For the U.S. Trustee's Office:

MICHAL J. BLOOM  
300 S. Las Vegas Boulevard  
Suite 4300  
Las Vegas, Nevada 89101

For the Debtor:

ZACHARIAH LARSON  
LARSON & ZIRZOW, LLC  
850 E. Bonneville Avenue  
Las Vegas, Nevada 89101

Also Present:

William D. Smith, M.D.  
(Via telephone) Hyatt Collins  
Lewis Garfinkle  
Christina Weller  
Simone Chadda  
Richard Dryser  
Matthew Johnson



1 PROCEEDINGS

2

3 MS. BLOOM: We are on the record. This  
4 is the 341 meeting of the creditors. This is not  
5 continued, is it? It's the original.

6 C'mon in. Are you for Flamingo Surgery?

7 UNKNOWN SPEAKER: Yes.

8 MS. BLOOM: Okay. There's a creditor's  
9 sign-in sheet.

10 This is the Meeting of Creditors in the  
11 case of Flamingo Pecos Surgery Center, LLC,  
12 Bankruptcy No. 14-18480. Today is  
13 February 5, 2015, and this is the Office of the  
14 United States Trustee. I am Michal Bloom  
15 representing the trustee, and we have a debtor's  
16 representative here today.

17 And what's your name, sir?

18 DR. SMITH: William Douglas Smith, M.D.

19 MS. BLOOM: All right. And you're the  
20 one that signed the schedules?

21 DR. SMITH: That is correct.

22 MS. BLOOM: Very good. And I'm going to  
23 swear you in. Do I need to see identification? I  
24 don't think so. All right. Tell me your last name  
25 one more time.

1 DR. SMITH: Smith.

2 MS. BLOOM: That's why I forgot it. It's  
3 too easy. Could you, Dr. Smith, raise your right  
4 hand?

5 Whereupon,

6 WILLIAM DOUGLAS SMITH, M.D.,  
7 having been duly sworn in, testified as follows:

8 MS. BLOOM: Thank you. Counsel?

9 MR. LARSON: Zach Larson on behalf of  
10 Flamingo Pecos Surgery Center, LLC, doing business  
11 as Surgery Center of Southern Nevada.

12 MS. BLOOM: Okay. So we're going to get  
13 everyone's appearance on the record. First on the  
14 telephone we have.

15 MR. COLLINS: This is Hyatt Collins,  
16 (inaudible), and I am with Gullett Sanford Robinson  
17 & Martin.

18 MS. BLOOM: Okay. We'll just go around  
19 the room. Someone start.

20 MR. GARFINKLE: Sure, let me start.  
21 Lewis Garfinkle of Levine Garfinkle & Eckersley on  
22 behalf of Canyon Medical Building, LLC.

23 MS. WELLER: Christina Weller from Weller  
24 Law on behalf of Christiansen Law Offices, Eglet  
25 Law Group, LLP, and Sam Harvey Law Firm.

1 MS. CHADDA: Simone Chadda from Chadda  
2 Demopolis (ph) on behalf of George Gluck, M.D.

3 MR. DRYSER: Richard Dryser from Wilson  
4 Elser on behalf DesMed, LLC.

5 MR. JOHNSON: Matthew Johnson from  
6 Johnson & Gubler on behalf of both the Elcore (ph)  
7 Family Trusts.

8 MS. BLOOM: Okay. Could we have a  
9 summary of what is going on in the case today and  
10 anything else that you can think of?

11 MR. LARSON: The summary is is we're  
12 raising funds to reopen a location. We originally  
13 had three locations that closed in large part, or  
14 some would say mostly, because of the actions of a  
15 poison pill that was managing the place to the  
16 extent where the FBI is investigating.

17 Was he indicted?

18 DR. SMITH: Not yes, no.

19 MR. LARSON: Not yet. But we have  
20 indications he will be indicted.

21 MS. BLOOM: Okay. This was someone that  
22 worked for --

23 MR. LARSON: Yes, for the surgery center.

24 MS. BLOOM: The officer manager, okay.

25 MR. LARSON: Correct. During his tenure,

1 not only did monies disappear, but we're informed  
2 and believed that various contacts were made  
3 wherein this individual either A, got a kickback or  
4 B, deliberately entered into economically  
5 unfeasible agreements.

6 MS. BLOOM: Contracts with whom?

7 MR. LARSON: Various creditors. One such  
8 agreement, for example, would be the linens that  
9 were to be cleaned for various surgery centers were  
10 being shipped to Utah and paid at a three to four  
11 times the normal contractual rate to clean each  
12 linen for each surgery here in Las Vegas. There  
13 are lots of examples. The FBI is investigating.

14 The surgery centers have shut down. We  
15 are raising money through a variety of people to  
16 basically put into a capitalization fund to reopen  
17 one location only.

18 That one location in large part will be  
19 funded, hopefully, still working out the finalized  
20 details, by a party who owns approximately seven  
21 nationwide surgery centers and has vast experience  
22 in building and managing surgery centers as well as  
23 the focus on getting the billables in and  
24 converting the center to Medicare and Medicaid.  
25 Right, Doctor?

1 DR. SMITH: And not just that but also  
2 where the insurance is local, worker's comp.

3 MR. LARSON: Basically taking our account  
4 receivable time from a 90- to 120-day lag time to,  
5 in a case of Medicare, 32-day lag time. So the  
6 goal is to get the bell curve up and running and  
7 start collecting receivables.

8 The doctors can create a lot of  
9 receivables for the center once it reopens in  
10 relatively short periods of time because the  
11 surgeries they perform are always insurance covered  
12 that they do or paid for up front.

13 And the problem was is once we got the  
14 poison pill in there, all the doctors that were  
15 part of the group -- or I'll say two-thirds of the  
16 doctors gave up because he had -- he played the  
17 pyramid scheme allegedly with the doctors saying,  
18 hey, this is what's going on and why you're not  
19 getting paid and kept the information from the  
20 vital parties as to the true financial condition of  
21 the surgery center.

22 So once everything is in order, it should  
23 be a successful reorganization. We're trying to  
24 open up escrow now to place the funds in in order  
25 to get a motion out of the Court to approve the

1 funding, the new capitalization structure as well  
2 as budgetary issues in regards to this is what  
3 month two, three and four are going to look like.

4 MS. BLOOM: Okay. And in terms of --

5 MR. LARSON: If the funds are not raised,  
6 this will be a liquidating plan where the  
7 receivables that are not owned by other third  
8 parties will be collected and disbursed by an  
9 agent, but that is not the goal and not the plan.

10 MS. BLOOM: Okay. So my question  
11 initially is what motions are pending? Your firm's  
12 been employed?

13 MR. LARSON: I don't think we've attended  
14 that hearing yet.

15 MS. BLOOM: Okay. All right. It looks  
16 like there's emergency -- oh, those are your first  
17 day motions. That's right.

18 MR. LARSON: Did Matt attend those?

19 MS. BLOOM: Matt attended them. He did.  
20 And I don't think we had any problem with any of  
21 them. I assume -- I don't know if the order has  
22 been entered. Nobody objected to any of them, did  
23 they?

24 MR. LARSON: No.

25 MS. BLOOM: I didn't think so. Okay. It

1     seems like not a very contentious case.

2             MR. LARSON:   There's lots of contentions.

3             MS. BLOOM:   Are there?   Lots of  
4     contentions but no contentiousness.   Okay.

5             MR. LARSON:   It's just a matter of  
6     getting the information to people as to how it  
7     goes.

8             MS. BLOOM:   Yeah.   How much was stolen?  
9     Do we know?

10            DR. SMITH:   Millions.

11            MS. BLOOM:   Millions?   This went on for  
12     years.

13            DR. SMITH:   Probably at least for three  
14     to five years.

15            MS. BLOOM:   Now, was there an accounting  
16     firm that was --

17            DR. SMITH:   There was probably three  
18     separate accounting firms that appear that he would  
19     hire one, and as soon as the accountants starting  
20     having questions, he would tell us, oh, they're not  
21     doing a good job.   We needed to go to the next one.

22            MS. BLOOM:   Wow.   And you all had a lot  
23     of faith in him because?

24            DR. SMITH:   He's been in the community  
25     for probably 15 years doing similar type of work.

1 MS. BLOOM: He's never ripped anyone else  
2 off?

3 DR. SMITH: Not that we know of.

4 MS. BLOOM: You guys were the lucky  
5 firsts.

6 DR. SMITH: We were the first ones.

7 MS. BLOOM: Wow. So he was recommended  
8 by other surgery centers?

9 DR. SMITH: He was employed by, I think,  
10 Health South. So even -- you know, was doing work  
11 directly for them for their centers. And, you  
12 know, we have -- you know, most of the surgeons  
13 here are extremely busy, and we trusted him to do  
14 the day-to-day management.

15 MS. BLOOM: Those are the people one  
16 trusts the most.

17 MR. LARSON: Well, there seems to be a  
18 gambling issue too.

19 DR. SMITH: Yes. There's credit cards he  
20 used for withdrawing cash from in the middle of the  
21 night, 25, \$30,000 at a time.

22 MS. BLOOM: From the corporate credit  
23 card?

24 DR. SMITH: Corporate credit card,  
25 uhm-hm.



1                   MS. BLOOM: Well, that's not his fault.  
2 Gambling's a disease. What's the problem?

3                   DR. SMITH: Yes, that's his story.

4                   MS. BLOOM: Yeah, right. Okay.  
5 (Inaudible).

6                   Okay. So I assume everyone that's here  
7 is pretty much up to speed. I'm the only one that  
8 this is new to. Secured debt, there's a lot of  
9 terminated employees, I guess. Do you know how  
10 much is owed, approximately, in back salaries?

11                  MR. LARSON: We don't believe there's  
12 very many.

13                  MS. BLOOM: Okay.

14                  MR. LARSON: We put most of those  
15 employees on notice so that if they had any issues  
16 because (inaudible) was in disarray and we're  
17 putting it together just to make sure. But we're  
18 under the impression that most of everybody had  
19 been paid.

20                  DR. SMITH: Yeah. I think we currently  
21 -- yeah. We have currently two part-time employees  
22 and I think they may be -- I think everybody is  
23 paid up to date. They may be behind a week or two,  
24 but I think everybody is up to date.

25                  MS. BLOOM: Okay. Because there's pages

1 and pages for this --

2 MR. LARSON: Yeah, but it was out of  
3 abundance, and some of them were patients too as  
4 well because of their --

5 MS. BLOOM: Oh, they were owed. Okay.

6 MR. LARSON: Well, because sometimes a  
7 doctor would be sued and they would name the  
8 surgery center because that's where it took place.

9 MS. BLOOM: I see.

10 MR. LARSON: So everybody we had issues  
11 for whether they're employees or otherwise, we just  
12 through the gamut, here's your notice and if you  
13 have an issue, please come see us.

14 MS. BLOOM: Okay. Now, are there inside  
15 creditors, insiders?

16 MR. LARSON: Yes.

17 MS. BLOOM: Okay. And they're listed  
18 where?

19 MR. LARSON: How many doctors? 27?

20 DR. SMITH: Yes.

21 MS. BLOOM: There's 27? These would be  
22 the doctors. So how many doctors were there all  
23 together with ownership interest?

24 DR. SMITH: I want to say 27.

25 MS. BLOOM: Oh, 27. So you're all owed

1 money. And where are you listed? This would be in  
2 Schedule F?

3 MR. LARSON: Uhm-hm.

4 MS. BLOOM: Any particular place? Too  
5 much to look at. All right. So how much is --  
6 let's just go in round numbers then. So the  
7 secured debt is 1.5 million, which is -- we don't  
8 know how much the current employees were owed. So  
9 what's the 1.5 million comprised of?

10 MR. LARSON: They're probably owed about  
11 zero, the employees.

12 MS. BLOOM: Okay. So then -- because I'm  
13 --

14 MR. LARSON: The secured debt is almost  
15 all equipment based.

16 MS. BLOOM: Oh, I see. I didn't turn the  
17 page. Okay. It's all equipment. All right.  
18 That's easy. And it's all been repossessed or  
19 turned over?

20 MR. LARSON: Not really.

21 MS. BLOOM: No? You still have it.

22 DR. SMITH: It's still at the center  
23 we're planning to reopen.

24 MS. BLOOM: Okay. So do you know -- have  
25 you worked out agreements you're going to hold on

1     --

2             DR. SMITH: That's what we're working on  
3 now.

4             MS. BLOOM: Good. Because that would be  
5 -- yeah, okay. So that's fine. And then how much  
6 of the unsecured debt is insider debt? 4.2?

7             MR. LARSON: Gosh, what all the doctors  
8 put in over the years.

9             DR. SMITH: Oh, it's probably -- I would  
10 think it's probably about 700,000, somewhere in  
11 that range.

12            MS. BLOOM: That's it? And the rest of  
13 it is what?

14            DR. SMITH: Vendor debt probably.

15            MS. BLOOM: Vendor debt mostly, okay.

16            MR. LARSON: A large part of that is  
17 lease.

18            MS. BLOOM: Okay.

19            MR. LARSON: Those two buildings that  
20 were given up.

21            MS. BLOOM: Now, I guess there's no  
22 committee, so we would know by now because Jim's  
23 pretty good about that. You haven't heard  
24 anything.

25            MR. LARSON: Nothing. Zero.

1 MS. BLOOM: This is not my case, so.

2 All right. So basically -- wait, this  
3 2.9 million listed as personal property. That's  
4 receivables or is there actual money in the bank  
5 somewhere?

6 DR. SMITH: I think there's a small  
7 amount of money in the bank.

8 MS. BLOOM: And it's also receivables.  
9 And how old are they? How much is collectible?

10 DR. SMITH: Good question. I think a  
11 fair amount of them was around 120 days.

12 MS. BLOOM: Is it government, Medicare,  
13 Medicaid, or mostly private?

14 DR. SMITH: A mix. A mix.

15 MS. BLOOM: All right. So your best  
16 guesstimate, how much is collectible?

17 DR. SMITH: I would think if we had a  
18 good collection team really working it, I would  
19 think 20 percent.

20 MS. BLOOM: Okay. And that's optimistic.

21 DR. SMITH: Yes.

22 MS. BLOOM: Has anyone started doing that  
23 or is that something you're going to do?

24 DR. SMITH: I believe that's on hold.

25 MS. BLOOM: It's on hold. Are you going

1 to employ somebody?

2 MR. LARSON: Until we get the funding.

3 DR. SMITH: Yeah.

4 MS. BLOOM: Oh, so -- okay.

5 MR. LARSON: Our plan is not -- our plan  
6 does not plan on utilizing the current ARs --

7 MS. BLOOM: I see.

8 MR. LARSON: -- to fund the plan.

9 DR. SMITH: That's the cherry on top.

10 MS. BLOOM: Okay.

11 MR. LARSON: Let me give you a theory, a  
12 theoretical.

13 MS. BLOOM: Sure.

14 MR. LARSON: Dr. Smith could operate  
15 let's call it ten times per month, okay, and  
16 generate \$400,000 for fees. Okay? Those would  
17 generally be paid within 90 days. That's one  
18 doctor out of a team of nine we're looking at  
19 getting not including the national partner we're  
20 trying to get to bring in others.

21 So the surgery center was always  
22 profitable if there wasn't somebody who was  
23 stealing millions of dollars. So it's not -- we're  
24 not relying upon the plan to bring in those  
25 receivables to pay for the plan. It's a matter of

1     basically re-investing new capital to get the  
2     machine running again.

3             MS. BLOOM:   Okay.

4             MR. LARSON:   Which is expensive.   Right?  
5     I mean, we're talking a half a million dollars at  
6     least.

7             MS. BLOOM:   That's nothing.   That's one  
8     doctor's income in a month.   Right?

9             MR. LARSON:   Not income.

10            DR. SMITH:    I wish.

11            MR. LARSON:   Not income, we're talking  
12   fees to -- you know, but the point is is that -- I  
13   said theoretical, not actual.   Right?   The goal is  
14   not to collect on the receivables --

15            MS. BLOOM:   No, I understand it's not the  
16   goal, but --

17            MR. LARSON:   -- in order to do it because  
18   it's a lot of time --

19            MS. BLOOM:   No, I understand.

20            MR. LARSON:   -- that is spent that  
21   doesn't necessarily pan out to dollars.

22            MS. BLOOM:   Okay.   Let me just ask this,  
23   though, because we all know the longer one waits,  
24   the less collectible they are.   And there's  
25   agencies that will take a percentage and do it for

1     you.  Is that worth -- I don't know if you  
2     considered --

3                 MR. LARSON:  Yeah, one of our plans is to  
4     try to sell some, right?

5                 MS. BLOOM:  Well, yeah, but whatever --

6                 MR. LARSON:  But that is not our focus.

7                 MS. BLOOM:  No, I understand.  I'm just  
8     asking because --

9                 MR. LARSON:  If we fail, the liquidating  
10    agent will do that for us.

11                MS. BLOOM:  Right.  Okay.  So --

12                MR. GARFINKLE:  Can I ask a question?

13                MS. BLOOM:  Sure, jump right in.  Feel  
14    free.

15                MR. GARFINKLE:  I was going to ask this  
16    question --

17                MS. BLOOM:  Okay.  But say who you are,  
18    first.

19                MR. GARFINKLE:  My name is  
20    Lewis Garfinkle, and I did want to focus on the  
21    accounts receivable.  How old are these  
22    receivables?

23                DR. SMITH:  I'd say the last time I  
24    looked, that would have been a couple months or two  
25    ago, it was about 120 days.



1                   MR. LARSON: So now you're at a hundred  
2 and --

3                   MR. GARFINKLE: The trustee is right.  
4 The longer you wait, the less likely you're going  
5 to be able to collect them. And I mean, it sounds  
6 like you really do need to get a collection company  
7 in place who -- I mean, they typically will do it  
8 based on what they collect, a percentage of it, so  
9 it's not going to cost the debtor any money as  
10 such, I mean. So is that something that --

11                  MR. LARSON: It's something we'll do if  
12 we convert to a 7 or appoint a liquidating agent.  
13 Right? If we -- if the plan comes together, right,  
14 the surgery center will have a team in place that  
15 bills. Right? So they will have -- they'll have  
16 the time and now be employed to bill not only the  
17 new current stuff, but focus on older stuff.

18                  Could we sell it? Yes, perhaps. But  
19 there's no need -- what I'm saying is the ARs will  
20 not make or break the case. If the case transforms  
21 into a liquidating 11 and/or 7, a liquidating agent  
22 will be appointed to go sell that stuff.

23                  MR. GARFINKLE: You know, I --

24                  MR. LARSON: If your client wants to show  
25 up and say, Dear Mr. Larson, right, we see what

1 your receivables are and we would like to pay X for  
2 them if we can see them, I would be happy to  
3 listen. But that's not part of our -- we're not  
4 focused on that because that's not the success of  
5 this case. Does that make sense?

6 MR. GARFINKLE: Well, I understand, but  
7 why wouldn't you want to -- if there are assets out  
8 there, okay, a couple of million, that could be  
9 worked by a collection company that might charge  
10 you X amount of dollars for what they collect, why  
11 wouldn't you want to go ahead and start doing that  
12 now so that you can collect those assets --

13 MR. LARSON: We're going to if we ever --

14 MR. GARFINKLE: But why should it be  
15 contingent? Why can't you do that now is my  
16 question.

17 MS. BLOOM: Yeah.

18 MR. LARSON: It's not contingent. It's  
19 just --

20 MR. GARFINKLE: Well, it is. Because  
21 what you're saying is is that it should be  
22 contingent upon whether the success of your plan.  
23 I mean, why if there are assets out there right  
24 now, why wouldn't you want to marshall those for  
25 the benefit of the estate and the creditors --

1                   MR. LARSON: We're going to.

2                   MR. GARFINKLE: -- when it doesn't cost  
3 any money?

4                   DR. SMITH: Well, we had a billing  
5 company doing that, and then because they were not  
6 get paid, they stopped doing that. And that would  
7 happen about, I want to say, two or three months  
8 ago. So the question would be if these people have  
9 a contract, can we just then bring in (inaudible)  
10 can buy those same accounts they were working, I'm  
11 not sure that we can do that.

12                  MR. GARFINKLE: Doctor, when you say  
13 billing company, was it you guys had contracted  
14 somebody to -- you know, Aargon or somebody --

15                  DR. SMITH: (Inaudible) yes.

16                  MR. GARFINKLE: Okay. And when you say  
17 they weren't getting paid, they weren't getting  
18 paid by --

19                  DR. SMITH: By us because they had  
20 initially a monthly agreement to work the accounts  
21 as well as going on for our ongoing business. And  
22 there was some concern about if they were truly  
23 working the back accounts or not, which takes a lot  
24 more work. And then they said they wanted more  
25 money when they saw we were having problems, and

1     then snowball, snowball, snowball.

2                 So, again, we had somebody doing that.

3     There's a disagreement with if they're still  
4     working or not, which they are not. Again, I'm not  
5     sure that legally we could then have somebody else  
6     come in to try to work those same accounts right  
7     now.

8                 MS. BLOOM: Anything else?

9                 MR. GARFINKLE: No.

10                MS. WELLER: I just have one quick  
11     question.

12                MS. BLOOM: Sure.

13                MS. WELLER: Christina Weller just on  
14     accounts receivable. Are you holding any of like  
15     the personal injury loans yourself or did you sell  
16     them all off?

17                DR. SMITH: I think that we were trying  
18     to sell most of those off. I'm sure we have a  
19     couple, but I would suspect that they're probably  
20     not great cases. Because certainly we gave --  
21     several different companies come look at our cases  
22     and the ones we were left with were ones somebody  
23     did not want to purchase.

24                MS. WELLER: Okay.

25                MR. GARFINKLE: I don't remember when my

1 clients stopped doing business with (inaudible),  
2 but I think it was quite -- I think it was a while  
3 ago. So I don't think that they would have  
4 purchased anything --

5 MR. LARSON: Well, maybe somebody -- I  
6 know there were two or three other companies the  
7 center had worked with, and, again, Mr. Barnes,  
8 maybe I shouldn't use his name, but the manager was  
9 in charge of a lot of these things, and so we're  
10 just still -- you know, still picking up the  
11 pieces.

12 DR. SMITH: It all came to a head very,  
13 very quickly.

14 MR. GARFINKLE: I'm familiar with  
15 Mr. Barnes.

16 MS. BLOOM: Okay. Let's see. Oh, so can  
17 you give us a status on -- so there were 27  
18 doctors, there's nine that are still on board?

19 MR. LARSON: Well, we're trying to see  
20 who's willing to be involved. We had some people  
21 say yeah, but the proof will be when they put money  
22 into an escrow account.

23 MS. BLOOM: Okay. Can you talk about  
24 what you're anticipating? You're trying to get  
25 other -- some national company and more doctors and

1     then you'll do some --

2                 MR. LARSON:   Yes.   And we already found  
3     -- the national company has already put money in  
4     towards to help us get to a bankruptcy.

5                 MS. BLOOM:   Can you say what the company  
6     is?

7                 MR. LARSON:   VIP Centers, I think his  
8     name is Dr. Rabukata (ph).   He's a managing  
9     partner.   Again, he's certainly got a lot more  
10    experience than we ever had with Mr. Barnes.   So I  
11    think if we can keep this going, we feel very  
12    confident he'll give us the expertise we need.

13                MS. BLOOM:   Okay.   So he put money in  
14    when and where?

15                DR. SMITH:   Well, he gave money to help  
16    us continue our business --

17                MR. LARSON:   Well, yes and no.   From a  
18    bankruptcy perspective, he bought a license for a  
19    closed location in anticipation he could negotiate  
20    with that particular landlord to open that  
21    location.   As it turned out, the license we sold  
22    them, the landlord negotiations failed.   But he did  
23    purchase that license from us.   It is listed on  
24    SOFA.

25                MS. BLOOM:   Okay.

1           MR. LARSON: That money we'd utilize to  
2 help fund. He's also agreed to lease certain  
3 equipment that he will need to open up the new land  
4 or the new surgery center should it go forward.

5           And/or if he opens up another center with  
6 that equipment, we'd have to get permission from  
7 the Court to do that if it's really ours. But  
8 that's the goal is to reopen the center.

9           MS. BLOOM: Okay. Here's the SOFA.  
10 Okay. And where's that listed?

11          MR. LARSON: It would be, what, No. 10.

12          MS. BLOOM: Okay. Bill of sale for  
13 license. All right.

14          MR. GARFINKLE: Sawyer and Collins. My  
15 old firm.

16          MS. BLOOM: Oh, that's --

17          MR. LARSON: No comment.

18          MS. BLOOM: Yeah, no comment. We know  
19 where that is.

20          MR. GARFINKLE: That was many years ago.

21          MS. BLOOM: Okay. It doesn't say -- does  
22 anybody want to see that agreement? Because,  
23 whatever, it doesn't say what -- that includes the  
24 equipment, the equipment leases?

25          MR. LARSON: No, two separate agreements.

1 MS. BLOOM: Okay. So right now there was  
2 only \$50,000 put in for the license.

3 MR. LARSON: Yes, correct.

4 MS. BLOOM: And that's it. All right.  
5 But there will be another agreement. So there were  
6 three surgery centers. So that's one of them  
7 that's essentially taken care of. You're going to  
8 try to get funding to open up the other two again.

9 DR. SMITH: Just the one.

10 MS. BLOOM: Oh, just for this one. So  
11 which one is it?

12 DR. SMITH: It's the one on Burnham on  
13 the east side.

14 MS. BLOOM: Okay.

15 DR. SMITH: Next to Desert Springs  
16 Hospital.

17 MS. BLOOM: Oh, this one that's listed,  
18 and so there still is an office there. Okay.

19 MR. LARSON: And the one on Twain, that's  
20 closed down.

21 DR. SMITH: Correct.

22 (Off the record.)

23 MS. BLOOM: Okay. We are recording  
24 again. You talked about -- yeah, we talked about  
25 the licensing purchase. And go ahead. I'm sure



1 everybody wants to hear whatever you're willing to  
2 say on the record about what the plans are, how far  
3 you've gotten with bringing in more investors.

4 MR. LARSON: Well, I think the key is to  
5 get the right doctors involved who are willing to  
6 proceed. I mean, certainly with everything we've  
7 been through the past three years what we  
8 discovered as taken the heart and soul out of us.

9 Because, you know, to deliver, you know,  
10 really a great product for lack of a better term  
11 where people do well, do great surgery and then to  
12 see it just ripped apart has been very hard for us.

13 So to try to get doctors to agree, well,  
14 let's -- you know, let's do it all over again but  
15 do it in a smarter fashion, a more efficient  
16 fashion. So that's what we're getting up against.  
17 And I think that, you know, with an eight to ten  
18 surgeons who are putting up the money, I think that  
19 it will be very, very successful.

20 MS. BLOOM: So you already have eight to  
21 ten you said?

22 DR. SMITH: We've got 10 probably 15  
23 doctors who voiced interest.

24 MS. BLOOM: Okay.

25 DR. SMITH: I assume, like anything else,

1     that if we get two-thirds of them to put up money,  
2     I think we'll be very happy with.

3             MS. BLOOM:   Okay.   So what's your time  
4     line?   Do you have any idea?

5             DR. SMITH:   I'm hoping to have it funded  
6     within the next three to six weeks.

7             MS. BLOOM:   Oh, excellent, okay.

8             MR. LARSON:   Yeah, we're getting escrow  
9     open so we can show people that, A, this is where  
10    you put in so we can tell the Court this is what's  
11    going on so we can -- the goal is we're already  
12    working on the plan.

13            MS. BLOOM:   Right.

14            MR. LARSON:   Right.   Because if this  
15    happens, the plan and this (inaudible) are going to  
16    be coming very fast.

17            MS. BLOOM:   Right.

18            MR. LARSON:   Because figuring out the  
19    numbers isn't that difficult, but we can't do the  
20    numbers unless we know there's money there, so.

21            MS. BLOOM:   Is any of the stolen money  
22    recoverable or is that also off the table?

23            DR. SMITH:   Probably unlikely.   He  
24    doesn't have really any great assets thus far.   We  
25    can see he's got a home that's mortgaged up to the

1 hilt.

2 MS. BLOOM: Okay.

3 MR. LARSON: We're hoping he goes to  
4 jail.

5 MS. BLOOM: Yeah, that would be nice, but  
6 it won't help your business.

7 All right. Anyone have questions?

8 MR. GARFINKLE: They've been answered.

9 MS. BLOOM: All right. Hyatt, do you  
10 have any questions?

11 MR. COLLINS: I do not. Thank you.

12 MS. BLOOM: Okay. Then we are concluded.  
13 Thank you.

14 (Whereupon, the recording ended.)

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TRANSCRIBER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK    )

I, Kathy Hoffman, do hereby certify:  
That I listened to the recording of a 341  
Meeting of Creditors for Flamingos-Pecos Surgery Center  
dba Surgery Center of Southern Nevada;;

That I thereafter transcribed said  
recording into a typewritten transcript and that  
the typewritten transcript of said proceedings are  
a complete, true, and accurate transcription of  
said recording to the best of my ability to hear  
and understand the recording.

I further certify that I am not a  
relative or employee of counsel involved in said  
action, nor a person financially interested in said  
action.

---

KATHY HOFFMAN, TRANSCRIBER

## **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-oOo-

Case No.:

VS.

**PLEA AGREEMENT UNDER  
FED. R. CRIM. P. 11 (c)(1)(A) and  
(B)**

Defendant.

Plaintiff United States of America, by and through Daniel G. Bogden, United States Attorney, and Crane M. Pomerantz, Assistant United States Attorney, the defendant Robert W. Barnes, and the defendant's attorney, Daniel Albregts, submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A and B).

## I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and Robert W. Barnes. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other prosecuting, administrative, or regulatory authority, the United States Probation Office, or the Court.

1 The Plea Agreement sets forth the parties' agreement regarding criminal  
2 charges referenced in the Plea Agreement and applicable sentences, fines,  
3 restitution and forfeiture. It does not control or prohibit the United States or any  
4 agency or third party from seeking any other civil or administrative remedies  
5 directly or indirectly against the defendant.

6 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

7 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead  
8 guilty to the following charges set forth in the Criminal Information:

9 Count One: Embezzlement in Connection with Health Care, in violation of  
10 Title 18, United States Code, Section 669.

11 The defendant also agrees to the forfeiture of the property, the imposition of  
12 the forfeiture on the property, and the imposition of the in personam criminal  
13 forfeiture money judgment as set forth in the Plea Agreement and the Forfeiture  
14 Allegations of the Criminal Information.

15 B. Waiver of Trial Rights. The defendant acknowledges that he has been  
16 advised and understands that by entering a plea of guilty he is waiving -- that is,  
17 giving up certain rights guaranteed to all defendants by the laws and the  
18 Constitution of the United States. Specifically, the defendant is giving up:

19 1. The right to proceed to trial by jury on all charges, or to a trial  
20 by a judge if the defendant and the United States both agree;

21 2. The right to confront the witnesses against the defendant at  
22 such a trial, and to cross-examine them;

1           3.     The right to remain silent at such a trial, with assurance that  
2 his silence could not be used against him in any way;

3           4.     The right to testify in his own defense at such a trial if he so  
4 chooses;

5           5.     The right to compel witnesses to appear at such a trial and  
6 testify in the defendant's behalf; and

7           6.     The right to have the assistance of an attorney at all stages of  
8 such proceedings.

9           7.     The right to be indicted by a grand jury.

10          C.     Withdrawal of Guilty Plea. The defendant will not seek to withdraw  
11 his guilty pleas after he has entered them in court.

12          D.     Additional Charges. The United States agrees not to bring any  
13 additional charges against the defendant arising out of the investigation in the  
14 District of Nevada which culminated in this Plea Agreement and based on conduct  
15 known to the United States except that the United States reserves the right to  
16 prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16.

17 **III.   ELEMENTS OF THE OFFENSES**

18          Counts One: The elements of Embezzlement in Connection with Health  
19 Care, in violation of 18 U.S.C. § 669 are:

20                 First, the defendant, without authority, embezzled money from the  
21 Surgical Centers of Southern Nevada and related entities;

22                 Second, the defendant acted knowingly and willfully;



1 Third, the Surgical Center of Southern Nevada was an entity that  
2 provided health care benefits for which payment may be made under a health care  
3 benefit program; and

4 Fourth, the amount embezzled exceeded \$100.  
5 18 U.S.C. § 669; 18 U.S.C. § 24(b).

6 **IV. FACTS SUPPORTING GUILTY PLEA**

7 A. The defendant will plead guilty because he is, in fact and under the  
8 law, guilty of the crimes charged.

9 B. The defendant acknowledges that if he elected to go to trial instead of  
10 pleading guilty, the United States could prove his guilt beyond a reasonable doubt  
11 and establish its right to forfeit the specified property by preponderance of the  
12 evidence. The defendant further acknowledges that his admissions and  
13 declarations of fact set forth below satisfy every element of the charged offenses.

14 C. The defendant waives any potential future claim that the facts he  
15 admitted in this Plea Agreement were insufficient to satisfy the elements of the  
16 charged offenses.

17 D. The defendant admits and declares under penalty of perjury that the  
18 facts set forth below are true and correct:

19 Beginning on or about October 5, 2006, defendant Robert W. Barnes worked  
20 as the Operating Manager / Office Administrator for Surgery Centers of Southern  
21 Nevada ("SCSN"). SCSN is an outpatient ambulatory surgical center at which  
22 surgical procedures not requiring an overnight hospital stay are performed.  
23 Procedures performed at SCSN are reimbursed by public and private health

1 insurance companies on behalf of their beneficiaries. As the Operating Manager /  
2 Office Administrator for SCSN, defendant Robert W. Barnes was responsible for  
3 the management and finances of that entity, including vendor payments and  
4 distributions to the physician investors who owned SCSN and performed surgical  
5 procedures there. At all relevant times, SCSN had locations at Burnham Avenue  
6 and W. Twain Avenue in Las Vegas. Defendant Robert W. Barnes' criminal  
7 conduct took place in the District of Nevada.

8 In approximately 2010, SCSN began to struggle financially. Vendor  
9 payments, including rent, were long overdue and physician-investors ceased  
10 receiving distributions on their investments, despite the fact that SCSN continued  
11 to receive reimbursement from the various public and private insurance companies  
12 whose beneficiaries had procedures there. SCSN ultimately declared bankruptcy  
13 as a result of the substantial amounts due to its various vendors, causing  
14 significant losses to its physician investors.

15 Defendant Robert W. Barnes was responsible for the lack of payments to  
16 vendors and lack of distributions to investors. Between approximately 2010 and  
17 continuing through 2013, he embezzled at least \$1.3 million dollars from SCSN,  
18 without authority to do so. Defendant Robert W. Barnes improperly used multiple  
19 SCSN credit cards for personal purchases, including travel, jewelry, concerts and  
20 dining. For example, defendant Robert W. Barnes obtained approximately  
21 \$515,000 in casino cash advances using SCSN credit cards, which he used for  
22 personal gambling. In February 2013, defendant Robert W. Barnes used an SCSN  
23 credit card to purchase a diamond and platinum ring for \$38,000. During one five

1 month period in 2013, defendant Robert W. Barnes charged approximately \$45,000  
2 on one SCSN credit card for concert tickets, hotels and expenses at Disneyland,  
3 expensive meals, and other personal entertainment and expenses. Defendant  
4 Robert W. Barnes also embezzled funds from entities related to SCSN, including  
5 Epiphany Surgical Solutions (“ESS”), a management company that received fees  
6 from SCSN for management services, and VIP Surgical Centers, a prospective  
7 surgical center that defendant Robert W. Barnes was managing through ESS, in  
8 which several physicians had made substantial cash investments.

9 At all relevant times, the defendant acted knowingly and willfully.

10 The parties agree that \$1.3 million is the correct measure of loss for  
11 guideline calculation purposes.

12 The defendant admits that the property and the in personam criminal  
13 forfeiture money judgment amount listed in Section X is any property, real or  
14 personal, which constitutes or is derived from proceeds traceable to a violation of  
15 Title 18, United States Code, Section 669, a specified unlawful activity as defined  
16 in Title 18, United States Code, Section 1956(c)(7)(F), involving a Federal health  
17 care offense as defined in Title 18, United States Code, Section 24, or a conspiracy  
18 to commit such offense, and is property, real or personal, that constitutes or is  
19 derived, directly or indirectly, from gross proceeds traceable to the commission of  
20 Title 18, United States Code, Section 669, involving a Federal health care offense  
21 as defined in Title 18, United States Code, Section 24, and is subject to forfeiture  
22 pursuant to Title 18, United States Code, Section 981(a)(1)(C) with Title 28, United

1 States Code, Section 2461(c); Title 18, United States Code, Section 982(a)(7); and  
2 Title 21, United States Code, Section 853(p).

3 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

4 The facts set forth in Section IV of this Plea Agreement shall be admissible  
5 against the defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any  
6 purpose. If the defendant does not plead guilty or withdraws his guilty pleas, the  
7 facts set forth in Section IV of this Plea Agreement shall be admissible at any  
8 proceeding, including a trial, for impeaching or rebutting any evidence, argument  
9 or representation offered by or on the defendant's behalf. The defendant expressly  
10 waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the  
11 use of the facts set forth in Section IV of this Plea Agreement.

12 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

13 A. Discretionary Nature of Sentencing Guidelines. The defendant  
14 acknowledges that the Court must consider the United States Sentencing  
15 Guidelines ("USSG" or "Sentencing Guidelines") in determining the defendant's  
16 sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the  
17 Court has discretion to impose any reasonable sentence up to the maximum term  
18 of imprisonment permitted by statute.

19 B. Offense Level Calculations. The parties stipulate to the following  
20 calculation of the defendant's offense level under the Sentencing Guidelines,  
21 acknowledge that these stipulations do not bind the Court, and agree that they will  
22 not seek to apply any other specific offense characteristics, enhancements or  
23 reductions

Count One: 18 U.S.C. § 669

a. Base Offense Level USSG § 2B1.1: 6

b. Loss < \$1.5 million: +14

Adjusted Offense Level: 20

Less: Acceptance of Responsibility -3

Total Offense Level: 17

The defendant acknowledges that the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the defendant's sentence notwithstanding any applicable Sentencing Guidelines provisions.

C. Reduction of Offense Level for Acceptance of Responsibility. Under U.S.S.G. §3E1.1(a), the United States will recommend that the defendant receive a two-level downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false or misleading information to the United States, the Court, Pretrial Services, or the Probation Office; (e) denies involvement in the offense or provides conflicting statements regarding his involvement or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates the conditions of pretrial release.

1 Under USSG §3E1.1(b), the United States will move for an additional one-  
2 level downward adjustment for acceptance of responsibility before sentencing  
3 because the Defendant communicated his decision to plead guilty in a timely  
4 manner that enabled the United States to avoid preparing for trial and to  
5 efficiently allocate its resources.

6 These Sentencing Guidelines provisions, if applied, will result in a total  
7 offense level of either 18 (if two-level adjustment applies) or 17 (if two-level  
8 adjustment and additional one-level adjustment both apply.)

9 D. Criminal History Category. The defendant acknowledges that the  
10 Court may base his sentence in part on the defendant's criminal record or criminal  
11 history. The Court will determine the defendant's Criminal History Category  
12 under the Sentencing Guidelines.

13 E. Relevant Conduct. The Court may consider any counts dismissed  
14 under this Plea Agreement and all other relevant conduct, whether charged or  
15 uncharged, in determining the applicable Sentencing Guidelines range and  
16 whether to depart from that range.

17 F. Additional Sentencing Information. The stipulated Sentencing  
18 Guidelines calculations are based on information now known to the parties. The  
19 parties may provide additional information to the United States Probation Office  
20 and the Court regarding the nature, scope, and extent of the defendant's criminal  
21 conduct and any aggravating or mitigating facts or circumstances. Good faith  
22 efforts to provide truthful information or to correct factual misstatements shall not  
23 be grounds for the defendant to withdraw his guilty plea.

1 The defendant acknowledges that the United States Probation Office may  
2 calculate the Sentencing Guidelines differently and may rely on additional  
3 information it obtains through its investigation. The defendant also acknowledges  
4 that the Court may rely on this and other additional information as it calculates  
5 the Sentencing Guidelines range and makes other sentencing determinations, and  
6 the Court's reliance on such information shall not be grounds for the defendant to  
7 withdraw his guilty plea.

## 8 VII. APPLICATION OF SENTENCING STATUTES

9 A. Maximum Penalty. The maximum penalty for Embezzlement in  
10 Connection with Health Care under 18 U.S.C. § 669 is ten years imprisonment and  
11 a fine of \$250,000, or both.

12 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors  
13 set forth in 18 U.S.C. § 3553(a) in determining the defendant's sentence. However,  
14 the statutory maximum sentence and any statutory minimum sentence limit the  
15 Court's discretion in determining the defendant's sentence.

16 C. Parole Abolished. The defendant acknowledges that his prison  
17 sentence cannot be shortened by early release or parole because parole has been  
18 abolished.

19 D. Supervised Release. In addition to imprisonment and a fine, the  
20 defendant will be subject to a term of supervised release of not more than three  
21 years. Supervised release is a period of time after release from prison during  
22 which the defendant will be subject to various restrictions and requirements. If  
23 the defendant violates any condition of supervised release, the Court may order the

1 defendant's return to prison for all or part of the term of supervised release, which  
2 could result in the defendant serving a total term of imprisonment equal to the  
3 statutory maximum prison sentence of 10 years of imprisonment.

4 E. Special Assessment. The defendant will pay a \$100.00 special  
5 assessment per count at the time of sentencing.

#### 6 **VIII. POSITIONS REGARDING SENTENCE**

7 In light of mutual consideration, the United States will seek a sentence  
8 within the applicable sentencing guideline range as determined by the Court,  
9 unless the defendant commits any act that could result in a loss of the downward  
10 adjustment for acceptance of responsibility, in which case the United States may  
11 recommend any term up to the statutory maximum. The defendant acknowledges  
12 that the Court does not have to follow that recommendation. The defendant  
13 reserves the right to request a sentence below the Sentencing Guidelines range as  
14 determined by the Court and may seek a downward adjustment pursuant to 18  
15 U.S.C. § 3553 or USSG § 4A1.3(b)(1) from any sentence the Court may impose.

16 The Defendant acknowledges that the Court does not have to follow this  
17 recommendation. The Defendant also acknowledges that the Court does not have  
18 to grant a downward departure based on the Defendant's substantial assistance to  
19 the United States, even if the United States chooses to file a motion pursuant to 18  
20 U.S.C. § 3553(e)(1), USSG § 5K1.1, or Fed. R. Crim. P. 35. This Plea Agreement  
21 does not require the United States to file any pre- or post-sentence downward  
22 departure motion under USSG § 5K1.1 or Fed. R. Crim. P. 35. The United States  
23



1 reserves its right to defend any lawfully imposed sentence on appeal or in any post-  
2 conviction litigation.

3 The defendant agrees that he will not seek early termination or reduction of  
4 his term of supervised release.

5 **IX. RESTITUTION**

6 In exchange for benefits received under this Plea Agreement, the defendant  
7 agrees to pay restitution in an amount determined by the Court, to be applied  
8 towards the losses the defendant caused by his participation in the offenses,  
9 whether charged or uncharged, pled to or not, and by all of his relevant conduct. 18  
10 U.S.C. § 3663(a)(3). The defendant cannot discharge his restitution obligation  
11 through bankruptcy proceedings. The defendant acknowledges that restitution  
12 payments and obligations cannot offset or reduce the amount of any forfeiture  
13 judgment imposed in this case.

14 **X. FORFEITURE**

15 The defendant knowingly and voluntarily:

16 A. Agrees to the District Court imposing the civil judicial forfeiture or the  
17 criminal forfeiture of:

- 18 1. 2007 Honda Accord EX Gray 4D Sedan, VIN 1HGCM56857A164507,  
19 Nevada License Plate 452WVU;
- 20 2. 2011 EXP Limited 5.4L 4X4 Ford Expedition, Color: Sterling Gray  
21 Metallic, VIN 1FMJU2A53BEF36389, Nevada License Plate 929VJR;
- 22 3. 14k white gold cluster stud earrings with four princess cut diamonds  
23 surrounded by 16 round diamonds;

- 1 4. Ladies stainless steel Breitling Lady Colt A72345 Watch with blue
- 2 Mother of Pearl dial, diamond bezel (28 diamonds), Serial No. 386210;
- 3 5. Ladies 14k white gold ring centered with one rectangle blue Tourmaline
- 4 with 45 diamonds;
- 5 6. Ladies Tanzanite (approx. 40 carats) platinum ring with 152 brilliant
- 6 diamonds;
- 7 7. Ladies 14k white gold with violetish red Garnet surrounded by 74
- 8 brilliant diamonds;
- 9 8. Ladies platinum oval shaped bluish green Tourmaline with 92 brilliant
- 10 diamonds;
- 11 9. Ladies 14k white gold ring, pear shaped cabochon cut black opal with
- 12 blue play of color and 50 diamonds;
- 13 10. Movado Womans watch with black in color face;
- 14 11. Edge Watch with brown leather like wrist band;
- 15 12. Tag Heuer lady's Watch silver in color;
- 16 13. Gucci Watch gold in color;
- 17 14. Necklace, silver in color, with Tiffany pendant heart shaped;
- 18 15. Necklace, silver in color, with floral design pendant;
- 19 16. Bracelet gold in color with green in color stones;
- 20 17. Bracelet gold in color appeared to be broken at time of seizure;
- 21 18. Bracelet clear stone type;
- 22 19. Pair of Earrings with green in color stones;
- 23 20. Metal ring, yellow in color with green in color stones;

- 1 21. Pair of Earrings tear drop shaped;
- 2 22. Pair of Earrings heart shaped;
- 3 23. Braided necklace, yellow in color;
- 4 24. Ring, silver in color with clear stones;
- 5 25. Pair of Earrings flower shaped;
- 6 26. Ring, silver in color with clear stones;
- 7 27. Pair of Earrings hoop shaped yellow in color;
- 8 28. Pair of Earrings, yellow in color with round white in color stones;
- 9 29. Thick Bracelet yellow in color;
- 10 30. Two (2) necklace like coils of wooden type beads;
- 11 31. Pair of Earrings, yellow in color;
- 12 32. "L" shaped pendant yellow in color;
- 13 33. Three (3) rings, yellow in color: One (1) with clear type stones, Two (2)
- 14 with heart shaped designs;
- 15 34. Ring, white in color with clear stones;
- 16 35. Two (2) Rings yellow in color with blue in color stones;
- 17 36. Ring, yellow in color with green in color stone;
- 18 37. Ring, heart shaped with clear stones;
- 19 38. Two (2) Rings yellow in color with white in color stones;
- 20 39. Five Bracelets: Two (2) yellow in color; Two (2) yellow in color with name
- 21 plates on them "Lucas" and "Joshua"; One (1) yellow in color with green
- 22 stones;
- 23 40. Necklace, white in color;

1 41. Necklace, white in color with tear drop pendant;

2 42. One (1) Necklace, white in color with pink in color stone; One (1) pair of  
3 earrings with pink in color stones;

4 43. One (1) Necklace, gold in color; and One (1) Bracelet gold in color;

5 44. One (1) pendant with picture; and One (1) round pendant yellow in color;  
6 and

7 45. Pair of Earrings, orange in color

8 (all of which constitutes property);

9 B. Agrees to the District Court imposing an in personam criminal forfeiture  
10 money judgment including, but not limited to, at least \$1,300,000, and that the  
11 property will be applied toward the payment of the money judgment;

12 C. Agrees to the abandonment, the civil administrative forfeiture, the civil  
13 judicial forfeiture, or the criminal forfeiture of the property;

14 D. Abandons or forfeits the property to the United States;

15 E. Relinquishes all right, title, and interest in the property;

16 F. Waives his right to any abandonment proceedings, any civil administrative  
17 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal  
18 forfeiture proceedings of the property and the in personam criminal forfeiture  
19 money judgment (proceedings);

20 G. Waives service of process of any and all documents filed in this action or any  
21 proceedings concerning the property and the in personam criminal forfeiture  
22 money judgment arising from the facts and circumstances of this case;

1 H. Waives any further notice to him, his agents, or his attorney regarding the  
2 abandonment or the forfeiture and disposition of the property;

3 I. Agrees not to file any claim, answer, petition, or other documents in any  
4 proceedings concerning the property and the in personam criminal forfeiture  
5 money judgment;

6 J. Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.  
7 7, 11, and 32.2, all constitutional requirements, including, but not limited to, the  
8 constitutional due process requirements of any proceedings concerning the in  
9 personam criminal forfeiture money judgment;

10 K. Waives his right to a jury trial on the forfeiture of the property;

11 L. Waives all constitutional, legal, and equitable defenses to the forfeiture or  
12 abandonment of the property and the in personam criminal forfeiture money  
13 judgment in any proceedings, including, but not limited to, (1) constitutional or  
14 statutory double jeopardy defenses and (2) defenses under the Excessive Fines or  
15 Cruel and Unusual Punishments Clauses of the Eighth Amendment to the United  
16 States Constitution;

17 M. Agrees to the entry of an Order of Forfeiture of the property and the in  
18 personam criminal forfeiture money judgment to the United States;

19 N. Waives the right to appeal any Order of Forfeiture;

20 O. Agrees the property is forfeited to the United States;

21 P. Agrees that the in personam criminal forfeiture money judgment is  
22 immediately due and payable and is subject to immediate collection by the United  
23 States;

1 Q. Agrees and understands the abandonment, the civil administrative  
2 forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property and  
3 the in personam criminal forfeiture money judgment shall not be treated as  
4 satisfaction of any assessment, fine, restitution, cost of imprisonment, or any other  
5 penalty the Court may impose upon the defendant in addition to the abandonment  
6 or the forfeiture;

7 R. Acknowledges that the amount of the forfeiture may differ from, and may be  
8 significantly greater than or less than, the amount of restitution; and

9 S. Agrees to take all steps as requested by the United States to pass clear title  
10 of the property and of any forfeitable assets which may be used to satisfy the in  
11 personam criminal forfeiture money judgment to the United States and to testify  
12 truthfully in any judicial forfeiture proceedings. The defendant understands and  
13 agrees that the property and the in personam criminal forfeiture money judgment  
14 amount represent proceeds and/or facilitating property of illegal conduct and are  
15 forfeitable. The defendant acknowledges that failing to cooperate in full in either  
16 the forfeiture of the property or the disclosure of assets constitutes a breach of this  
17 Plea Agreement.

18 **XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

19 Before or after sentencing, upon request by the Court, the United States, or  
20 the Probation Office, the defendant will provide accurate and complete financial  
21 information, submit sworn statements, and/or give depositions under oath  
22 concerning his assets and his ability to pay. The defendant will surrender assets  
23 he obtained directly or indirectly as a result of his crimes, and will release funds

1 and property under his control in order to pay any fine, forfeiture, or restitution in  
2 the amount of \$19,146.00 ordered by the Court.

3 **XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

4 A. Plea Agreement and Decision to Plead Guilty. The defendant  
5 acknowledges that:

6 (1) He has read this Plea Agreement and understands its terms  
7 and conditions;

8 (2) He has had adequate time to discuss this case, the evidence,  
9 and this Plea Agreement with his attorney;

10 (3) He has discussed the terms of this Plea Agreement with his  
11 attorney;

12 (4) The representations contained in this Plea Agreement are true  
13 and correct, including the facts set forth in Section IV; and

14 (5) He was not under the influence of any alcohol, drug, or  
15 medicine that would impair his ability to understand the Agreement when he  
16 considered signing this Plea Agreement and when he signed it.

17 The defendant understands that he alone decides whether to plead guilty or  
18 go to trial, and acknowledges that he has decided to enter his guilty plea knowing  
19 of the charges brought against him, his possible defenses, and the benefits and  
20 possible detriments of proceeding to trial. The defendant also acknowledges that  
21 he decided to plead guilty voluntarily and that no one coerced or threatened his to  
22 enter into this Plea Agreement.

1       B.     Waiver of Appeal and Post-Conviction Proceedings. The defendant  
2 knowingly and expressly waives: (a) the right to appeal any sentence imposed  
3 within or below the applicable Sentencing Guideline range as determined by the  
4 Court; (b) the right to appeal the manner in which the Court determined that  
5 sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal  
6 any other aspect of the conviction or sentence and any order of restitution or  
7 forfeiture.

8       The defendant also knowingly and expressly waives all collateral challenges,  
9 including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the  
10 procedure by which the Court adjudicated guilt and imposed sentence, except non-  
11 waivable claims of ineffective assistance of counsel.

12       The defendant acknowledges that the United States is not obligated or  
13 required to preserve any evidence obtained in the investigation of this case.

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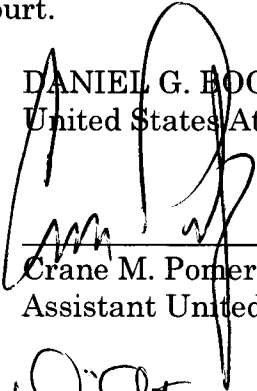


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 3 ...  
 4 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

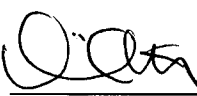
5 This Plea Agreement resulted from an arms-length negotiation in which  
 6 both parties bargained for and received valuable benefits in exchange for valuable  
 7 concessions. It constitutes the entire agreement negotiated and agreed to by the  
 8 parties. No promises, agreements or conditions other than those set forth in this  
 9 agreement have been made or implied by the defendant, the defendant's attorney,  
 10 or the United States, and no additional promises, agreements or conditions shall  
 11 have any force or effect unless set forth in writing and signed by all parties or  
 12 confirmed on the record before the Court.

13  
 14  
 15 DATE 3/17/16

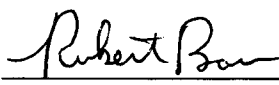
DANIEL G. BOGDEN,  
 United States Attorney

  
 Crane M. Pomerantz  
 Assistant United States Attorney

16  
 17 DATE 3/16/16

  
 Daniel Albregts  
 Counsel for the Defendant

18  
 19  
 20 DATE 3/16/16

  
 Robert W. Barnes  
 Defendant

## **EXHIBIT 4**

LARSON & ZIRZOW, LLC  
810 S. Casino Center Blvd. #101  
Las Vegas, Nevada 89101  
Tel: (702) 382-1170 Fax: (702) 382-1169

LARSON & ZIRZOW, LLC  
ZACHARIAH LARSON, ESQ.  
Nevada Bar No. 7787  
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MATTHEW C. ZIRZOW, ESQ.  
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810 S. Casino Center Blvd. #101  
Las Vegas, Nevada 89101  
Telephone: (702) 382-1170  
Fascimile: (702) 382-1169

Proposed Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

FLAMINGO-PECOS SURGERY CENTER, LLC  
DBA SURGERY CENTER OF SOUTHERN  
NEVADA,

Debtor.

Case No.: BK-S-14-18480-ABL  
Chapter 11

Date: OST PENDING  
Time: OST PENDING

**OMNIBUS DECLARATION OF WILLIAM SMITH, M.D. IN SUPPORT  
OF DEBTOR'S INTERIM EMERGENCY MOTIONS AND RELATED RELIEF**

I, WILLIAM SMITH, M.D. hereby declare as follows:

1. I am over the age of 18 and am mentally competent. I make this declaration in support of the motions and applications requesting various types of immediate relief (collectively, the "Emergency Motions") filed by Flamingo-Pecos Surgery Center, LLC dba Surgery Center of Southern Nevada ("Debtor"), debtor and debtor-in-possession in the above-captioned bankruptcy case (the "Chapter 11 Case").

2. I am Board President of Debtor. In the foregoing capacity, I am familiar with the Debtor's daily business, operational, and financial affairs. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge of the Debtor's operations and

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 Las Vegas, Nevada 89101  
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finances, information learned from my review of relevant documents, and information supplied to me by other members of the Debtor's management and its business and legal advisors. If called upon to testify as to the content of this declaration, I could and would do so consistent herewith.

3. This declaration is filed on the same date (the "Petition Date") that the Debtor filed its voluntary petition for relief under chapter 11, title 11 of the United States Code (the "Bankruptcy Code"). This declaration provides the Court with certain background information regarding the Debtor as well as the context for the initial relief sought by the Debtor. Accordingly, the Declaration is organized into two parts: an overview of the Debtor, its business, organizational structure, and the events leading to the Chapter 11 Case, and an explanation of the relief sought in the First Day Motions.<sup>1</sup> The relief sought in the First Day Motions is critical to the Debtor's business operations, will allow for a smooth transition into Chapter 11, and will help to ensure that the Debtor is provided the opportunity to reorganize successfully.

### Background

4. Debtor is a Nevada limited liability company established in 2002. Debtor has several shareholders that are listed on page 124 of the Debtor's Bankruptcy Petition. Debtor leases two surgery center locations which are located at 4275 Burnham Ave., Ste. 101, Las Vegas, Nevada 89119 and 10195 West Twain Ave, Las Vegas, Nevada 89147. These locations are not currently taking patients.

5. When the two locations were fully operational, Debtor, Flamingo Surgery Center, operated them as modern, family-oriented outpatient surgery centers. Debtor provided the highest quality of care in a friendly, personalized setting, for those patients whose surgical needs did not require an overnight hospital stay. Debtor's locations were Medicare approved facilities, licensed by the state of Nevada, and accredited by AAAHC (Accreditation Association of Ambulatory Health Care, Inc.).

---

<sup>1</sup> All capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the relevant Emergency Motions, all of which are being filed contemporaneously herewith.



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1           6.       Patients were referred to the Debtor by 134 physicians who specialized in Urology,  
2 Pain Management, Neurosurgery, ENT, Orthopedics, General Surgery, Hand Surgery and  
3 Podiatry.

4           7.       Debtor was forced to cease operations in October 2014 after significant wind down  
5 over the previous months.

6           8.       Throughout approximately 2004 through summer of 2013, the Debtor was  
7 primarily managed by a sole individual. While the shareholders maintained a board in compliance  
8 with the operating agreement, the former manager of the company was relied upon to handle the  
9 business operations of the Debtor.

10          9.       In or about June or July of 2013, Debtor began receiving reports from landlords and  
11 vendors that debts were going unpaid and had been for significant amounts of time. The handling  
12 of these debts was the responsibility of this former manager. When the former manager was  
13 confronted by the board, the former manager immediately resigned. The board then sought the  
14 advice of counsel to attempt to navigate through the myriad of issues that were presenting  
15 themselves and to determine what had happened.

16          10.      Throughout the late summer and fall of 2013, counsel worked to assess the situation  
17 and determined that it appeared that significant breaches and embezzlement had occurred at the  
18 hands of the former manager.

19          11.      The conduct of the former manager was reported Las Vegas Metropolitan Police  
20 and to the Federal Bureau of Investigation ("FBI"). After conducting an extensive investigation  
21 over the past year, the FBI has recently sought direction and permission from the Washington  
22 bureau office to proceed with a grand jury indictment of this former manager. The time frame for  
23 when the FBI will proceed is unknown.

24          12.      Debtor is also involved in a breach of contract litigation in the case commonly  
25 known as JP Morgan Chase Bank NA v. Flamingo-Pecos Surgery Center LLC et al. / Case No. A-  
26 14-700424-C in the Eighth Judicial District Court. This litigation is based on a breach of contract  
27 for promissory notes/lines of credit in the approximate amount of \$1.7 Million. These agreements  
28 were entered into by the same former manager and it is alleged that he misappropriated significant

1 funds from these amounts from Debtor for the former manager's personal use and to the Debtor's  
2 detriment.

3 13. As a result of the conduct of the former manager, Debtor was forced to significantly  
4 reduce costs to cover the debts incurred as a result of the former manager's improper conduct.  
5 Debtor scaled back its operations, laying-off approximately ninety (90) employees and only has  
6 five (5) remaining employees. None of these employees are currently providing any patient care  
7 and serve in part-time administrative capacities.

8 14. It is the Debtor's intention to seek a capital infusion in order to get Debtor operating  
9 again.

10 15. The Debtor's transition into Chapter 11 must be effectively organized to ensure that  
11 it will be able to operate smoothly in bankruptcy and be afforded the opportunity to successfully  
12 emerge from this Chapter 11 Case. Accordingly, it is critical that the Debtor maintain strong  
13 relationships with its customers, employees, partners, vendors, creditors, and such other parties  
14 that enable Debtor to conduct its business. To maintain and foster these relationships, it is  
15 important to minimize the distractions to the Debtor's business operations that could result from  
16 the Debtor's petitioning for Chapter 11 relief.

17 16. I have reviewed and am generally familiar with the contents of each of the First  
18 Day Motions. Based on that familiarity and information supplied to me by other members of  
19 Debtor's staff and legal advisors, I believe that the relief sought in each of the First Day Motions  
20 is necessary to enable the Debtor to operate in this Chapter 11 Case with minimal disruption or  
21 loss of productivity or value. Absent granting the relief in the First Day Motions, immediate and  
22 irreparable harm will result to the Debtor and its business.

### 23 Employee Wage Motion

24 17. Debtor employs approximately five (5) employees (collectively, the "Employees"),  
25 in the ordinary course of its business. Continued service by the Employees is vital to Debtor's  
26 ongoing operations. As of the Petition Date, the Employees were owed or had accrued in their  
27 favor various sums from Debtor for wages and salaries incurred in the ordinary course of Debtor's  
28 business (collectively, the "Wage Obligations"). The total estimated amount of Wage Obligations



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1 that will have accrued, but remain unpaid, as of the Petition Date is approximately 4,541.55.  
2 Debtor pays its Employees on a bi-weekly payroll cycle. Debtor's last payroll was made on  
3 December 22, 2014 for the period of December 7, 2014 through December 19, 2014. The  
4 upcoming payroll for the period of December 20, 2014 through January 3, 2015 is due to be  
5 processed on or about January 9, 2015.

6 18. Debtor is required by law to withhold from certain Employees' wages amounts  
7 related to federal, state, and local income taxes, as well as social security and Medicare taxes and  
8 to remit the same to the appropriate taxing authorities. To the extent that Debtor has deducted  
9 funds from the Employees' paychecks sufficient to pay prepetition taxes, withholding taxes and  
10 FICA contributions attributable to Wage Obligations, which are due but have not been paid yet to  
11 any governmental entity, Debtor seeks authorization to continue to deduct these funds and pay  
12 them to such governmental entities in the ordinary course of business.

13 19. In addition, Debtor is required to make matching payments from its own funds on  
14 account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll  
15 (and subject to state-imposed limits), additional amounts to the taxing authorities for, among other  
16 things, state and federal unemployment insurance. Debtor seeks authorization to continue to pay  
17 these funds in the ordinary course of business.

18 20. Debtor's Wage Obligations to be paid to or for the benefit of each of the Employees  
19 will not exceed \$11,725 per employee, consistent with the cap provided in Section 507(a)(4) of  
20 the Bankruptcy Code.

21 21. If Debtor is unable to take the necessary steps to ensure that wages and taxes are  
22 paid for the pay period commencing immediately prior to the Petition Date and concluding post-  
23 petition, there is a significant risk that its Employees will resign and that those Employees that  
24 remain will be discontented and demoralized.

25 22. Continued payment of Wage Obligations, the Employee Insurance, and  
26 Reimbursable Business Expenses and maintaining its workers' compensation system are essential  
27 to preserve the morale and to maintain positive relations between Debtor and its Employees. If  
28 the relief requested in the Motion is not granted, the success of Debtor's reorganization will be

1 jeopardized. Thus, the relief request in this Motion is in the best interests of the Debtor, its estate,  
2 and its creditors.

### 3 Utilities Motion

4 23. In the ordinary course of its business, Debtor incurs utility expenses for water,  
5 sewer service, electricity, gas, telephone service, internet service, cable television, and waste  
6 management. These utility services are provided by various utility companies (as such term is  
7 used in section 366 of the Bankruptcy Code, collectively, the “Utility Providers”) including but  
8 are not necessarily limited to NV Energy and Southwest Gas (the “Utility Service List”).

9 24. Although Debtor believes that the Utility Service List includes all of its Utility  
10 Providers, Debtor reserves the right, without the need for further order of the Court, to supplement  
11 the Utility Service List if any Utility Provider has been omitted. Additionally, the listing of an  
12 entity on the Utility Service List is not an admission that such entity is a utility within the meaning  
13 of section 366 of the Bankruptcy Code, and Debtor reserves the right to contest any such  
14 characterization in the future. To the extent any of the Utility Providers identified on the Utility  
15 Service List provide services to a non-debtor entity, Debtor does not anticipate that the procedures  
16 set forth in this Motion would be applicable.

17 25. On average, Debtor expends approximately \$6,585.39 each month on utility costs.  
18 As of the Petition Date, Debtor is substantially current on its utility obligations.

19 26. Preserving utility services on an uninterrupted basis is essential to Debtor’s ongoing  
20 operations and, therefore, to the success of its reorganization. Any interruption of utility services,  
21 even for a brief period of time, would disrupt Debtor’s ability to continue servicing its customers,  
22 thereby negatively affecting customer relationships, revenues and profits. Such a result could  
23 jeopardize Debtor’s reorganizations efforts and, ultimately, value and creditor recoveries. It is  
24 therefore critical that utility services continue uninterrupted during the Chapter 11 Case.

25 27. Debtor intends to pay its post-petition utility obligations owed to the Utility  
26 Providers in a timely manner. Debtor expects that it will have ample liquidity based upon cash  
27 flow from operations to pay post-petition obligations to the Utility Providers.  
28



28. To provide additional assurance of payment for future services to the Utility Providers that did not hold deposits from Debtor on the Petition Date (collectively, the “Other Utility Providers”), after entry of the order approving this Motion the Debtor will dedicate the sum of \$6,585.39, which is a sum equal to 100% of Debtor’s estimated cost of its monthly utility consumption (the “Proposed Adequate Assurance”), for payments of utilities expenses in a segregated account. This will provide still further assurance of future payment, over and above Debtor’s ability to pay for future utility services in the ordinary course of business based upon its cash flow from operations.

29. Debtor submits that the existing deposits and the Proposed Adequate Assurance provide protection well in excess of that required to grant sufficient adequate assurance to the Utility Providers.

#### Limit Notice

30. In the case at hand, there are in excess of 450 creditors and other parties-in-interest, and therefore the cost of full notices for each hearing would be burdensome and costly to the estate. As a result, Debtor request entry of an order limiting notice for motions, hearings and proceedings to the following: the Office of the United States Trustee; the Debtors’ proposed reorganization counsel, the law firm of Larson & Zirzow, LLC (Attn: Zachariah Larson, Esq.); the top twenty (20) unsecured creditors in the Debtors’ Chapter 11 Case; any official creditors’ committee of unsecured creditors if one is appointed pursuant to section 1102 of the Bankruptcy Code; the Internal Revenue Service; any entity that files with the Court and serves on Debtors’ counsel a request for special notice; and any party against whom direct relief is sought by motion, application or otherwise, including by way of example and not limitation, the non-debtor party to an executory contract being assumed or rejected, parties asserting an interest in property being sold, and the like.

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...

1 I declare under penalty of perjury of the laws of the United States that these facts are true  
2 to the best of my knowledge and belief.

3 DATED: January 8, 2015.

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WILLIAM SMITH, M.D.

LARSON & ZIRZOW, LLC  
810 S. Casino Center Blvd. #101  
Las Vegas, Nevada 89101  
Tel: (702) 382-1170 Fax: (702) 382-1169

## EXHIBIT 5

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: )  
 )  
Flamingo-Pedos Surgery )  
Center, LLC dba Surgery )  
Center of Southern ) BK No. 15-13135-abl  
Nevada ) Chapter 11  
 )  
Debtors-in-Possession, )

AUDIO TRANSCRIPTION

341 MEETING OF CREDITORS

Unknown date

TRANSCRIBED BY: Kathy Hoffman

APPEARANCES

TRUSTEE  
300 S. Las Vegas Boulevard  
Suite 4300  
Las Vegas, Nevada 89101

For the Debtor:

ZACHARIAH LARSON  
LARSON & ZIRZOW, LLC  
850 E. Bonneville Avenue  
Las Vegas, Nevada 89101

Also Present:

William D. Smith, M.D.  
Mr. Works  
Mohamed Iqbal  
Mr. Limon  
Ms. Ireland

1 PROCEEDINGS

2

3 TRUSTEE: All right. So we are back on  
4 the record.

5 Dr. Smith, I'll remind you you are still  
6 under oath.

7 DR. SMITH: Yes.

8 TRUSTEE: And we've added Mr. Works to  
9 the mix for SI-BONE, Inc.

10 Mr. Iqbal, did you have more questions?

11 MR. IQBAL: A few more.

12 TRUSTEE: Okay. Go ahead.

13 MR. IQBAL: And I appreciate the time and  
14 the extra questions that you've allowed usually at  
15 341.

16 TRUSTEE: Well, we're on a timeline here.  
17 We're going to have to bail at 2:30, 2:25 because I  
18 have a hearing, and I think Mr. Shapiro has a  
19 hearing. So let's see what we can get through.

20 MR. IQBAL: Yeah, I just have a few more.

21 Sir, you mentioned 30 shareholders. How  
22 many people were on the board?

23 DR. SMITH: Probably six, seven.

24 MR. IQBAL: Okay. Could you tell us the  
25 names of the individuals on the board?

1 DR. SMITH: Dr. Belsky, Dr. Ng (ph),  
2 Dr. Freedman (ph), Dr. Tadlock. He was excused.  
3 Mr. Barnes until he was fired, and there's probably  
4 several others I'd have to look up.

5 MR. IQBAL: How often did the board meet?

6 DR. SMITH: It was supposed to meet once  
7 a month.

8 MR. IQBAL: How often did it actually  
9 meet?

10 DR. SMITH: Well, during the Barnes  
11 tenure, it met very infrequently because he would  
12 cancel meetings.

13 MR. IQBAL: So roughly two or three a  
14 year or --

15 DR. SMITH: Perhaps. And then we've gone  
16 back and we can't find any of the board meetings  
17 actually that he was -- that he was at these  
18 meetings, so a lot of documents were either  
19 destroyed or taken away after he left. He  
20 sabotaged a couple of computers that had some  
21 information on, so we have a hard time getting some  
22 of that down.

23 Over the past -- you know, over the last  
24 year of operations, the board met on sort of an  
25 ad hoc basis. You know, sometimes a couple times,

1 two or three times a month, sometimes not for one,  
2 every other month to handle what just is going on.

3 MR. IQBAL: Okay. So you found out about  
4 Barnes in 2012. He gets fired in 2013. You folks  
5 filed for bankruptcy at the very end of 2014. Did  
6 Flamingo Pecos bring suit against Mr. Barnes?

7 DR. SMITH: The FBI has all the  
8 information. They're considering criminal charges  
9 against him. So that's the last I heard.

10 MR. IQBAL: So no civil actions by  
11 Flamingo Pecos?

12 DR. SMITH: We talked about it, but we've  
13 had word that he's -- he's actually in bankruptcy,  
14 has no -- anything of value to sue for.

15 MR. IQBAL: Okay. No civil action for  
16 fraud?

17 DR. SMITH: I talked to Dr. Belsky and  
18 she and I met three weeks ago, talked about it, you  
19 know. Again, we're just not sure if it's worth  
20 paying an attorney to go after things that aren't  
21 there.

22 MR. IQBAL: Okay. But in 2013, once he  
23 got fired, no civil action was brought against him?

24 DR. SMITH: Again, we went to the FBI  
25 within six months.



1           MR. IQBAL:   Okay.   Six months after  
2   finding out or six months after firing him?

3           DR. SMITH:   After firing him.

4           MR. IQBAL:   It took six months to uncover  
5   what he did?

6           DR. SMITH:   Well, I'm still finding stuff  
7   out, you know, as of now.   I mean, it's a very  
8   tangled web, and I'm not an expert at this.

9           MR. IQBAL:   Okay.   After you fired him  
10   and in that six-month interim before you went to  
11   the FBI, did Flamingo Pecos hire anyone to look  
12   into what Barnes did?

13          DR. SMITH:   No.   We didn't have money to  
14   do it.   We were trying to operate, operate the  
15   center.

16          MR. IQBAL:   So he gets fired.   You guys  
17   don't hire anyone to look into how much he took --

18          DR. SMITH:   We couldn't hire anybody.   We  
19   didn't have the money.

20          MR. IQBAL:   Okay.   And then six months  
21   later you went to the FBI.   Did you give the FBI a  
22   number?

23          DR. SMITH:   A number?

24          MR. IQBAL:   Of how much he --

25          DR. SMITH:   No.   We gave them all the

1 information we had, and they've done multiple  
2 interviews and asked for more information.

3 MR. IQBAL: When was the last time you  
4 talked to the FBI?

5 DR. SMITH: Me personally it's probably  
6 six months ago, eight months ago.

7 MR. IQBAL: And to the best of your  
8 knowledge that's still an active investigation with  
9 the FBI?

10 DR. SMITH: I was told about two or three  
11 weeks ago.

12 MR. IQBAL: Now, you mentioned draws or  
13 distributions of 5,000 a year at that time. I'm  
14 assuming you worked in other hospitals, with other  
15 entities?

16 DR. SMITH: Yes.

17 MR. IQBAL: At that time how many other  
18 entities or hospitals did you work with?

19 DR. SMITH: I'm the chief neurosurgeon at  
20 the University Medical Center. That's probably  
21 where I do 95 percent of my work.

22 MR. IQBAL: And the accounts receivable,  
23 is it common practice to carry two, 2.2 million,  
24 two and a half million in ARs for an entity that  
25 size?

1 DR. SMITH: Yes.

2 MR. IQBAL: And so the last few years,  
3 the accounts receivable have roughly been in the  
4 same two million range?

5 DR. SMITH: I would think so, yes.

6 MR. IQBAL: Okay. What have you done  
7 personally since the end of 2014 to try and recover  
8 the accounts receivable?

9 DR. SMITH: I have personally done  
10 nothing.

11 MR. IQBAL: Okay. What did you do in the  
12 six months before the entity filed bankruptcy?

13 DR. SMITH: Again, I have done nothing  
14 personally, but we have a billing team, a  
15 collection team. We had an outside company come in  
16 and try to work the accounts. And, again, from  
17 what they've told us that in general medical  
18 accounts receivable go stale very quickly, so. And  
19 that 2 to \$3 million in accounts receivable,  
20 there's probably very little that's actually  
21 active.

22 MR. IQBAL: And how much of that did you  
23 recover, do you think or guess?

24 DR. SMITH: I think very little. It's  
25 been diminishing return. I'm sure we can go

1 through the bank accounts and see.

2 MR. IQBAL: Okay. And are you doing any  
3 kind of new business with any of the 30  
4 shareholders of Flamingo now? Are you joining or  
5 creating any new groups, surgery groups or anything  
6 like that?

7 DR. SMITH: No.

8 MR. IQBAL: So right now you're just  
9 employed by UMC?

10 DR. SMITH: I'm not employed by UMC.

11 MR. IQBAL: Okay. You're an independent  
12 contractor?

13 DR. SMITH: No.

14 MR. IQBAL: What are you --

15 DR. SMITH: I'm a physician, and I bring  
16 my patients there. I don't have any type of  
17 financial (inaudible) with UMC.

18 MR. IQBAL: Okay. That is all I have for  
19 now. Thank you, sir.

20 DR. SMITH: Thank you.

21 TRUSTEE: All right. Mr. Limon?

22 MR. LIMON: Just a few questions  
23 (inaudible).

24 Any of the medical equipment that was at  
25 either the Twain location or the Burnham location,

1 is that being used any place else at that this time  
2 to your knowledge?

3 DR. SMITH: I know that a small surgical  
4 center on Flamingo -- I can't remember the name of  
5 it, had borrowed some equipment or leased some  
6 equipment. And I think I got an email a while  
7 back, a month or two back, saying that they were  
8 going to return it back to the Burnham location.

9 MR. LIMON: Okay. What type of equipment  
10 is that?

11 DR. SMITH: Surgical instruments, a bed.  
12 I don't know.

13 MR. LIMON: Do you know of any other  
14 medical equipment from either the locations that's  
15 being used someplace else?

16 DR. SMITH: Maybe. I don't know. I  
17 don't recall.

18 MR. LIMON: Do you know the name of that  
19 surgery center on Flamingo?

20 DR. SMITH: I should. VIP Surgical  
21 Center.

22 MR. LIMON: Okay. That's all the  
23 questions I have. Thank you.

24 TRUSTEE: Ms. Ireland.

25 MS. IRELAND: Yes. I'm actually

1     concerned with the property of Burnham when it  
2     might be able to be vacated.

3             DR. SMITH: I guess whenever (inaudible)  
4     takes whatever remaining equipment is there, I  
5     suppose. I don't know.

6             MS. IRELAND: So you said to call Tiffany  
7     (inaudible)?

8             DR. SMITH: I think so, yeah.

9             MS. IRELAND: (Inaudible).

10            DR. SMITH: I hope I can get them. I  
11     just looked through my phone. The only contact I  
12     have is her email for the (inaudible) center, which  
13     I'm even sure is active anymore. But we can try.

14            MS. IRELAND: What was her position  
15     there?

16            DR. SMITH: She was the accountant and  
17     sort of the general manager for the office for a  
18     while.

19            MS. IRELAND: So they did have an  
20     in-house accountant?

21            DR. SMITH: For a while, yeah. She did  
22     payroll and things like that.

23            MS. IRELAND: So what is the value of the  
24     equipment that remains there? You have no idea?

25            DR. SMITH: I have no -- I don't even

1 know what's there. Like I said, I have not -- I  
2 have personally not stepped foot in that place  
3 since the day it closed.

4 MS. IRELAND: Who would be in a position  
5 to know when (inaudible)? Are things going to be  
6 put in storage or --

7 UNKNOWN SPEAKER: I think that's someone  
8 you can work -- you can kind of work together with  
9 the State, the Trustee. She's now in control of  
10 the property.

11 MS. IRELAND: Yeah. Were there any other  
12 finishings and fittings beyond --

13 DR. SMITH: No, I mean, we had -- the  
14 center obviously built out the place, put a lot of  
15 money to build out the place, but that's all chairs  
16 and benches and things that I don't think are of  
17 much value.

18 MS. IRELAND: And who were the guarantors  
19 that you know that were not forged on the  
20 (inaudible).

21 DR. SMITH: Again, I'm not certain about  
22 that. My attorney -- I think it's my attorneys  
23 saying that they're not -- they think that  
24 Dr. Belsky and her husband's were not forged.  
25 Although, you know, I'm not sure I would believe

1     that.  I think they -- I think there was  
2     discrepancy on all the signatures from what it  
3     sounds like.

4             MS. IRELAND:  So as far as you know, it's  
5     just yourself and the Belskys.

6             DR. SMITH:  And Dr. Garber, Jason Garber.

7             MS. IRELAND:  Thank you.

8             TRUSTEE:  Mr. Works, did you have any  
9     questions?

10            MR. WORKS:  No questions for me.

11            MR. IQBAL:  If I can just follow up on a  
12     few things.  Regarding Mr. Barnes, at the time that  
13     the allegations that he was stealing money took  
14     place, did the debtor have any insurance for  
15     malfeasance?

16            DR. SMITH:  No.  Malpracticing.

17            MR. IQBAL:  I figured you had  
18     malpractice, but.

19            DR. SMITH:  Unfortunately, we did not.

20            MR. IQBAL:  On the accounts receivables,  
21     I believe you just testified that you hired perhaps  
22     a third-party to try to collect.  Do you recall the  
23     name of that company that tried to collect?

24            DR. SMITH:  I can go through my emails to  
25     track them down, but, no, I don't recall the



1 company.

2 MR. IQBAL: Okay. If you can provide  
3 that to Mr. Zirzow, I would appreciate it.

4 UNKNOWN SPEAKER: It wasn't Med HQ, was  
5 it?

6 DR. SMITH: Yes.

7 UNKNOWN SPEAKER: Well, they were on  
8 employed post-petition as well.

9 DR. SMITH: Yeah.

10 UNKNOWN SPEAKER: Were they employed  
11 pre-petition?

12 DR. SMITH: I believe so, yeah.

13 MR. IQBAL: I'm sorry. It was med?

14 UNKNOWN SPEAKER: Med HQ. There's a  
15 retention out for them on file.

16 MR. IQBAL: Do you know if the company  
17 ever tried to sell the accounts receivable to a  
18 third-party?

19 DR. SMITH: Well, the liens we were  
20 selling to third parties to try to get some income  
21 generation. And then as I recall we sold every one  
22 that a lien company would buy.

23 MR. IQBAL: And that was done prior to  
24 filing the bankruptcy, wasn't it?

25 DR. SMITH: Yes.

1                   MR. IQBAL: You also indicated or  
2 testified that the company was leasing some of its  
3 equipment. One of them was to VIP Surgical  
4 Centers. Do you know how much the leases -- how  
5 much money you were getting on the lease?

6                   DR. SMITH: I think it was a small amount  
7 of money, but I don't recall.

8                   MR. IQBAL: What would be a small amount?

9                   DR. SMITH: A couple thousand dollars  
10 maybe.

11                  MR. IQBAL: A couple thousand a month.  
12 Were they actually written agreements?

13                  DR. SMITH: I would assume they were, but  
14 I...

15                  MR. IQBAL: And the surgical centers that  
16 were the lessees, were their affiliated with any of  
17 the physicians that were members or shareholders?

18                  DR. SMITH: I don't think so. I did one  
19 case there just hoping to get VIP to come buy us  
20 out when we were thinking of going through  
21 Chapter 7, but -- I mean, Chapter 11, but, you  
22 know, it didn't work out.

23                  MR. IQBAL: I don't have any other  
24 questions.

25                  TRUSTEE: Okay. I have nothing further.

1 I'm going to go ahead and conclude the meeting. If  
2 you have any issues or questions, please reach out  
3 to my counsel. Okay.

4 MR. LARSON: We'll do our best to  
5 cooperate. Thank you.

6 TRUSTEE: Thank you. I appreciate it.

7 (Whereupon, the recording ended.)

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TRANSCRIBER'S CERTIFICATE

STATE OF NEVADA     )  
                                  )     ss.  
COUNTY OF CLARK    )

I, Kathy Hoffman, do hereby certify:  
That I listened to the recording of a 341  
Meeting of Creditors for Flamingos-Pecos Surgery Center  
dba Surgery Center of Southern Nevada;

That I thereafter transcribed said  
recording into a typewritten transcript and that  
the typewritten transcript of said proceedings are  
a complete, true, and accurate transcription of  
said recording to the best of my ability to hear  
and understand the recording.

I further certify that I am not a  
relative or employee of counsel involved in said  
action, nor a person financially interested in said  
action.

---

KATHY HOFFMAN, TRANSCRIBER

## EXHIBIT 6

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 )  
4 IN RE: )  
CHARLES H. TADLOCK and MARY )  
5 E. TADLOCK, )  
6 ) BK No. 15-13135-abl  
Debtors-in-Possession. ) Chapter 11  
7 \_\_\_\_\_ )

8  
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10  
11  
12 2004 EXAMINATION OF CHARLES TADLOCK, M.D.

13 VOLUME II

14 LAS VEGAS, NEVADA

15 MONDAY, MARCH 14, 2016

16  
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23  
24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 297685

<p>Page 2</p> <p>1 CONTINUED 2004 EXAMINATION OF CHARLES TADLOCK,  2 M.D., held at Thomas E. Crowe Professional Law  3 Corporation, located at 2830 South Jones Boulevard,  4 Suite 3, Las Vegas, Nevada 89146, on Monday, March 14,  5 2016, at 1:02 p.m., before Brittany J. Castrejon,  6 Certified Court Reporter, in and for the State of  7 Nevada.  8  9  10 APPEARANCES:  11 For Charles Tadlock, M.D.:  12  13 THOMAS E. CROWE PROFESSIONAL  14 LAW CORPORATION  15 BY: THOMAS E. CROWE, ESQ.  16 2830 South Jones Boulevard  17 Suite 3  18 Las Vegas, Nevada 89146  19 702-794-0373  20 tcrowe@thomascrowelaw.com  21 For Creditor Patriot-Reading Associates, LLC  22 IQBAL LAW PLLC  23 BY: MOHAMED IQBAL, JR., ESQ.  24 714 South Fourth Street  25 Las Vegas, Nevada 89101  702-750-2950  mai@ilawlv.com</p>	<p>Page 4</p> <p>1 Las Vegas, Nevada; Monday, March 14, 2016  2 1:02 p.m.  3 -oOo-  4 Whereupon --  5 (The court reporter requirements under Rule  6 30(b)(4) of the Nevada Rules of Civil  7 Procedure were waived.)  8 CHARLES TADLOCK, M.D.,  9 having been first duly sworn by the court reporter to  10 testify to the truth, the whole truth, and nothing but  11 the truth, was examined and testified under oath as  12 follows:  13 EXAMINATION  14 BY MR. IQBAL:  15 Q. So we're here for the continued 2004 Exam of  16 Dr. Charles H. Tadlock in Bankruptcy Case Number  17 BK-S-15-13135-ABL.  18 My name is Mohamed Iqbal. I represent  19 Patriot-Reading Associates.  20 Dr. Tadlock, we're continuing the examination  21 from the first part of the 2004, and I just want to note  22 that your counsel is also here, for the record, Tom  23 Crowe.  24 MR. CROWE: Yes.  25 BY MR. IQBAL:</p>
<p>Page 3</p> <p>1 I N D E X  2 WITNESS: CHARLES TADLOCK, M.D.  3 EXAMINATION  4 By Mr. Iqbal  5  6  7  8 E X H I B I T S  9 NUMBER DESCRIPTION  10 EXHIBIT A Third Amended Disclosure Statement  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p>PAGE  4  5</p>	<p>Page 5</p> <p>1 Q. And do we need to go over the ground rules, or  2 are you ready to go and you recall everything we talked  3 about in terms of you're under oath, and that I will try  4 and let you finish your answer if you let me finish my  5 question, so we can keep the transcript clean?  6 A. Certainly.  7 Q. Okay. All right.  8 Right off the bat just to make sure, I am handing  9 the court reporter what we can mark as Exhibit A to the  10 continued 2004 Exam, which is going to be the third  11 amended disclosure statement. And I have a copy of it  12 for you just for reference and a copy for your counsel  13 as well.  14 (Exhibit A was marked for identification.)  15 BY MR. IQBAL:  16 Q. It's two pages per sheet. And I give that to you  17 because some of my questions will go to specific things  18 in there, and it might make it faster if you have it  19 just to check what I'm saying or if you have to refresh  20 your recollection.  21 So your third amended disclosure statement claims  22 the building that houses your practice is likely to be  23 foreclosed on in March; is that correct?  24 A. It's already been foreclosed on.  25 Q. Who told you that?</p>

<p style="text-align: right;">Page 6</p> <p>1 A. They sent me a statement, and the statement was 2 put on the door. And they took possession. 3 Q. Okay. So you're no longer in that building? 4 A. Correct. 5 Q. What was the basis of that foreclosure? 6 A. I'm not sure what you mean. 7 Q. Why did they foreclose on it? Were you behind -- 8 Was the LTD behind on payments? 9 A. Yeah, they were massively behind on payments. 10 Q. Do you know when the LTD stopped making payments 11 on that building? 12 A. About a year ago, I think. It might have been 13 longer. It was with Bank of America at the time. 14 Q. At the time and now the foreclosure was actually 15 done by another bank; correct? 16 A. Correct. 17 Q. Do you recall the name of the bank? 18 A. Northwest something. 19 Q. Did they buy the note from Bank of America? 20 A. I have no idea what they did with Bank of 21 America. 22 Q. And the third amended disclosure statement states 23 the foreclosure will necessitate your firm's relocation. 24 You've already established that the foreclosure has 25 already happened.</p>	<p style="text-align: right;">Page 8</p> <p>1 patient health information, things covered under HIPAA 2 or what do you mean? 3 A. Things covered under HIPAA. 4 Q. And those charts and the patient information 5 where is that currently? 6 A. It's currently in my house in California except 7 for a little bit with security somebody or other who 8 has, I think, 550 boxes which I'm hoping are old so I 9 can just shred them, but I'm not sure. 10 Q. Of course all that stuff is protected under -- 11 A. Correct. 12 Q. -- a number of statutes, so you have to be very 13 careful, I'm sure. 14 A. Yes. Exactly. 15 Q. And when did you move the stuff to California? 16 A. We've been doing it since -- 17 Well, as far as the office material, we started 18 moving it the weekend of my birthday. So it would have 19 been -- I think my birthday was the 27th. So we started 20 loading it Thursday night, a little bit on a -- I think 21 Thursday night. Then over the weekend. 22 Q. Okay. Besides the patient files and the charts, 23 did you have any medical equipment in there that you 24 owned or the LTD owned? 25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 Have you relocated? 2 A. We've relocated the charts. We have not yet 3 started up a practice because at this juncture I'm 4 basically going to let this business run out and stop. 5 I've already notified the board that I'm retiring on 6 disability and have stopped my practice. 7 Q. When you say board, sir, who do you mean? 8 A. Nevada State Medical Board. 9 Q. Got it. 10 Because with respect to decisions with the LTD, 11 you're making them; correct? You're in charge? There 12 are no other members? 13 A. No, I don't believe there are any other members. 14 Q. Okay. All right. 15 So when did you actually stop your practice? 16 A. Seeing patients officially I think on the 25th, 17 though I think one or two wandered in as they were 18 trying to get the charts out of the building before it 19 was taken back. I probably wrote a couple prescriptions 20 to get people by, but certainly nothing after the 29th. 21 Q. 29th of February? 22 A. February. 23 Q. 2016, just to be clear? 24 A. 2016. 25 Q. All right. And when you mean charts, you mean</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. What happened to that? 2 A. Most of it's out of date. We didn't bother 3 moving it. We did move four medical beds, one portable 4 ultrasound and a weight scale, one of those nice doctor 5 weight scales, and blood pressure cuff on a stand, both 6 of which I donated to the school. 7 Q. You're talking about Boyd or Nevada School of 8 Medicine? 9 A. Ohio Valley School, so they could use it for 10 their students. 11 Q. And outside of the equipment you just mentioned, 12 everything else you left in the building? 13 A. Yeah. The computers if it had patient-sensitive 14 information were removed by the IT folks, and they're 15 waiting a judgment as to whether I destroy it or whether 16 I need to get access to it to get patient charts, which 17 I haven't made a determination yet whether I'm going to 18 need them or not. So they're holding on to them under 19 lock and key. 20 Q. In the same place that has the 550 files or 21 somewhere else? 22 A. No. The IT people are keeping it. I think it's 23 Reliable that's keeping it under lock and key until I 24 see what happens. 25 Q. Got it.</p>



Page 10

1 So outside of the computers you just talked  
2 about, the equipment, some of which you donated, some of  
3 which is out of date and then the patient files, there's  
4 really nothing else left in that building?

5 A. No. There was some old desks and things which we  
6 had neither the time nor any place to put it, so we just  
7 left it.

8 Q. And you picked end of February because the bank  
9 told you to move out by then, or you just picked that  
10 time?

11 A. Well, it was actually a mixture of circumstances.  
12 I started getting worse and my office manager started  
13 getting worse and my wife started getting worse, and the  
14 determination was made that between the three of us, we  
15 did not have the capability of moving and reopening.

16 Q. Okay. So and your office manager is separate  
17 than your wife. Your wife has a function at -- well,  
18 had a function at the LTD. What was that function?

19 A. That function was basically -- well, recently has  
20 been to drive me everywhere because I can't drive for  
21 more than 20 or 30 minutes at a time. It's hard for me  
22 to do that, but now she's unable to do that due to a  
23 fracture of her ankle that has worsened. And she's also  
24 on disability.

25 Q. And that determination has been made; she's on

Page 11

1 disability now or applied or?

2 A. The determination was made by her physicians.  
3 I've had no sign that the insurance company plans on  
4 fighting it, and will lose if they do in my opinion.

5 Q. So you have the doctor saying that she should be  
6 on disability, and so as far as --

7 A. Three doctors.

8 Q. Okay. All right.

9 So until she --

10 And very recently when your wife was driving you  
11 around, what was her official role at your LTD?

12 A. Well, depends. She was my medical assistant,  
13 though technically she's an R.N. She's not an R.N. in  
14 this state, was an R.N. in California, never bothered to  
15 get her R.N. transferred. But she was basically a  
16 medical assistant of whatever I needed up in Ely. She  
17 was the only person that went with me to Ely.

18 Q. Then your office manager is separate. I'm sorry  
19 to hear about the circumstances.

20 What's going on with your office manager that she  
21 can't work?

22 MR. CROWE: Can we go off record for a  
23 minute?

24 MR. IQBAL: Sure.

25 (A brief discussion was held off the record.)

Page 12

1 BY MR. IQBAL:

2 Q. Back on the record.

3 It's safe to say that your office manager can't  
4 work anymore?

5 A. Yes.

6 Q. All right. That's fair.

7 Now you recently hired a PA. Have you let that  
8 PA go?

9 A. Yes.

10 Q. So it was a short-term contract?

11 A. There was no contract.

12 Q. It was just at-will you hired them and then at  
13 the end of the month, you decided to let them go?

14 A. Actually, what happened was my office manager  
15 made him an offer, he didn't accept but made a  
16 counteroffer and then quit at his old job before I had a  
17 chance to look at the counteroffer. And so I let him  
18 work until it became clear that I wasn't going to be  
19 able to keep it up any longer and kept him on as long as  
20 I could, but we have no contract because he took it upon  
21 himself to kind of jump the gun.

22 Q. Okay, okay.

23 So as of this date, March 14, 2016, you have no  
24 plans of practicing again?

25 A. Don't really know, but probably not.

Page 13

1 Q. At least right now not practicing?

2 A. Well, certainly I told my \*malpractice company I  
3 don't practice. I've stopped. You know, if I can find  
4 some job where I can work a couple half days, something  
5 like that, then I would try that. Hard to do that.

6 Q. Right.

7 What's the process when you tell the board,  
8 what's the process of getting reinstated because you were  
9 active before? Would it just be a phone call, or would  
10 you have to go through an application process?

11 A. I have no clue. I'm still trying to figure out  
12 the retirement rules for charts and things.

13 Q. Right.

14 At this time you mentioned that you may look for  
15 something part-time. You're not looking right now?

16 A. No, I'm not looking right now.

17 Q. Okay. All right. That's all I had on that.

18 Now, when we last sat down, you talked about a  
19 \$300,000 arrearage with the State of Arizona.

20 A. Correct.

21 Q. And that was for Access? What did you mean by  
22 Access?

23 A. Yes. Access is one or two or three companies  
24 that provide Medicaid to the Arizona State's patients.

25 Q. And so the State of Arizona owes you 300,000 or

Page 14

1 Access owes you 300,000? I'm not clear.  
 2 A. Neither am I.  
 3 Q. Okay. But who's owed the 300,000? The LTD?  
 4 A. Yes.  
 5 Q. And why is that 300,000 figure, why is that owed  
 6 to you?  
 7 A. It's owed to me because the State of Arizona  
 8 decided they didn't have enough money to pay their  
 9 bills, and I consulted counsel on it who told me that  
 10 other than complaining to the insurance commissioner, I  
 11 really had no recourse.  
 12 Q. Okay.  
 13 A. Except to stop taking patients, which I did.  
 14 Q. Now, these patients you saw in Arizona and then  
 15 you submitted the details to Access or Medicaid, and  
 16 these amounts were supposed to be reimbursed by Arizona  
 17 and they weren't?  
 18 A. Well, most of your statement is correct, but I  
 19 saw those patients both here in Nevada and Las Vegas,  
 20 also at Laughlin until recently, and some of them came  
 21 here because of the Arizona Strip. I don't know if you  
 22 know about that. The Grand Canyon runs along there, and  
 23 you can't really get to any other part of Arizona. So  
 24 they would come here, and Access at one point was paying  
 25 me for them.

Page 15

1 Q. Got it.  
 2 So Arizona residents, but they also came to get  
 3 medical treatment up here in Nevada?  
 4 A. Yes. And years ago I had an office in Kingman.  
 5 Q. When did you stop seeing people at that office?  
 6 A. I don't know the exact date. Two or three years  
 7 ago. Might be longer.  
 8 Q. That's fine.  
 9 And you were providing the same services that you  
 10 provided to your other patients to these residents of  
 11 Arizona that is part of this 300,000 that you're owed;  
 12 correct?  
 13 A. Correct. Including getting preauthorization for  
 14 pretty much everything because they required it at that  
 15 time. But that doesn't mean that authorization is  
 16 not -- not a surety of being paid. It's worded somewhat  
 17 differently in the contract.  
 18 Q. Why did the arrearage get so large? Did -- let  
 19 me ask that before I go on to other questions.  
 20 A. Well, at the time I had one or two PAs and an  
 21 anesthesiologist and me when I was at max, and I worked  
 22 my -- put that in a polite way. I worked very hard for  
 23 a very long time.  
 24 Q. And so the arrearage got to 300,000 before you  
 25 folks tried to collect on it, or were there problems

Page 16

1 before that time, before it got to 300,000?  
 2 A. Access has been a problem for everyone forever.  
 3 Q. So you weren't getting paid and then it got to  
 4 300,000 and you said enough and you stopped?  
 5 A. Correct.  
 6 Q. And I know you mentioned in your transcript  
 7 previously Gordon Richardson -- I'm sorry -- Gordon  
 8 Richards tried to go over the 300,000.  
 9 What exactly did you folks try to do? Did you  
 10 send demand letters, or did you sue the state? What did  
 11 you do?  
 12 A. Supposedly I can't really sue the State of  
 13 Arizona. My office manager made numerous attempts to  
 14 get paid. We made attempts both I and her, and the both  
 15 of us together had a meeting with the person in charge  
 16 for that area, and they didn't show up for the meetings.  
 17 And we put demand letters into Phoenix and to the  
 18 insurance commissioner, and then I asked Gordon and he  
 19 said there's really not much that you can do.  
 20 Q. So there's no litigation?  
 21 A. No.  
 22 Q. Did Gordon send any letters or anything, or was  
 23 it just you and your office manager?  
 24 A. Too long ago for me to remember if Gordon  
 25 really -- it probably would have been her and he talking

Page 17

1 about it, not me anyway.  
 2 Q. And you said it was too long ago. Was it a  
 3 couple years ago when you stopped with the --  
 4 When did this 300,000 --  
 5 When did it come to 300,000 and you said enough?  
 6 A. More than a year ago.  
 7 Q. Did you have a contract with the state?  
 8 A. Yes.  
 9 Q. And in your opinion, I know you're not a lawyer,  
 10 they breached that contract?  
 11 A. Yes, in my interpretation they breached that  
 12 contract. Dr. Valbeoni (phonetic spelling) one time  
 13 worked with me, stopped taking Access a couple months  
 14 ago and started taking it again. Don't know what's  
 15 going on with that. But obviously -- it appears obvious  
 16 to me that they're preferentially treating some  
 17 providers over others.  
 18 Q. And the contract was with the State of Arizona or  
 19 with Access?  
 20 A. I don't know.  
 21 Q. Do you have a copy somewhere of the contract?  
 22 A. Possibly.  
 23 Q. And I guess on that point, you talked about your  
 24 patients' files and records with the LTD. The LTD's  
 25 business records and operating statements and things,

Page 18

1 some of which have been filed in this action, but the  
2 other stuff, all the administrative stuff, do you have  
3 that?

4 A. I have some of it, the part that isn't on a  
5 computer, in cartons. I literally have hundreds of  
6 cartons full of mostly patient records, some records of  
7 insurance contracts, etc.

8 Q. And business records?

9 A. Yeah, business records.

10 Q. Okay. And the accountant that you used for the  
11 LTD would have some records?

12 A. Correct.

13 Q. Do you know the name of that accountant?

14 A. Chris Wilcox.

15 Q. Chris Wilcox, okay.

16 And then presumably Gordon would have some legal  
17 files associated with the LTD?

18 A. I'm sure he has records of his dealings with us,  
19 and Kent Greene would have some records dealing with us,  
20 more than Gordon would have.

21 Q. Who's Kent Greene?

22 A. Kent Greene is another attorney that worked with  
23 me for many years.

24 Q. Is he based in Nevada or Arizona?

25 A. Las Vegas.

Page 19

1 Q. And he also tried to help with the State of  
2 Arizona and this 300,000?

3 A. No.

4 Q. That one was just Gordon?

5 A. Yes.

6 Q. And Gordon said it's going to be impossible to  
7 get it back from them?

8 A. Correct.

9 Q. And they don't have to pay you, I believe, just  
10 quoting what you said last time "Because it's the State,  
11 and they don't have to pay you even though they agreed  
12 to pay"?

13 A. Correct. And that's actually true for insurance  
14 companies too. They don't necessarily pay you what they  
15 agree to pay you.

16 Q. I know that person didn't show up when they were  
17 supposed to be from Phoenix, but did anybody from the  
18 state or Access give you any kind of explanation why  
19 they weren't paying you?

20 A. Not to me personally, no.

21 Q. To anybody that worked for you, like, your office  
22 manager?

23 A. Well, I'm sure she talked about it because she  
24 told me about communications she'd had with them, but  
25 they just basically said they were bankrupt and did not

Page 20

1 have the money to pay.

2 Q. Were they in fact bankrupt, or did they go  
3 bankrupt?

4 A. I don't know if they did or not.

5 Q. So you haven't personally and your LTD hasn't  
6 filed a claim for that 300,000?

7 A. No. Recommendations of my attorney it would be a  
8 waste of money.

9 Q. And when we say entity, I mean any entity that  
10 you're associated with?

11 A. Any entity of any sort whatsoever.

12 Q. Okay, okay.

13 And you didn't assign this potential claim, you  
14 didn't assign an interest or transfer the claim to any  
15 other entity; correct?

16 A. No.

17 Q. Because your attorney said it's worthless; we  
18 can't go after it?

19 A. Never even occurred to me.

20 Q. Okay. Have you or any entity that you have an  
21 interest in, including the LTD, written off the  
22 receivable or used it in any kind of tax return as an  
23 uncollectible debt or anything?

24 A. Don't know.

25 Q. Don't know, okay.

Page 21

1 But Chris Wilcox would know because he did the  
2 tax returns?

3 A. Presumably, yeah.

4 Q. Do you recall having a discussion with him about  
5 the taxes and how to do the taxes involving this --

6 A. Not on that particular issue, no.

7 Q. And when you did the LTD's taxes, I know that  
8 it's no longer practicing, but when you did do them, you  
9 would sit down with Chris and go through the year, and  
10 he would show you a return and then you would sign it?  
11 How was that process?

12 A. Basically that process was he did all the --

13 Well, he did all the work, and I'd look at it and  
14 sign it.

15 Q. But you'd kind of verify it or you trusted him?

16 A. A, I trusted him, and B, he would go over  
17 everything monthly with my office manager.

18 Q. Okay, okay.

19 So your office manager really handled the  
20 financial side, and it sounds like from her  
21 communications with Arizona, she worked on receivables  
22 and sort of all of that for you?

23 A. Correct. Since about '97 or '98.

24 Q. And her name?

25 A. Tammy Shaffer.

Page 22

1 Q. Now, did Tammy work just for the LTD, or did she  
2 do work for Epiphany and other entities that you were  
3 associated with?

4 A. She was actually a partial owner, one percent of  
5 Epiphany through me because you have to have -- you  
6 know, you can do it, but it has to be through a doctor.  
7 She did -- long time ago when I was setting up Epiphany  
8 do some work for Epiphany. Unfortunately, she didn't  
9 continue doing it with Epiphany, or we wouldn't have  
10 gotten into trouble that we did with the person that we  
11 did.

12 At this juncture I doubt very much that she would  
13 be of very much help in recalling anything back then.

14 Q. And just for your assistance, just like I've  
15 given you the third amended disclosure sheet, I have  
16 copies of your transcript from the first time just in  
17 case you want to reference because I'll be asking  
18 specific questions.

19 A. Okay.

20 Q. I'm going to represent what's actually on there  
21 and be truthful, but obviously you can, you know, trust  
22 but verify. You can verify anything that I'm saying.  
23 Okay?

24 A. Sure.

25 Q. So it's right here. I don't think we need to put

Page 23

1 these as an exhibit, Tom, because they were just part of  
2 the prior transcript. But this is just for your  
3 assistance, and if you want to verify any question that  
4 I'm asking you. Okay? Is that fair?

5 A. Okay.

6 Q. So in the transcript page 64, 65 and then a small  
7 portion of 67, you testified that Bank of America at  
8 first told you that they would claw back money taken  
9 from Epiphany Surgical Solutions' account?

10 A. Yes.

11 Q. Did they claw any of the money back?

12 A. No.

13 Q. Why not?

14 A. They said that time to of told them had gone  
15 past.

16 Q. Do you believe that's true?

17 A. No.

18 Q. You told them as soon as you found out; correct?

19 A. Yes.

20 Q. And how long did they take to respond to you?

21 A. Months.

22 Q. Months, okay.

23 Did you have people in the office following up  
24 with them?

25 A. I was following up with them.

Page 24

1 Q. And when they told you that there was no time  
2 left to pursue the claim, you did or didn't believe  
3 them?

4 A. Well, I did believe them that they -- let's put  
5 it this way: I don't know whether they did or not. I  
6 received guidance from the FBI agent saying to try to be  
7 nice to Bank of America and see if they were nice, and  
8 if not, to wait until after the FBI made their  
9 investigation and then make a decision as to whether to  
10 do anything or not.

11 Q. So then a number of months go by and they come  
12 back to you and they say too much time has elapsed?

13 A. (Nods head.)

14 Q. What did you do after that?

15 A. I called them up and yell at them, and other than  
16 that, there really wasn't much I could do.

17 Q. Did you get an attorney to look into a claim  
18 against Bank of America?

19 A. As I said last time, I believe I had an  
20 accounting firm do -- what's the name of the accounting  
21 you do when you're looking for fraud?

22 Q. Forensic accounting?

23 A. Forensic accounting. And the forensic accounting  
24 agreed that fraud had taken place, but I didn't have the  
25 cash to go after them given the amount of expense that

Page 25

1 would be required to do so.

2 Q. Got it.

3 So you had a forensic accountant go through the  
4 Bank of America mess --

5 A. Yes.

6 Q. -- with Epiphany Surgical Solutions?

7 A. Just the Epiphany Surgical Solutions part of it,  
8 not the entire mess.

9 Q. And you just didn't have the money to pursue?

10 A. Yeah. I still owe them -- or at least he says I  
11 owe him \$10,000 in addition to the 5, which I was -- my  
12 idea of all I was going to pay for the accounting.

13 Q. When did he do the forensic accounting?

14 A. I don't recall the exact date, but shortly after  
15 I found out about --

16 Q. The mess?

17 A. -- the mess within three or four months, and that  
18 was because Bank of America stalled, in my opinion, not  
19 giving us any records of where the checks went. They  
20 would give me a record of the number of checks and  
21 dollar amounts, but no check --

22 Q. Actual checks?

23 A. Actual checks, copies of the checks, saying where  
24 it went, which of course they can't do forensic  
25 accounting without that.

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1 Q. You said you were the one following up with them.  
 2 How often were you following up with them?  
 3 A. They came to my office weekly for a few weeks,  
 4 and then the guy disappeared and somebody else took his  
 5 place.  
 6 Q. And I know you don't remember the exact date and  
 7 that's fine. I'm just trying to get a ballpark. You  
 8 filed for BK in mid-2015. Do we have a ballpark, just  
 9 even a year, when this Bank of America nonsense was  
 10 happening?  
 11 A. I hate to hazard a guess honestly. I just really  
 12 don't know.  
 13 Q. Was it a couple years before?  
 14 A. Couple years.  
 15 Q. Like 2013?  
 16 A. Maybe, yeah. Maybe. I'm not really sure.  
 17 That's all easily looked up.  
 18 Q. Do you have the copy of the forensic accounting  
 19 report that this gentleman did?  
 20 A. I may have an email copy of it. If not, Wilcox's  
 21 partner has it.  
 22 Q. And the forensic accountant was associated with  
 23 Chris Wilcox or someone separate?  
 24 A. They were associated at the time. I don't think  
 25 they are anymore.

Page 27

1 Q. Got it.  
 2 And the name of this individual?  
 3 A. Don't remember.  
 4 Q. Okay. But if we get the forensic accounting  
 5 report, that will lay out what time all of this stuff  
 6 happened; correct?  
 7 A. Yes, it should.  
 8 Q. Okay. All right.  
 9 So I have a question here that did Epiphany make  
 10 any claims against B of A; I'm guessing your answer would  
 11 be no because you didn't have the money to pursue B of A?  
 12 A. Correct.  
 13 Q. And Epiphany didn't have the money to pursue B of  
 14 A, and the LTD also didn't have the money to pursue B of  
 15 A; correct?  
 16 A. Correct.  
 17 Q. Okay. Who controls Epiphany Surgical Solutions  
 18 now?  
 19 A. Epiphany Surgical Solutions, I believe, does not  
 20 exist anymore.  
 21 Q. When did it stop existing?  
 22 A. I think within the last year.  
 23 Q. And during the last phase of Epiphany Surgical  
 24 Solutions' existence, who were the officers?  
 25 A. I was.

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1 Q. And any others?  
 2 A. Bill Smith -- no, yeah, Bill Smith I think was,  
 3 and I don't know if we had any other officers or not,  
 4 but you never get anybody to answer emails or anything  
 5 else with regard to it. I did get them to answer emails  
 6 with regard to firing Barnes.  
 7 Q. Okay. All right.  
 8 Now you've said that Epiphany Surgical Solutions  
 9 right now has no assets?  
 10 A. No, it doesn't have any assets, and I'm pretty  
 11 sure it's not even in existence. I think I decided not  
 12 to pay another 550 or \$600 to keep it going. I'm not  
 13 absolutely sure of that, but I think I stopped.  
 14 Q. And at that point, did you talk to Bill Smith  
 15 about that, or did you just not pay it? You decided  
 16 yourself not to pay it?  
 17 A. I've been talking with Bill Smith about it for  
 18 years, so it was not as if he didn't know it was coming.  
 19 (Cell phone interruption.)  
 20 THE WITNESS: Excuse me. I'm turning it  
 21 off.  
 22 MR. IQBAL: No problem.  
 23 BY MR. IQBAL:  
 24 Q. So do you think Epiphany, at this point, it's not  
 25 in existence, but it was entitled to recover some money

Page 29

1 from B of A for mishandling Epiphany's accounts;  
 2 correct?  
 3 A. I believe so, but B of A doesn't.  
 4 Q. And no claim or demand letter or complaint was  
 5 filed or sent to B of A; correct?  
 6 A. No. I sent a letter asking if they would  
 7 reimburse me for the amount in question.  
 8 Q. Okay.  
 9 A. And then I received a letter back saying, no,  
 10 it's too late.  
 11 Q. Got it.  
 12 Do you have that correspondence somewhere?  
 13 A. Doubt it.  
 14 Q. Those kinds of business records you kept for a  
 15 little bit of time and dumped them or?  
 16 A. They may be in -- office manager generally kept  
 17 stuff like that, and they may be in one of the 50,000  
 18 boxes I have in my garage. But I don't know if it still  
 19 exists, and I wouldn't know where it was if it still  
 20 does exist.  
 21 Q. And when you say garage, you mean the garage in  
 22 Oxnard?  
 23 A. In Oxnard; correct. Takes about the area of this  
 24 room for the boxes.  
 25 Q. Okay, okay.

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1 And that includes some business records, but also  
2 patient files, or the are the patient files here in  
3 Nevada?

4 A. No, there are still patient files here which I'm  
5 moving over after making a determination whether or not  
6 they're still relevant or not.

7 Q. At this point in your petition, you didn't list  
8 it as a -- the B of A claim as an asset because you  
9 didn't think it was recoverable?

10 A. Correct. I didn't think it was recoverable.

11 Q. But you didn't have a formal legal determination;  
12 it was just your assessment of the situation, and based  
13 on what Tammy and what you had found out from your  
14 letters with B of A?

15 A. I sat down with a couple of different attorneys.  
16 Told me it would be somewhere around 20,000 plus just as  
17 a down payment to start the litigation. And with  
18 nothing from the FBI yet to corroborate it, I didn't  
19 think that it was going to be within my abilities given  
20 the state of my health.

21 Q. And I know that Chris Wilcox did the accounting  
22 for the LTD. Did he also do the books for Epiphany  
23 Surgical Solutions?

24 A. No, he did not. The officers and managers,  
25 owners of the surgery center thought I had too much

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1 power, and therefore, and literally had, I think, the  
2 last one was Dr. Belsky's accountant do the accounting  
3 for the two years prior to a determination being made  
4 that possibly Barnes was embezzling.

5 Q. So the accountant was Belsky's accountant?

6 A. Correct.

7 Q. Who was asleep at the wheel?

8 A. I don't want to get myself sued by Belsky's  
9 accountant, but you can make your own judgment on that.

10 Q. Do you know the name of the accountant?

11 A. Not off the top of my head.

12 Q. But it was an accountant who worked for  
13 Dr. Belsky?

14 A. And for the surgical center, yeah.

15 Q. And the surgery center?

16 A. Yes.

17 Q. So whichever accountant was doing the books for  
18 Epiphany Surgical Solutions was also doing the books for  
19 the surgery center on the Flamingo/Pecos surgery center?

20 A. If I said that, I misspoke. The books for the  
21 surgery center were being done by -- by Belsky's  
22 attorney -- not attorney -- accountant. The books for e  
23 Epiphany were being done by Wilcox, but based on false  
24 information sent to him from the surgery center.

25 Q. Got it. Got it.

Page 32

1 And how did he finally determine that that  
2 information was false?

3 A. No, he didn't actually. Tammy opened the box  
4 from Bank of America when it finally sent it with the  
5 checks on it and started crying and came down to my  
6 office and said that she thought embezzlement was going  
7 on in a big way.

8 Q. And this is a dramatic event. Do you remember or  
9 recall when that was?

10 A. It's a dramatic event when you're not having  
11 spinal surgery and can't walk.

12 Q. Fair point. Fair point. So you can't remember?

13 A. I'm correct. I'm also on medications. Right now  
14 they're making my memory not particularly good.

15 Q. Okay. Does the surgery center or Epiphany  
16 Surgical Solutions -- I know Epiphany is not an existing  
17 entity, but the surgery center did they continue to use  
18 Bank of America after the mess with B of A?

19 A. They moved actually to Wells Fargo. The previous  
20 person had been working with them at B of A had moved to  
21 Wells Fargo. Barnes recommended that we move to Wells  
22 Fargo. There's some question with regard to what was  
23 going on between the two, and then subsequently, we went  
24 to Chase.

25 So I don't believe that Bank of America was being

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1 used by them at that time. I think Chase had bought out  
2 the contracts. At that time B of A was telling us that  
3 we were making money hand over fist and our credit was  
4 excellent. Based on what I saw and meetings I had with  
5 Bank of America, it looked like it was.

6 Q. Got it.

7 And that's the information that was given to  
8 Chris. He did the returns, and then afterwards you guys  
9 found out, oh, no?

10 A. Right, and contacted the FBI and metropolitan  
11 police.

12 Q. Now, on page 67 of this transcript from the first  
13 time, you testified that there was an Epiphany entity  
14 where you kept your, quote, "private stuff"?

15 A. Yeah, Epiphany Surgery Centers I just had shares,  
16 my own personal shares, and the one share that belonged  
17 to Tammy and at some point we had shares of Smith too  
18 because he never got around to formally making his own  
19 corporation. So we would just cut him a check for his  
20 portion of Kingman ASC.

21 Q. Was that a separate entity then?

22 A. Yes.

23 Q. And what was the name of that entity?

24 A. Epiphany Surgery Centers. Dates way back before  
25 Solutions.

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1 Q. Got it. Got it.  
2 So Solutions is the one that's no longer a valid  
3 entity?  
4 A. Yeah. Neither of them are open anymore.  
5 Q. But Surgery Centers is the one where you kept the  
6 private stuff, and you just explained that private stuff  
7 were your own shares from Surgery Solutions and Tammy's  
8 share and Bill Smith's share?  
9 A. Yeah -- well, part of Bill's share for Kingman  
10 and my shares of all the ASCs was five or six at one  
11 point or another.  
12 Q. You had shares in five or six ASCs, we're talking  
13 ambulatory surgery centers.  
14 How many of the ASCs do you have shares in now?  
15 A. None.  
16 Q. What happened to those shares?  
17 A. I was bought out at one under protest and  
18 actually got a bit higher price after I sued them  
19 because it was ridiculously and ludicrously low priced  
20 for the shares. Recovered some of that. Kingman --  
21 Q. So that was the first one. Hold on. And what  
22 was the name of that one where you engaged in all the  
23 litigation, and they low balled you and you sued them?  
24 A. The one at Gold Ring. 3030 Gold Ring, I think it  
25 is.

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1 Prior to that I was bought out without any  
2 litigation, Corral Desert. I forget where Corral Desert  
3 was.  
4 Q. California?  
5 A. No. I think it's over in Utah. Out on the  
6 border.  
7 Q. Okay.  
8 A. And then --  
9 Q. So you talked about Corral Desert, and that was  
10 amicable?  
11 A. That was amicable.  
12 Q. Gold Ring 3030 was not amicable?  
13 A. Not amicable.  
14 Q. And then you were about to mention Kingman?  
15 A. Right. Kingman basically went out of business  
16 when two things occurred. One, the State of Arizona cut  
17 payments to ASCs, about two-thirds. From my perception  
18 and viewpoint the owners there overreacted because they  
19 had to pull back from that position shortly thereafter,  
20 but blamed Epiphany Surgical Solutions for the State of  
21 Arizona changing what they were paying for, and  
22 therefore, fired me despite, as a management person in  
23 Epiphany Surgical Solutions as a managing company  
24 despite the fact that I was making roughly half of their  
25 income per month. So they died within a year.

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1 Q. That doesn't make a lot of sense. What they were  
2 saying?  
3 A. They're doctors.  
4 Q. Did you fight back when they said this is your  
5 fault?  
6 A. Sure. I pulled all my cases out. I didn't have  
7 to do anything else.  
8 Q. Did they actually take the shares from you, or  
9 the shares just were worthless at that point?  
10 A. I have no idea what they did afterwards. They  
11 thought they were going to sell to the hospital, but I  
12 had talked to the hospital administrator who was Mormon  
13 as were the doctors who were being sent different  
14 messages about the hospital buying them out. And the  
15 hospital did exactly what they told me what they were  
16 going to do, which was not buy them out.  
17 Q. So was that litigious? Was there any litigation  
18 associated with the Kingman ASC?  
19 A. No.  
20 Q. You just pulled your --  
21 A. Pulled my cases out. There would be nothing to  
22 go after.  
23 Q. All right. And then so that's three, and then  
24 there were two or three more?  
25 A. Just two more, I believe. Well, actually I take

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1 it back. Three more. It's one surgery center that  
2 moved across the street from the long-term care hospital  
3 on Flamingo to the surgery center owned by Desert  
4 Springs Hospital. I killed it. Then I took it over and  
5 ran it for a few years. We made a profit and opened up  
6 the surgery center that your client owns the building  
7 of.  
8 Q. Got it.  
9 Now when you say you killed it and then took it  
10 over, can you explain?  
11 A. I took all their surgeons away from them pretty  
12 much and all their cases, and then they shut it down.  
13 And they tried to do a GI office, and I was making  
14 repeated offers to them to rent it or lease it or  
15 something, and I got a really good deal on it. So we  
16 moved.  
17 We were going to try to keep both of them opened,  
18 but two across the street from each other just didn't  
19 work out.  
20 Q. So at some point you acquired shares in that ASC?  
21 A. Right. And in all these ASCs except for the one  
22 at 3030 Gold Ring, or is it 2020 Gold Ring? Meds really  
23 do make you a little hazy. At any rate, whichever one  
24 the address is, except for that one where I was doing  
25 maybe 10 percent of the work and owned 4.6 or something

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1 percent. I take it back, 6.8 percent.  
 2 So I was even there doing more than the  
 3 percentage I owned, but not enough to make them happy  
 4 because I was doing so much more at the other surgery  
 5 center which they had to get permission from to open.  
 6 So they then threw me out despite the fact that  
 7 that was the agreement that had been made. They threw  
 8 me out because I was on the board and according to them  
 9 not doing everything I could for the surgery center.

10 Q. Okay.

11 A. So that's one, two, moved across the street to  
 12 the one behind Desert Springs and opened up the one on  
 13 the west side of town. That's it.

14 Q. That's it, okay. So that's five.

15 And this one that was owned by Desert SPRINGS  
 16 that was sort of a hostile take over?

17 A. It wasn't hostile.

18 Q. You kept making offers and at some point they let  
 19 you into the business?

20 A. The hospital didn't want to do it. There's a  
 21 management company that owns the real estate for the  
 22 hospital, and they wanted to do it. The hospital wasn't  
 23 too happy about it, but their parent corporation was or  
 24 sister corporation. I don't know which.

25 Q. So when you referenced private stuff, it was the

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1 shares from these five ASCs --

2 A. Five or six.

3 Q. Five or six, and then it was Tammy's share of --

4 A. She had one share of the original.

5 Q. -- solutions.

6 A. Opening it because -- yeah, Solutions -- she  
 7 didn't own in Solutions, actually. She owned the  
 8 original share in -- when we initially opened the first  
 9 one in Las Vegas.

10 Q. Okay. Okay. What was that original one?

11 A. At the Kindred Hospital.

12 Q. What was the name of that entity?

13 A. I don't remember. Sorry. I'm on meds. The  
 14 names kind of go.

15 Q. That's fine.

16 Now, this private Epiphany Surgical Centers, did  
 17 Wilcox do the books for this private entity?

18 A. Yes.

19 Q. And he did the tax returns?

20 A. Yes.

21 Q. And what's the address or the --

22 Does this private epiphany entity have a physical  
 23 address?

24 A. Sure. It was the second unit of the two units  
 25 that were repossessed.

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1 Q. Just recently?

2 A. Correct.

3 Q. By the --

4 During the foreclosure?

5 A. Correct.

6 Q. Okay, okay.

7 Now that foreclosure sale took place, you got a  
 8 notice of default and election to -- you got all the  
 9 foreclosure documents; right, on that before they did the  
 10 foreclosure?

11 A. Yes. We've been in negotiations with Bank of  
 12 America and later with them as to amending the  
 13 agreement, made one amendment with a gun held to my  
 14 head, essentially. And at that point when my health  
 15 further deteriorated, I gave up.

16 Q. Was that Gordon who negotiated?

17 A. Which?

18 Q. The amendment involving the foreclosure?

19 A. No. I pretty much had no choice. They were  
 20 either going to foreclose on me, or I agreed to what  
 21 they said. I had no choice whatsoever.

22 Q. Did they tell you --

23 Do you know what the deficiency is or how much  
 24 you still owe them?

25 A. No. My best guess is that they were asking about

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1 a quarter million more than it was worth.

2 Q. Did you know what the total amount that was owed  
 3 because there weren't payments made for a year, did you  
 4 know what --

5 A. No, I don't know. But the original place cost me  
 6 originally over 1.2 million. The loan was, like, 700  
 7 and something thousand. And it was the best of the  
 8 best, and I couldn't figure out -- talking to real  
 9 estate professionals it was worth maybe 550 at most.

10 Q. The place, the actual property?

11 A. Right.

12 Q. So they were under water about 200,000, give or  
 13 take?

14 A. Bank of America was. I think that the new place  
 15 probably they're not under water. They probably bought  
 16 it cheap is my guess.

17 Q. Got it.

18 Now, your private Epiphany entity that you  
 19 keep -- where you kept the shares, is that still  
 20 operating?

21 A. No.

22 Q. You closed that as well?

23 A. There's no reason to keep it open. If it's open,  
 24 it won't be open any longer. I think it's been closed  
 25 for a while.



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1 Q. Considering all the shares that you did have, you  
2 no longer have those shares and the ASCs in there, so  
3 you really don't have anything in that private entity  
4 anymore?

5 A. No.

6 Q. Besides your shares, did it have any other assets  
7 in there?

8 A. No.

9 Q. Okay.

10 A. It had Bill's shares. I already discussed that.

11 Q. Right.

12 A. And in Kingman for a while.

13 Q. Did it have a bank account?

14 A. Yes.

15 Q. Okay.

16 A. Kept everything separate.

17 Q. Is that bank account still operating or you don't  
18 know?

19 A. I don't believe that that one is open although I  
20 was told that I had to close a couple, but I think that  
21 was on the list. No, it's closed.

22 Q. And when that was closed, where was the money  
23 transferred to?

24 A. At that point there really wasn't any significant  
25 amount of money in it.

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1 Q. You would have just --  
2 It would have come to you?

3 A. Epiphany Surgery Centers?

4 Q. Yes.

5 A. Yeah, I was the sole owner of Epiphany Surgery  
6 Centers except for the 1 percent that I pretty much gave  
7 Tammy. There was no money left.

8 Q. Did you pay her some percentage every year  
9 because she owned the 1 percent?

10 A. Correct. And it varied as to 1 percent because  
11 it would vary depending on how many shares there was.

12 Q. When was the last year that you took money out of  
13 the private Epiphany entity?

14 A. Many years ago. Don't know how many.

15 Q. So it hasn't been active for years?

16 A. Yeah, it hasn't been active for years.

17 Q. Now, asking about Regent. You testified that  
18 Regent still existed, and the CEO is Tom something. But  
19 did you ever discuss what happened with Epiphany with  
20 Tom?

21 A. No.

22 Q. Why not?

23 A. What for?

24 Q. Was it different businesses, so he wouldn't  
25 have --

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1 A. No, we bought him out of the original -- okay,  
2 the original Kindred Surgery Center occurred because I  
3 was asked by Kindred Hospital to be their medical  
4 director and move my practice into their building, which  
5 I did, though I didn't become -- I was their medical  
6 director for a while. They wanted to reopen their two  
7 operating rooms. I told them there was no way that even  
8 I could keep two operating rooms open in Las Vegas; that  
9 what they should do is blow out a wall, make an entryway  
10 and make it into a surgery center and get a bunch of  
11 other doctors in there.

12 Kindred originally was going to keep, like, 17  
13 percent something like that. Then at the last minute,  
14 their attorneys because they were in trouble with other  
15 things, the government said, no, you better not go in  
16 with the doctors on anything. It might look like an  
17 illegal inducement, which it wasn't. According to my  
18 attorneys, there was no way it would be.

19 So they decided just to be the lessors. It was a  
20 big mistake on their part because it made a lot of  
21 money. Then they got plaza and moved over there.

22 Q. That's when you started Regent?

23 A. That's when we bought out -- actually, we bought  
24 out Regent before we moved. Regent was trying to get  
25 the office space over there even before I was, in the

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1 surgery center space at plaza surgery center, which is  
2 behind Desert Springs.

3 Q. So you bought that property from Kindred?

4 A. No. We didn't buy the property. We bought  
5 the --

6 Q. The practice?

7 A. The business of doing the management from -- and  
8 their percentage of ownership in from Regent as a group.

9 Q. Got it. Got it. Got it.

10 So Regent is Kindred?

11 A. No. Okay. Regent was one of three surgery  
12 center management companies that were brought in by the  
13 person that asked me to come and look at the building.  
14 Turned out I was last of many pain doctors they asked to  
15 do this. None of whom had the idea of doing the surgery  
16 center.

17 Q. Okay.

18 A. It turns out that the person they hired who found  
19 me had made another agreement with Tom Allen, which none  
20 of us knew about, to make him the vice president of  
21 Regent. So he recommended it, and we took his  
22 recommendation since he was the person whom Kindred had  
23 hired to make a determination of what to do with the  
24 building and who to do it with. That Regent be brought  
25 in. This made many people very unhappy when they found

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1 out about it.

2 **Q. And this person was?**

3 A. I don't remember his name right now.

4 **Q. So you bought out Regent for practice?**

5 A. No. It was we that -- doctors that were there  
6 that bought out Regent in mass including the contract.

7 **Q. And when you say we, you mean Epiphany Surgical  
8 Solutions?**

9 A. No. We I mean the doctors involved at the  
10 surgery center. They had to vote for it. I forget  
11 whether it's two-thirds or something like that, and then  
12 negotiate with Regent to get bought out.

13 **Q. So we're talking the same doctors involved with  
14 the surgery center on the west side?**

15 A. Right. On the east side, actually. And some of  
16 which we went on to the west side.

17 **Q. Got it.**

18 So the group of doctors who got together and  
19 bought out Regent, that was one group and then some of  
20 those doctors were involved in the east side practice --

21 A. Most.

22 **Q. Most of those doctors were involved in the east  
23 side practice, and then some of those doctors were  
24 involved in the west side practice as well?**

25 A. Well, we actually merged the two so they ended up

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1 -- you know, they were running one institution for all  
2 intents and purposes. It made it too difficult  
3 otherwise because who would do their cases or where?

4 **Q. That makes sense. That makes sense. Okay.**

5 **And Barnes worked at Regent?**

6 A. Correct. Barnes was originally hired by Regent.

7 **Q. Before he came over with the group?**

8 A. Right.

9 **Q. Got it. Got it.**

10 A. He was not my choice.

11 **Q. It was the surgeons involved with the --**

12 A. Correct.

13 **Q. -- the east side and the west side, they voted?**

14 A. They voted to keep Barnes.

15 **Q. Did you vote against?**

16 A. No.

17 **Q. You just abstained?**

18 A. I didn't abstain. I basically had no choice in  
19 the matter. It was kind of the deal, was one package to  
20 go for it or not.

21 **Q. So he came with the package?**

22 A. Correct.

23 **Q. And so you voted for it because you had no  
24 choice?**

25 A. Yeah, basically not, no.

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1 **Q. Okay. Okay. Now after the mess, did you go and  
2 talk to Tom and Regent and see if it had happened there  
3 with him?**

4 A. I received so many emails praising him to the  
5 skies from Regent that I didn't think that it would do  
6 any good.

7 **Q. So the forensic accountant did he go to Regent  
8 and see if anything had happened back there with Barnes?**

9 A. Not that I'm aware of. The FBI basically told us  
10 to stay out of it until they finished their  
11 investigation.

12 **Q. And they haven't told you that investigation is  
13 finished?**

14 A. Correct. I tried calling them twice.

15 **Q. Recently?**

16 A. I think the last time was a year or more ago. I  
17 take it back. Probably less than a year ago. A little  
18 over a year ago I talked to Agent Burris who told me  
19 that these things take a long time.

20 **Q. Okay.**

21 A. But they were actively working the case.

22 **Q. Did they affirmatively tell you don't file a  
23 civil action or don't investigate what happened?**

24 A. Well, she was actually on the case. She didn't  
25 say anything about it afterwards. I called her, and she

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1 had been promoted and was in New Orleans or in the  
2 Midwest or somewhere. Then she told me try to get Bank  
3 of America peacefully to resolve it, and if not,  
4 probably should wait to see what evidence we get before  
5 you proceed with anything. That's been a long time ago  
6 now.

7 **Q. Are there any other business entities in which  
8 you or Mary have any interest direct or indirect that  
9 isn't in your disclosure statement?**

10 A. Everything is in disclosure statement. It was  
11 Shadow Mountain, which is -- I'm pretty sure I covered  
12 it. We were set up in order to attempt to take over  
13 Shadow Mountain Surgery Center. That failed. And then  
14 since it failed, nobody had any money in it but me, I  
15 used it as a holding company for my electronic health  
16 records since it was my belief that they wouldn't work,  
17 and they haven't pretty much across the country.

18 So I think it still has maybe \$100 in the  
19 account. It's one of the ones I was told to go close.  
20 And I forget what the other one was I was told to go  
21 close. But essentially everything is defunct.

22 **Q. So everything is in your disclosure statement?**

23 A. Everything that I can remember, yeah.

24 **Q. Got it.**

25 **One last question on Regent before we go to**

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1 assets.  
2 When you acquired Regent or when the surgeons  
3 acquired Regent --  
4 A. We didn't acquire Regent.  
5 Q. Bought out Regent?  
6 A. Just the portion of Regent that owned the  
7 management contract and their shares of the one surgery  
8 center.  
9 Q. Okay. Did the surgeons then get possession of  
10 the financial records associated with that portion of  
11 Regent?  
12 A. Yeah, they did.  
13 Q. And those records you don't have them?  
14 A. No.  
15 Q. Dr. Belsky's accountant would have them since the  
16 accountant was doing the taxes for the surgery center?  
17 A. The more recent stuff, but Barnes walked off with  
18 almost everything, the computers.  
19 Q. Okay. He took all the financial records?  
20 A. All the financial records for Epiphany and for  
21 the surgery center.  
22 Q. How were the surgeons --  
23 How were you able to do your taxes without any of  
24 that financial information?  
25 A. You're going to have to ask --

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1 Q. Wilcox?  
2 A. Well, actually Wilcox, it's easy enough to do  
3 ours because we didn't get anything. So it was a loss.  
4 He actually put money in there and took it out  
5 illegally.  
6 Q. Got it. Got it.  
7 And so Dr. Belsky's accountant is going to have  
8 to explain how they did taxes without any financial  
9 information?  
10 A. I'd like to know because he had a couple meetings  
11 with me and never mentioned any impropriety.  
12 Q. So your motor home where -- and if you want to  
13 take a break, I know --  
14 MR. CROWE: Let's keep going. Can we keep  
15 going, Doctor?  
16 THE WITNESS: Let's keep going.  
17 MR. CROWE: We're reviewing everything we  
18 did last time anyway. I don't know.  
19 Are you ready to move on at all.  
20 MR. IQBAL: Yeah, yeah. I'm ready --  
21 talking about the motor home and the different assets  
22 that I didn't ask about last time.  
23 MR. CROWE: I'm hearing exactly what I heard  
24 last time to be honest.  
25 MR. IQBAL: Okay.

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1 BY MR. IQBAL:  
2 Q. Where is your motor home currently?  
3 A. It's over at the Oasis RV Resort.  
4 Q. Which state is it registered in?  
5 A. Nevada.  
6 Q. And it's in driving condition and you go back and  
7 forth between California and Nevada?  
8 A. No. It's sitting at the Oasis. It's not in  
9 drivable condition. The wheels and tire -- not wheels,  
10 but the tires need to be replaced, and the thing hasn't  
11 had anything done to it in quite a while. So just  
12 little things need fixing.  
13 Q. The tires and what do you mean little things?  
14 A. The tires. I've replaced some of the batteries  
15 because I had to, but I haven't replaced the other  
16 batteries. They're quite expensive. And then there are  
17 leaks in the toilet. There's a leak in the ice maker.  
18 There's little things that need to be fixed.  
19 Q. Do you have a range or an understanding of how  
20 much it would cost to fix it?  
21 A. No, I don't.  
22 Q. Have you had someone look at it and give you an  
23 estimate?  
24 A. No.  
25 Q. So some undetermined amount of work will get it

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1 back to running shape, but you don't know how much work  
2 or how much that would cost; correct?  
3 A. Correct. But we had, I believe, somebody come  
4 over and make an assessment of it last year. So they  
5 had an assessor come and assess the value.  
6 Q. Right.  
7 But not how much it would take to get it started  
8 again?  
9 A. Right. And things continue to deteriorate. So  
10 it will cost more than it would have then, yes.  
11 Q. Got it.  
12 You just don't have an estimate right now?  
13 A. No.  
14 Q. When was the last time it was driven?  
15 A. When it was moved to the Oasis. About the time  
16 that bankruptcy started, I think.  
17 Q. In your statement of financial affairs, you list  
18 that as your primary residence.  
19 You're living there?  
20 A. Correct. I'm living there.  
21 Q. And that's your full-time residence?  
22 A. No. It's more than half, less than full-time.  
23 Q. Okay.  
24 A. I have my mail delivered there.  
25 Q. Your mail is delivered there?

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1 A. Some of it. My personal, yeah.  
 2 **Q. Where else is your mail delivered?**  
 3 A. Some of it is delivered to the house at 1531  
 4 Mandalay Beach. Some of it that was going to the office  
 5 is now going to a P.O. box.  
 6 **Q. Where is the P.O. box? Somewhere in Vegas?**  
 7 A. Yeah, it's somewhere within a couple of blocks.  
 8 **Q. And your wife goes and collects the mail from**  
 9 **there?**  
 10 A. Correct.  
 11 **Q. Got it, okay.**  
 12 **Now, how much do you pay for the -- the rent or**  
 13 **the connections at the Oasis for the RV?**  
 14 A. Right around 875.  
 15 **Q. Per month?**  
 16 A. Yeah.  
 17 **Q. And is that in the disclosure statement?**  
 18 A. I have no idea if it is or not.  
 19 **Q. So when we talk about 875, that includes the**  
 20 **utility hook-ups, that includes the rent for the pad and**  
 21 **all that?**  
 22 A. Yeah, the utilities vary. That's close.  
 23 **Q. Got it.**  
 24 **So you'd say that's the cost to maintain your**  
 25 **more than half, less than 100 percent residence is 875,**

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1 900 a month, something like that?  
 2 A. Yes. Now in the summer it's in the 900s.  
 3 **Q. And we're talking all in, just the expenses**  
 4 **monthly because it's an RV, it's not going to be too**  
 5 **much?**  
 6 A. Yeah, I had to spend, I think, \$1,000, something  
 7 like that, on replacing some of the batteries.  
 8 **Q. Got it. Okay.**  
 9 **And you testified just now that you haven't had**  
 10 **any maintenance done on it in some time?**  
 11 A. Other than the batteries and some work on -- what  
 12 do you call it -- the urine --  
 13 **Q. The bathroom facilities. We'll just call it**  
 14 **that.**  
 15 A. Right.  
 16 **Q. Air conditioner still works?**  
 17 A. Yes, the air conditioner, thank God, still works.  
 18 **Q. Now, you testified that it is more than 50**  
 19 **percent your residence but less than 100 percent.**  
 20 **Where else do you reside?**  
 21 A. I go over and see my children a lot in  
 22 California.  
 23 **Q. Where do you stay when you're in California?**  
 24 A. At Mandalay Beach usually.  
 25 **Q. And do you use the property in Lake Las Vegas?**

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1 A. Storing still a few things at Lake Las Vegas, but  
 2 very little.  
 3 **Q. When was the last time you spent a night in the**  
 4 **Lake Las Vegas residence?**  
 5 A. A few weeks ago we spent a night there. We were  
 6 there for most of the night but not the entire night,  
 7 trying to move stuff.  
 8 **Q. So just to get your living situation really**  
 9 **clear, so I don't have to ask a million questions about**  
 10 **it, you spend most of your time at the RV at Oasis, but**  
 11 **you also spend some time in the Oxnard beach house?**  
 12 A. Correct.  
 13 **Q. And you spend some time in the Lake Las Vegas**  
 14 **house?**  
 15 A. Not really since the summer because the air  
 16 conditioners went out. So it became uninhabitable  
 17 during the summer.  
 18 **Q. I think we all understand that.**  
 19 A. Yeah.  
 20 **Q. You didn't get the air conditioners fixed?**  
 21 A. Too expensive.  
 22 **Q. Did you get a quote?**  
 23 A. The last people that fixed it gave me quotes, but  
 24 that was quite a while ago. I'm not up to date. The  
 25 bigger ones are close to 10,000, and the smaller ones ar

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1 6 or 7,000.  
 2 **Q. So we're talking over 20,000 to fix the air**  
 3 **conditioners?**  
 4 A. Yeah, that's my best guess.  
 5 **Q. When did you --**  
 6 **When did you acquire the motor home?**  
 7 A. Do we have the motor home disclosure somewhere  
 8 because I don't remember?  
 9 MR. CROWE: It's in the schedule somewhere.  
 10 THE WITNESS: More than ten years ago.  
 11 Maybe 2003 maybe. Yeah, I think it was 2003.  
 12 MR. IQBAL: That's more than enough in terms  
 13 of my question. No need to be exact there.  
 14 BY MR. IQBAL:  
 15 **Q. Do you have the maintenance and service records**  
 16 **for the motor home, or are they in the motor home?**  
 17 A. We haven't really been keeping them that long.  
 18 **Q. Okay.**  
 19 A. The motor home was used exclusively for business,  
 20 and it's technically in the name of one of my partners  
 21 that was my employee/partner for a few months and got  
 22 indicted by the Feds, went to jail because he didn't  
 23 listen to my wife and I when we told him he really  
 24 needed to do blood pressures on patients before you exam  
 25 them and charge the federal government.

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1 Q. So that was a partner?

2 A. Yeah, well, he would have become a partner had he  
3 stayed, but I bought him out of his contract because he  
4 was doing things -- and we were not in agreement how  
5 patients were to be treated, and he thought I was  
6 running up the expenses too high by doing urine tests on  
7 them to make sure they were taking the drugs and doing  
8 blood pressures and slowing down things and apparently  
9 not having sex with patients. So he's been spent a few  
10 years in federal penitentiary.

11 Q. So he --

12 Both of you purchased the RV for business 10  
13 years ago or 15, however long ago it was?

14 A. 2003. Yeah, his name was on it, but he  
15 relinquished it. He didn't want to pay for it anymore  
16 and hasn't.

17 Q. How were you using it for business? You were  
18 using it to go to different locations, or you actually  
19 had patients in the motor home?

20 A. Oh, No, we didn't have patients in the motor  
21 home. We used it instead of having to pay for hotel  
22 rooms in Kingman mostly. Once in awhile we would drive  
23 it somewhere else, but rarely. Too expensive to move  
24 it. Much more pleasant than a hotel.

25 Q. So then up until about a year ago, it was being

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1 used to move about, and then you just put it at Oasis,  
2 and basically it's not drivable right now, it's just  
3 sitting at Oasis?

4 A. I wouldn't go as far to say it's not drivable. I  
5 don't want to drive it too far. It needs tires, and I'd  
6 be afraid the batteries might die on me, things like  
7 that.

8 So it needs some work on it before I go very far.

9 Q. Understood, understood.

10 When was the last drive you took in it?

11 A. When we moved it to Oasis. I actually had  
12 somebody drive it for me, the person who came over to  
13 repair the batteries, because I didn't feel up to being  
14 able to drive it.

15 Q. Class C; right? It's the big one. I'm sorry  
16 class A is the big one.

17 A. It's a class A, diesel pusher.

18 Q. So let's talk about the airplane.

19 Are you a pilot?

20 A. I was.

21 Q. You were.

22 What years were you a pilot?

23 A. I took my first lesson in '96 or '97 opinion; is  
24 that right? Yeah, '96 or '97. It took a couple years to  
25 get my pilot's license because I was doing it mostly for

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1 business. I'm not sure when I officially became a  
2 pilot. But I since gained my IFR rating and went up  
3 from a regular prop airplane to a turbo prop airplane  
4 because I was using it so much for business, and it's  
5 safer.

6 Q. So you --

7 At some point after '97, you got your pilot's  
8 license, and you were using the Piper?

9 A. The Saratoga.

10 Q. The Saratoga?

11 A. Correct.

12 Q. Is Ms. Tadlock a pilot?

13 A. No, but she's had the short course for, you know,  
14 making an emergency landing.

15 Q. Does it need a copilot or is it just the one  
16 person?

17 A. No, it's not big enough. It's a weight thing. I  
18 think over 13,500 pounds or 12, 5000 pounds. Then you  
19 have to -- it's a determination made by the FAA whether  
20 it's single pilot or two pilot.

21 Q. Are there two --

22 A. Two seats in the front.

23 Q. Would she join you when you went for business  
24 trips?

25 A. Frequently, yes.

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1 Q. So you use the Saratoga, which is in your  
2 disclosure statements, you use that to go between what?  
3 Vegas and Kingman?

4 A. Kingman.

5 Q. And Vegas and Oxnard or just Vegas and Kingman?

6 A. Vegas and Kingman, Vegas and Laughlin, Vegas and  
7 Ely and sometimes a round trip all the way around going  
8 back and forth.

9 Q. Got it. Got it. Okay. Okay.

10 Did you --

11 What kind of ratings do you hold now? What can  
12 you fly right now?

13 A. Nothing. I'm on too many medications.

14 Q. Right.

15 So as far as the FAA is concerned, do you have  
16 your pilot's license and certification?

17 A. No. I haven't passed a physical in years.

18 Q. Got it. Okay.

19 So is it --

20 I guess that makes sense. You have to pass  
21 routine physicals to maintain your pilot's license?

22 A. Correct.

23 Q. And when was the last time you were a pilot?

24 A. Several years.

25 I transitioned from being a pilot to being a

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1 pilot some of the time with another safety pilot to not  
2 being a pilot at all as I got worse.

3 Q. So you haven't actually flown the Saratoga in  
4 awhile?

5 A. Oh, No. The Saratoga was sold back in 2005 or  
6 2006.

7 Q. Okay.

8 A. And I acquired the --

9 Q. The Piper?

10 A. Piper turbo prop.

11 Q. Right.

12 So I'm talking about the Piper because that's the  
13 one that's in this BK. The Piper --

14 When was the last time you flew the Piper?

15 A. A couple years. It's been on the ground so...

16 Q. Did you have your license last year in 2015?

17 A. No. Nor in 2014.

18 Q. Got it.

19 So you didn't renew it, or you didn't pass the --

20 A. With the amount of medications I'm on, the FAA  
21 would not let me fly. It would be the equivalent of  
22 flying drunk. So there's no way I would fly by myself.

23 Q. Okay. According to the third amended disclosure  
24 statement on page 20, you had income from leasing the  
25 plane in 2014?

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1 A. Yeah, I leased the -- okay. Icarus is the  
2 holding company for the airplane, for the previous  
3 airplane, and I was paying Icarus I think it was 7 or  
4 8,000 for the Saratoga, I think 10,000, and went up to  
5 12,000 something like that for the jet prop. But I'm  
6 not paying anything now because I don't have it. It's  
7 taken apart and sitting in Washington State.

8 On one of the annuals, the engineers at Salt Lake  
9 over-temp'd it three times. I could prove it because  
10 there's a little card that -- there's a machine that  
11 keeps tabs of the location and the temperatures and a  
12 little card that takes record. I have two cards, so I  
13 could pull one out, put the other one in and continually  
14 run it, because I was at basically almost 100 percent  
15 business. The IRS audited me, and they gave me money  
16 back, a lot back, 5 or 6,000. So they agreed that it  
17 was used almost entirely for business, and it was.

18 So when I got over-temp'd, we only flew it that  
19 year for 50 hours. My normal is 250 hours when I could  
20 do it, but I couldn't do it. And paying a pilot added  
21 to my stress on the aircraft. At about 50 hours he  
22 landed, which was good, because according to Pratt &  
23 Whitney, after you over-temp that engine, you're going  
24 to have an engine failure sometime between zero hours  
25 and 50 and crash landing if you're lucky.

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1 Q. Jeez. So there was a lot there. I want to break  
2 that down a little bit.

3 So when you say you leased it or you paid Icarus,  
4 by you, you mean the LTD?

5 A. Yeah. Charles H. Tadlock, M.D., LTD is where my  
6 attorneys and accountants recommend I hold it.

7 Q. And paid Icarus to lease the plane?

8 A. For business purposes.

9 Q. And up through 2014.

10 A. I don't know if it's 2014. It might be 2013,  
11 2014, somewhere in there.

12 Q. The disclosure statement says there was income  
13 from leasing in 2014.

14 A. Okay.

15 Q. And around that time a few years ago, you stopped  
16 actually flying it, and you hired a pilot?

17 A. Yeah. One of my former instructors for the most  
18 part, yeah.

19 Q. Then the LTD was paying the pilot or was it  
20 Icarus that was paying the pilot?

21 A. Don't know. Don't remember. I think it was  
22 going through -- I think paying the pilot ended up going  
23 through Tammy simply because it was easier for the pilot  
24 to do it.

25 Q. Right.

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1 It looks like from the --

2 A. Charged off -- charged off somehow or another to  
3 Icarus or about taxes or something. I don't know. You  
4 have to look at the taxes to figure that one out.

5 Q. Okay. And when did you get the Piper?

6 A. I said already. 2006 roughly.

7 Q. Okay. What was the purchase price?

8 A. I think they were asking 690, and I got 10,000  
9 off for letting them have the radar. So somewhere  
10 around 680.

11 Q. Did you individually purchase it, or did the LTD  
12 purchase it?

13 A. I don't remember who purchased it. Icarus, I  
14 think, purchased it.

15 You know, you have all this stuff in -- my memory  
16 isn't that good. So you have all the stuff in the  
17 disclosures as to who bought what when.

18 Q. Okay. And the plane in 2015, last year, was not  
19 operable?

20 A. No.

21 Q. Because you said the engineers in Salt Lake they  
22 screwed it up?

23 A. They over-temp'd it, and they paid for having it  
24 flown over to Arizona, somewhere Phoenix I think, and  
25 taken completely apart and x-rayed and all this over

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1 stuff and all the parts replaced back in and shipped the  
2 engine back. But I have not had the money to pay for  
3 the engine repairs and the other stuff. So I got an  
4 annual, if I was able to use the plane because I  
5 couldn't fly it. And now it's out of annual again. So  
6 it needs another annual for another 35,000.

7 **Q. So when you say annual, you mean annual**  
8 **inspection?**

9 A. Annual inspection. You can't fly an airplane  
10 unless it's at the minimum looked at once a year,  
11 depending on what part of the FAA and FARs you're flying  
12 under.

13 **Q. And an annual inspection costs 35,000?**

14 A. Uh-huh, pretty much for a turbo prop.

15 **Q. And how much would it cost to fix the plane?**

16 A. Unanswerable question. To make a determination  
17 of what you want fixed on it and what level of fixing  
18 you want. I owe them, I think, about 35,000, and I  
19 think it would be about another 35 to get it through an  
20 annual, possibly more because I know last time -- well,  
21 they thought that they should have overhauled the prop.  
22 That's 11,000 by itself.

23 **Q. Overhaul the propeller?**

24 A. The propeller, and then the side windows -- I  
25 already replaced the front windows, but I haven't

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1 replaced the side windows. That's another actually  
2 unknowable amount because they don't make them anymore.  
3 So you have to find them and replace them.

4 **Q. So you don't have an actual --**

5 You didn't get a specific estimate of how much it  
6 would cost to make the plane operable?

7 A. No, I haven't.

8 **Q. And your best guess is somewhere in the range of**  
9 **70,000?**

10 A. No, I'm not --

11 MR. CROWE: If you look at the Schedule C,  
12 he owed 35,000 for last year's work when he filed.

13 MR. IQBAL: Okay.

14 MR. CROWE: So he's talking about another  
15 35,000 for this year basically.

16 THE WITNESS: Yeah, every calendar year you  
17 have to do it.

18 MR. IQBAL: Right.

19 BY MR. IQBAL:

20 **Q. And that's the annual inspection. I'm just**  
21 **trying to find out how much money it would take to make**  
22 **the plane operable to the point where it could, say, be**  
23 **leased out or it could provide value. That's the**  
24 **question I'm asking.**

25 A. Leased out, I don't think you could get it leased

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1 out for a number of reasons. To get it operable a  
2 minimum of 35, 40,000.

3 **Q. Now, you said just now that you don't think it**  
4 **could be leased out for a number of reasons.**

5 **What are those reasons?**

6 A. Well, there are very few people who are rated in  
7 that plane. Generally they buy them. They don't lease  
8 them. They may lease them to run their corporation, but  
9 mainly these people, you know, they have their  
10 corporation buy it for the deduction and that. And  
11 there just aren't that many people who are rated on that  
12 airplane.

13 **Q. So 35 to 40K to make it operable, best guess?**

14 A. Yeah, at a minimum. Most buyers would want more  
15 done to it than that.

16 **Q. And you haven't gotten a -- you know, had a**  
17 **mechanic give you an exact detailed sheet of what needs**  
18 **to be fixed?**

19 A. They can't until they pull it apart.

20 **Q. And that would take 35,000 for the annual**  
21 **inspection?**

22 A. My guess is it's going to cost more than 35,000,  
23 but, yeah, about what it cost last time. And there's  
24 even more things that need to be fixed this time that  
25 they said should have been fixed last time but were

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1 going to give pass on because they couldn't find the  
2 parts.

3 **Q. Got it. Okay. All right.**

4 So you didn't make any use of the airplane, the  
5 Piper, in 2015?

6 A. No.

7 **Q. Okay. All right.**

8 **What are your plans with the Piper?**

9 A. I haven't made any since everything is in such a  
10 state of transition.

11 **Q. And right now you don't want to make the payments**  
12 **because you said in the disclosure statement, quote,**  
13 **"required repairs have not been paid for." You made**  
14 **that decisions not to make the repairs at this time;**  
15 **correct?**

16 A. Correct.

17 **Q. And the reason for that?**

18 A. One, the practice was going downhill, my health  
19 was going downhill and the insurance company that should  
20 have been covering the costs associated with my having  
21 the plane down, which was a lot because I lost a day  
22 going up or a day coming back, have not paid me a cent.

23 **Q. Did someone have to tell you that it wasn't**  
24 **operable, or you just knew in your own experience that**  
25 **it's not able to fly right now?**

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1 A. I just told you that under FAA regulations I  
2 forget which FAR it is, I think it's flying under FAR 90  
3 now. You have to have an annual inspection every year;  
4 therefore, you cannot fly the airplane right now unless  
5 you get a special dispensation from the gods at the FAA  
6 to move it from there to another place to have it looked  
7 at, torn apart, fixed, and they give you a statement  
8 that the plane is in flyable condition.

9 Q. And where is it now?

10 A. In Washington State.

11 Q. Are you paying hanger fees to have it stored up  
12 there?

13 A. I'm paying the insurance as per the judge's  
14 instructions to me.

15 Q. So you're paying the insurance on the plane  
16 still?

17 A. Correct.

18 Q. And are you paying hanger fees in Washington?

19 A. They haven't sent me a bill for hanger fees.

20 Q. And when was it transported to Washington?

21 A. August or September a couple years ago.

22 Q. In 2014?

23 A. Probably, yeah.

24 Q. Because that's the last year that there was  
25 leasing income from --

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1 A. Probably would have been September. Either  
2 August or September.

3 Q. They haven't --

4 A. Sometime in September that they over-temp'd it  
5 three times.

6 Q. So they haven't sent you a bill for the hanger  
7 for over a year and a half?

8 A. No. They know what my condition is.

9 Q. Will they send you a bill later?

10 A. I assume I'm going to get a bill for a lot at  
11 some point.

12 Q. Typically how much does it cost?

13 A. I already told you.

14 Q. No, no. Hanger? How much does it cost to keep a  
15 plane at --

16 A. I doubt that they're hangaring it. It's probably  
17 outside. Last time I heard they didn't put the prop on.  
18 So a little place like that in the middle of nowhere,  
19 \$50 a month, \$100 a month.

20 Q. All right. Now in 2014 when it was leased to the  
21 LTD, was there a formal lease or it was just -- was  
22 there a written lease?

23 A. Yeah, it was a written lease.

24 Q. Okay. You signed for both parties? You signed  
25 for Icarus --

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1 A. I don't remember.

2 Q. But you ultimately control the LTD and Icarus;  
3 right?

4 A. Well, Icarus is actually owned by -- you're going  
5 to have to discuss that with my attorneys. Icarus is  
6 actually owned by my family trust. So theoretically, I  
7 guess, Kent Greene has the final judgment on it.

8 Q. Was it leased at the standard rates that anybody  
9 would lease a turbo prop?

10 A. Yeah.

11 Q. Like, it was just standard across the board?

12 A. I guess airplanes, you know, keep up with the  
13 King Air, half the price.

14 Q. Okay.

15 A. It would be hard to find anything that would more  
16 effectively or cheaply transport you.

17 Q. So hypothetically, if the repairs are done and  
18 someone pays the annual inspection fee, it would be  
19 operable?

20 A. Right. If they pay the arrears and have it  
21 fixed, it would be operable.

22 Q. Besides the LTD which leased the plane in 2014,  
23 did any other businesses lease it?

24 A. No.

25 Q. It's just been your own internal businesses?

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1 A. Correct.

2 Q. Did you make use of the plane for any personal  
3 trips in 2014?

4 A. No. I'm not absolutely certain that I might not  
5 have stopped somewhere, but I don't think I made any  
6 personal trips anywhere at all actually. I think under  
7 the IRS regs everything that I did on it was deductible.

8 Q. As a business trip?

9 A. Right. You have to go out and practice every  
10 once in awhile too. So I had so few hours on it.  
11 Anything that was on it above business would have been  
12 practice because you have to stay current.

13 Q. Got it.

14 The third amended disclosure statement on page 21  
15 says the hanger that houses the plane was, quote,  
16 "disposed of in 2014"? You sold a hanger here?

17 A. I don't know what year it was, but, yeah, I sold  
18 the hanger when I was unable to work.

19 Q. Okay. Okay.

20 A. So I had three emergency back surgeries, one a  
21 year before and two within three months of each other.

22 Q. And you made that decision to sell the hanger?

23 A. Yeah, because I had no -- you know, no income. I  
24 was lucky to be able to sell it. It's a bad market for  
25 hangers for airplanes.



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1 Q. Who did you sell it to?

2 A. Nice people that live up in Oregon or Washington.

3 I don't remember their names. That's all in the

4 disclosures.

5 Q. But it says that it was disposed of, but I don't

6 know if the buyers are listed. So just curious on that.

7 So you've listed two creditors as having an interest in

8 the plane, Jet Prop, LLC, and Citizens Bank.

9 What is Jet Prop, LLC?

10 A. That's the place where they did the most recent

11 annual.

12 Q. And that's when you mentioned previously that you

13 still owe them for --

14 A. Correct.

15 Q. You owe them for the annual that they did?

16 A. Yeah, my part of the annual. I think the

17 insurance company has already paid 120,000 or something

18 for the damage that they did, but they haven't

19 reimbursed me at all for the damage that they did to me

20 or my practice.

21 Q. Who's they?

22 A. The insurance company for the Salt Lake.

23 Q. And when did they damage it? They damaged it in

24 2014?

25 A. When they over-temp'd it. I think it was 2014,

Page 75

1 yeah.

2 Q. And so you have a claim against them?

3 A. Yeah, I've been attempting to pursue it nicely by

4 sending them letters.

5 Q. And recently you've sent them letters as well?

6 A. I haven't sent them anything recently. It's been

7 months.

8 Q. This claim what's -- they damaged the plane. How

9 much do you think they owe you?

10 A. They damaged the plane, but they, quote, "fixed

11 the engine," and they admit that they owe me something

12 for my time, but apparently, I've sent them the bill,

13 I've had my accountant check and recheck the bill, and

14 sent it to them and Gordon is aware of it, but I haven't

15 had enough money to be wasting it on attorneys on a

16 small possibility that I'm going to get anywhere near

17 what it cost me back.

18 Q. How much do you think they owe you?

19 A. Over \$100,000.

20 Q. And is this claim listed in your schedules?

21 A. I have no idea if it is or not because I'm

22 probably never going to get paid it honestly. They're

23 going to argue it. That's -- they would argue it any

24 way, which is why -- under the policy, they were

25 supposed to get me an airplane equivalent, but the only

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1 way they would do it is if I went out and rented the

2 airplane myself and paid for it, and then they would

3 have supposedly pay me back. The supposedly is the bad

4 part because to rent one and not get paid, there's no

5 way I could afford that at that time.

6 Q. When you say they, you're talking about the

7 insurance company?

8 A. Insurance company.

9 Q. And that's separate from the engineers that

10 screwed it in up in Salt Lake by over-tempting it?

11 MR. CROWE: No, that's their insurance

12 company.

13 THE WITNESS: That's their insurance

14 company.

15 MR. IQBAL: Got it. That makes sense.

16 Thank you.

17 BY MR. IQBAL:

18 Q. So you sent letters, but haven't filed suit or

19 anything?

20 A. Sent letters, I had accountants and my staff draw

21 up every hour that I lost, every day that I lost, the

22 amount of income I would have generated. The

23 accountants verified the amount of money I would have

24 generated, and I have heard nothing back from them for

25 months. So I don't think they'll do anything unless

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1 legal action is taken at this point.

2 Q. And right now you're not going to take legal?

3 A. No. I'm paying enough attorneys enough money as

4 it is.

5 Q. Who is Peter Terrault, T-E-R-R-A-U-L-T?

6 A. No idea.

7 Q. He's listed of Ely, listed as the manager of Jet

8 Prop, LLC?

9 A. In Ely or in Spokane?

10 Q. He's listed of Ely, listed as the manager of Jet

11 Prop, LLC?

12 A. Really. I didn't know he was from Ely. Then it

13 must be him. I don't know.

14 Q. He's the individual associated with Jet Prop, not

15 their insurance?

16 A. Not the person that I was dealing with. The

17 person I dealt with died last year when he was taking a

18 jet prop up. They lost control and crashed and he died.

19 Q. The name of this individual deceased?

20 A. Give me a sec.

21 MR. CROWE: I'm just objecting to the

22 relevance. I have no clue what this is about.

23 MR. IQBAL: I'm just asking about the plane.

24 It's a significant asset.

25 THE WITNESS: But the person who died?

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1 MR. CROWE: The manager of Jet Prop, LLC, I  
2 don't understand what that has --

3 MR. IQBAL: They may owe the estate  
4 \$100,000.

5 THE WITNESS: No.

6 MR. CROWE: Jet Prop, LLC, is where the  
7 plane is now. They did the annual after it was  
8 supposedly repaired; right?

9 THE WITNESS: Correct. They did the annual  
10 after Salt Lake City did the over-tempering. I've said  
11 that multiple times.

12 BY MR. IQBAL:

13 Q. And the name of the insurance company?

14 A. Oh, I don't remember that.

15 Q. Okay. All right.

16 So Exhibit Z to the third amended disclosure  
17 statement lists plane expense 6630 and then plane  
18 insurance 2,281.

19 Is that insurance to the plane, \$2,281?

20 A. I don't know. You'll have to look.

21 Q. It's not clear from Exhibit Z, so that's why I'm  
22 asking you.

23 A. Okay. The insurance for the plane.

24 MR. CROWE: Exhibit Z is your profit and  
25 loss from LTD. So you have some insurance listed here

Page 79

1 somewhere.

2 THE WITNESS: I can tell you approximately.

3 MR. CROWE: It says plane insurance 2281.

4 BY MR. IQBAL:

5 Q. Is that yearly or is that monthly?

6 A. Yeah, that would be about right. 6,000 --  
7 originally it was 21,000 a year. Then it dropped down  
8 to about 6600. But since it's not in flight, it's a  
9 little bit less now.

10 Q. So when the plane is active and working,  
11 insurance is about 21,000 a year?

12 A. Was. Now it's dropped because I have so many  
13 hours in it now. But they wouldn't insure me now  
14 because I'm uninsurable in it.

15 Q. You're currently paying just the 2281 on a  
16 three-month basis or a yearly basis?

17 A. I'm not sure where they get the 2281. Honestly  
18 I'm not.

19 Q. Do you have other expenses associated with the  
20 plane right now besides insurance?

21 A. I'm sure they're charging me for the hanger and  
22 the 35,000 and interest on it and that, but the -- that  
23 may include the payments on it.

24 MR. CROWE: The only plane expense on here  
25 is the plane insurance.

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1 THE WITNESS: Okay. Let me take a look.

2 Okay. So an agreement that plane insurance  
3 is \$2,281. October, December, 2015. Yeah, that sounds  
4 about right.

5 BY MR. IQBAL:

6 Q. So every three months it's a check for 2200?

7 A. No. It's about \$64,000 a year in flight, and not  
8 in flight it's about 2281.

9 Q. So yearly you're paying -- because it's grounded  
10 you're paying 2281 yearly?

11 A. Yeah, something like that or 3,000. I'm not sure  
12 of the exact amount. It's less because it's grounded.

13 Q. I get that.

14 The money is paid to your insurance company  
15 that's covering the plane?

16 A. Correct.

17 Q. And so they, obviously, have different levels  
18 depending on --

19 A. How much experience.

20 Q. How much experience, how many hours the plane has  
21 and then obviously whether it's operable or not. And  
22 since you're not operating it's the lowest level  
23 insurance?

24 A. Yeah, it's the lowest level of insurance it would  
25 be. I have a lot of hours in it, and I kept more

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1 insurance on it than minimum.

2 Q. Okay. Any other expenses that you have besides  
3 the insurance? And I'm not talking about the annual  
4 inspection that you have to pay for, I'm not talking  
5 about the hanger fees because they haven't charged you  
6 for the hanger fees yet. Any other expenses that you  
7 have on the plane?

8 A. Not that I'm aware of, no.

9 Q. And you've paid taxes to the Clark County  
10 assessor on the plane?

11 A. Annually?

12 Q. Yeah.

13 A. Yeah, I think so. I think so. Isn't it personal  
14 property taxes or something? Yeah. Yeah, personal  
15 property taxes, which -- and I think that's being paid  
16 too. So that would be an expense that's ongoing.

17 Q. And that's in Exhibit BB. I'm just trying to get  
18 a gauge of the expenses associated with the assets.

19 So it says Clark County assessor, 3633, does that  
20 ring a bell?

21 A. Not really, but that's probably about right.

22 Q. And --

23 MR. CROWE: I just want to again, objection,  
24 for the record. You're asking questions about expenses  
25 of Charles H. Tadlock, M.D., Limited, and we've been

<p style="text-align: right;">Page 82</p> <p>1 doing this now for two days in these depositions. I  2 don't understand where you're going with it.  3 MR. IQBAL: Well, these expenses are  4 associated with the income that he's going to get --  5 MR. CROWE: The exhibit you're talking about  6 --  7 MR. IQBAL: Right, it's in the disclosure  8 statement; right?  9 MR. CROWE: -- is for Charles H. Tadlock,  10 M.D., Limited.  11 MR. IQBAL: Which is going to contribute a  12 significant portion of the disposable income that's  13 going to pay the creditors; right?  14 MR. CROWE: Probably not anymore.  15 MR. IQBAL: Right, but because it's in the  16 disclosure statement, I'm allowed to ask questions about  17 it; right?  18 THE WITNESS: Can I go pee while you guys  19 argue?  20 MR. IQBAL: Off the record.  21 (A brief discussion was held off the record.)  22 BY MR. IQBAL:  23 <b>Q. So we're back on the record.</b>  24 <b>When you look at the profit and loss, it looks</b>  25 <b>like there was some money coming in for plane pilot of</b></p>	<p style="text-align: right;">Page 84</p> <p>1 clear, so that item is under expenses, but it's a  2 negative which means it's actually an income item. I  3 don't have any explanation for exactly that --  4 THE WITNESS: Okay. Which one --  5 MR. IQBAL: That's what I was asking.  6 MR. CROWE: It's under expense, but it's a  7 negative.  8 THE WITNESS: For what year?  9 MR. CROWE: 2015.  10 THE WITNESS: Oh. Oh, yeah.  11 MR. IQBAL: You see why I'm asking that  12 because it looks like you got paid for 45,000 for the  13 plane pilot. That's my question.  14 THE WITNESS: For the six -- I had an  15 employment contract with Ely Hospital that paid for my  16 expenses going back and forth for a plane and pilot.  17 MR. IQBAL: Okay.  18 THE WITNESS: Okay. That's what that was  19 from.  20 BY MR. IQBAL:  21 <b>Q. So they paid you 45,000 for going back and forth?</b>  22 A. Didn't matter whether it was a car or plane or  23 pilot or what. They were paying me a certain amount per  24 month to get back and forth.  25 <b>Q. And you didn't have to show invoices or anything</b></p>
<p style="text-align: right;">Page 83</p> <p>1 45,600.  2 MR. CROWE: It's a negative item. Please  3 read it carefully.  4 MR. IQBAL: What do you mean negative item?  5 MR. CROWE: It's negative. Are you talking  6 about Exhibit BB?  7 MR. IQBAL: Yes.  8 MR. CROWE: Okay. You see the negative  9 there before the item?  10 BY MR. IQBAL:  11 <b>Q. So that's an expense that LTD paid?</b>  12 A. Yeah. I had to have a pilot.  13 <b>Q. In 2014?</b>  14 A. Correct.  15 <b>Q. And were any amounts paid for a pilot in 2015?</b>  16 A. In 2015? Yeah.  17 <b>Q. The plane was not in use, were you still paying a</b>  18 <b>pilot?</b>  19 A. In 2015? I may have been paying back some from  20 2014, when I was behind in 2014.  21 <b>Q. But after the plane was no longer in use, you</b>  22 <b>stopped paying for the pilot obviously?</b>  23 A. Yeah, but I was behind for a while in 2014, so I  24 don't know.  25 MR. CROWE: Just for the record, so it's</p>	<p style="text-align: right;">Page 85</p> <p>1 <b>because obviously the plane wasn't in use at that time;</b>  2 <b>they were still just paying you?</b>  3 A. The contract was for a set amount.  4 MR. CROWE: So when they booked it, instead  5 of booking it under income, they booked it as an  6 adjustment to the expense.  7 MR. IQBAL: Got it. Now we're clear. Thank  8 you.  9 BY MR. IQBAL:  10 <b>Q. This contract that you had with Ely that was what</b>  11 <b>this 45,000 is from, did you have the same contract in</b>  12 <b>2013 and 2014 and years prior after 2006?</b>  13 A. They changed slightly but not a lot.  14 <b>Q. So they're paying the LTD for your travel?</b>  15 A. Previously some years ago they used to do it and  16 take the actual pilot and plane expense and pay it as a  17 separate item. They decided they didn't want to do that  18 anymore, so they just did a lump sum. Because if it  19 wasn't a plane or pilot, then I was spending a day  20 getting to Ely and a day getting back. So it didn't  21 really matter one way or the other how they paid it.  22 Does to me because I made less money, but...  23 <b>Q. Got it.</b>  24 <b>And that contract is over now?</b>  25 A. Yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. When did it end?</p> <p>2 A. You have this already. I don't remember. Middle</p> <p>3 of 2015. Middle of 2014. I don't remember.</p> <p>4 MR. CROWE: I think he previously testified</p> <p>5 it was October?</p> <p>6 THE WITNESS: No. It was August. I think</p> <p>7 it was early August.</p> <p>8 MR. IQBAL: That's fine. That's fine.</p> <p>9 2015?</p> <p>10 THE WITNESS: I'm not sure if it was 2015.</p> <p>11 Honestly, I don't remember if it was 2015.</p> <p>12 MR. IQBAL: That's fine.</p> <p>13 THE WITNESS: Hold on a second. Let me</p> <p>14 think. I don't remember.</p> <p>15 MR. IQBAL: That's fine.</p> <p>16 BY MR. IQBAL:</p> <p>17 Q. You've listed a house in California in the third</p> <p>18 amended disclosure statement.</p> <p>19 Do you own any other property in California?</p> <p>20 A. No.</p> <p>21 Q. Do you own any other property that's not listed</p> <p>22 in your disclosure statement?</p> <p>23 A. No.</p> <p>24 Q. Okay. Is your house in California occupied by</p> <p>25 anyone?</p>	<p style="text-align: right;">Page 88</p> <p>1 helps bring the patients back. She -- kind of like the</p> <p>2 other assistants. She generally helps me travel. She</p> <p>3 does medical records primarily and with scheduling</p> <p>4 patients.</p> <p>5 Q. Was she doing this from California?</p> <p>6 A. No. At the time she was living here. She's</p> <p>7 living there now.</p> <p>8 Q. Right.</p> <p>9 A. Before she was living here.</p> <p>10 Q. When did she move out to California?</p> <p>11 A. She moved out to California when my charts moved</p> <p>12 to California, but she was here as short a time ago as</p> <p>13 last week.</p> <p>14 Q. Got it.</p> <p>15 So until your charts moved to California, which</p> <p>16 was very recently, no one was occupying the house in</p> <p>17 Oxnard?</p> <p>18 A. No. We were there part-time.</p> <p>19 Q. Right.</p> <p>20 You mentioned that before, but nobody else?</p> <p>21 A. No. I haven't rented it out or leased it or</p> <p>22 anything else, no.</p> <p>23 Q. Okay. Is it listed with anyone as a rental</p> <p>24 property or is it for sale?</p> <p>25 A. No. Neither.</p>
<p style="text-align: right;">Page 87</p> <p>1 A. My daughter pretty much full-time since she</p> <p>2 finished the University of Hawaii. My wife and I once</p> <p>3 in awhile. My children when they're out of school.</p> <p>4 Q. Is your daughter paying rent?</p> <p>5 A. Is my daughter paying rent? No, I'm paying her</p> <p>6 because she's taking care of all the charts for me.</p> <p>7 Q. Got it.</p> <p>8 How much are you paying her?</p> <p>9 A. You have to look at the amounts. It's, like,</p> <p>10 \$800 twice a month or something like that.</p> <p>11 Q. And since you just moved the charts over, you</p> <p>12 just started paying her for the charts?</p> <p>13 A. No. Before that she was actually helping me by</p> <p>14 driving me to work or working at the office.</p> <p>15 MR. CROWE: Dr. Tadlock, we're trying to</p> <p>16 move this along, but be careful when you're asking these</p> <p>17 questions. Are you paying it or is the LTD paying it?</p> <p>18 THE WITNESS: Okay. The LTD is paying it.</p> <p>19 BY MR. IQBAL:</p> <p>20 Q. So is she an employee of the LTD?</p> <p>21 A. Yeah, she has been for years.</p> <p>22 Q. Your daughter?</p> <p>23 A. Yeah.</p> <p>24 Q. And what's her formal job title?</p> <p>25 A. Basically like my other medical assistants. She</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Neither of those things, okay.</p> <p>2 When did you acquire the house?</p> <p>3 A. That's in there. More than ten years ago.</p> <p>4 Q. Okay. Okay.</p> <p>5 And --</p> <p>6 A. And it wasn't me. It was actually Charles H.</p> <p>7 Tadlock, Mary Tadlock Qualified Residency Trust or</p> <p>8 whoever bought it. It's been in the trust for more than</p> <p>9 ten years. Never been moved out.</p> <p>10 Q. So it's never been leased or rented out in the</p> <p>11 time since you bought it?</p> <p>12 A. Not once.</p> <p>13 Q. Okay. And your daughter recently moved out</p> <p>14 there, and the plan is for her to stay in the house</p> <p>15 full-time?</p> <p>16 A. We haven't really decided yet. She hasn't</p> <p>17 decided yet, but I expect not. She's planning on going</p> <p>18 on to grad school.</p> <p>19 Q. Has anyone appraised the house in the last three</p> <p>20 years?</p> <p>21 A. I don't think so, no.</p> <p>22 Q. So there have been no appraisals, no sale value</p> <p>23 or no appraisal of rental value or anything like that?</p> <p>24 A. No.</p> <p>25 Q. You've never put it up for listing?</p>

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1 A. Never.

2 Q. And what you said in your statement of financial  
3 affairs that your primary residence is the motor home,  
4 that's still correct?

5 A. That's still correct.

6 Q. Do your neighbors in California lease or rent  
7 their homes?

8 A. I would have no way of knowing. But actually I  
9 think it's against -- to get back, I think it's against  
10 the regs that you do it for more than a couple weeks a  
11 year. You have to do it all of the time or none of the  
12 time almost.

13 Q. Okay. The house in Lake Las Vegas, is it  
14 currently occupied by anyone outside of your infrequent  
15 visits?

16 A. No.

17 Q. So it's basically empty?

18 A. Yeah, it's -- it's uninhabitable most of the  
19 year.

20 Q. Because of the air conditioning?

21 A. Correct.

22 Q. Outside of the air conditioning, which we talked  
23 about, would be approximately 20,000 or more to fix, are  
24 there any other problems with the house?

25 A. Yeah, it needs to be repainted, the refrigerator

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1 and the freezer aren't working, the microwave isn't  
2 working. There's a lot of stuff that it needs done.

3 Q. Okay. When was the last time it was occupied on  
4 a regular basis? When did you last live there?

5 A. Previous to last summer. I can't tell you the  
6 exact date. It's been awhile because it became  
7 uninhabitable over the summer.

8 Q. Is that when you made the decision to move  
9 everything primarily over to the RV in Oasis?

10 A. Well, Yeah. Primarily, everything in the house?  
11 No. But primarily us? Yes.

12 Q. And have you --

13 So you haven't leased or rented your home in  
14 Nevada to anyone?

15 A. No. It's also in a qualified personal residency  
16 trust for more than ten years. In that case a lot more  
17 than ten.

18 Q. And have you ever leased that house?

19 A. No, never.

20 Q. Have you ever put it for sale?

21 A. No, I never have.

22 Q. When did you acquire that house?

23 A. I'm guessing 2002, 2003, but it's a guess. It's  
24 well more than ten years.

25 Q. Got it. Okay.

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1 So how often do you actually go to that house? I  
2 know you mentioned once in awhile you'll go there. Last  
3 time you stayed most of the night, but you didn't stay  
4 the whole night. How often do you actually go in and  
5 check the house? Do you have plants? Do you have other  
6 things that you need to take care of there?

7 A. Yes. My wife goes there frequently especially  
8 because of the plants because it needs a new irrigation  
9 system. We have an aboveground one that doesn't work  
10 very well. We get in frequent arguments with  
11 homeowners' association about it.

12 Q. Do you have a boat there?

13 A. No, I have a dock that's there.

14 Q. And you're paying a slippage fee?

15 A. Yeah. I think \$200 a month or something like  
16 that.

17 Q. Why are you still paying the fee if you don't  
18 have a boat?

19 A. Because it's part of the homeowners' association.  
20 Otherwise, they come after me and the house.

21 Q. Oh, so you have to pay that fee even if you don't  
22 have a boat?

23 A. Correct. It's the way it is. You have the dock,  
24 you have to pay the fee.

25 MR. CROWE: I think that's true down there.

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1 THE WITNESS: It is.

2 BY MR. IQBAL:

3 Q. And have you had the house appraised, sale value  
4 or leasing value, rental value, anything like that?

5 A. Yeah. We did have somebody assess that one,  
6 didn't we?

7 MR. CROWE: Yeah, it was appraised for  
8 purposes of the plan.

9 MR. IQBAL: No, that's fine. That's fine.  
10 I was just -- I understand that there was an appraisal  
11 by Bank of America with respect to the plan. I'm asking  
12 did you separately outside of that before filing the  
13 petition?

14 THE WITNESS: No.

15 MR. IQBAL: You haven't, okay.

16 THE WITNESS: Nothing.

17 BY MR. IQBAL:

18 Q. All right. Okay.

19 Is there any other real estate that you or Mary  
20 have any interest direct or indirect that's not listed?

21 A. No. Nothing.

22 Q. Any other properties, any other, like, IP or  
23 shares in any companies or any other kind of assets that  
24 aren't listed in the --

25 A. Everything is pretty much defunct at this

<p style="text-align: right;">Page 94</p> <p>1 juncture.</p> <p>2 <b>Q. But everything you have is listed in the --</b></p> <p>3 A. To the best of my knowledge, everything is</p> <p>4 listed.</p> <p>5 <b>Q. In the schedules?</b></p> <p>6 A. In the schedules.</p> <p>7 <b>Q. And any claims, anything that you would have</b></p> <p>8 <b>against anyone are listed in there?</b></p> <p>9 A. I've discussed everything with you that is</p> <p>10 possible to discuss.</p> <p>11 <b>Q. And they're all listed in the schedules?</b></p> <p>12 A. I don't know if they're all listed in the</p> <p>13 schedules or not. Some of it I've determined is</p> <p>14 uncollectible.</p> <p>15 <b>Q. Okay. And that stuff isn't listed?</b></p> <p>16 A. I don't know if it's listed or not honestly.</p> <p>17 It's been so long since we listed it, but you have</p> <p>18 knowledge of it.</p> <p>19 <b>Q. Okay. On page 17 of the third amended disclosure</b></p> <p>20 <b>statement, you list a lien of \$23,048.29 against the</b></p> <p>21 <b>Charles And Mary Tadlock Family Trust. What's.</b></p> <p>22 <b>The nature of the lien? Here, I can give you</b></p> <p>23 <b>page 17, so you can look at it.</b></p> <p>24 MR. CROWE: Do you have a copy of the</p> <p>25 schedules?</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. CROWE: I'm just trying to help the</p> <p>2 witness recollect what it was. Charles And Mary Tadlock</p> <p>3 Family Trust includes Palma, Flamingo Pecos Surgery</p> <p>4 Center, which is zeroed out, Epiphany Surgery Center</p> <p>5 which is nothing, Speed Demon owns some vehicles; is</p> <p>6 that right?</p> <p>7 THE WITNESS: True. It might be the sum</p> <p>8 total of expenses for the cars, or it may be the money</p> <p>9 that we paid to the county because that sounds about</p> <p>10 right for the money we had to pay for the county in</p> <p>11 order to even be able to sell the hanger. It's very</p> <p>12 close anyway.</p> <p>13 BY MR. IQBAL:</p> <p>14 <b>Q. So somebody's got a lien. We just don't know who</b></p> <p>15 <b>holds the lien?</b></p> <p>16 A. I'm not sure if --</p> <p>17 MR. CROWE: I really can't find what it was,</p> <p>18 but it was deducted on the schedule B when we put it on</p> <p>19 Schedule C.</p> <p>20 THE WITNESS: That sounds like the amount</p> <p>21 for having paid the county.</p> <p>22 MR. IQBAL: I don't want to waste time. I</p> <p>23 appreciate you looking into it. If you want to talk</p> <p>24 about it later or have the accountant look into it.</p> <p>25 MR. CROWE: Sure.</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. IQBAL: Here you go. I'm just curious.</p> <p>2 It's on there.</p> <p>3 THE WITNESS: Where on here?</p> <p>4 MR. IQBAL: Page 17.</p> <p>5 THE WITNESS: I'm having trouble seeing it</p> <p>6 since it's so small.</p> <p>7 MR. IQBAL: I got you. Let me...</p> <p>8 MR. CROWE: It should actually be on</p> <p>9 schedule D.</p> <p>10 MR. IQBAL: Here we go. It's the second --</p> <p>11 I'm pointing to the second column under</p> <p>12 liens, right here.</p> <p>13 THE WITNESS: Charles And Mary Family Trust.</p> <p>14 I'm assuming that was money that was taken out of the</p> <p>15 trust because I couldn't work for four months at all.</p> <p>16 BY MR. IQBAL:</p> <p>17 <b>Q. Who would hold the lien?</b></p> <p>18 MR. CROWE: Let me get the schedules so that</p> <p>19 the witness can look at it. It's on schedule D.</p> <p>20 (A brief discussion was held off the record.)</p> <p>21 BY MR. IQBAL:</p> <p>22 <b>Q. Back on the record.</b></p> <p>23 <b>We're trying to figure out the lien for</b></p> <p>24 <b>\$23,048.29 cents on page 17 of the third amended</b></p> <p>25 <b>disclosure statement.</b></p>	<p style="text-align: right;">Page 97</p> <p>1 MR. IQBAL: Don't want to hold you here.</p> <p>2 I just have a few more questions. Then</p> <p>3 we'll be done. Okay. Is that fair?</p> <p>4 THE WITNESS: No, but go ahead.</p> <p>5 BY MR. IQBAL:</p> <p>6 <b>Q. Okay. All right.</b></p> <p>7 <b>I just wanted to clarify a couple of things from</b></p> <p>8 <b>the first portion of the transcript, and again, pages are</b></p> <p>9 <b>here just in case you want to take a look.</b></p> <p>10 A. Sure.</p> <p>11 <b>Q. You previously said that you formally offered</b></p> <p>12 <b>Barnes shares in Epiphany as an incentive to get</b></p> <p>13 <b>Epiphany going?</b></p> <p>14 A. Actually, what occurred was: The group wanted to</p> <p>15 keep Barnes, and most of the group decided to buy into</p> <p>16 Epiphany and thought it was a good idea if we offered</p> <p>17 him in addition to I think a one percent bonus for</p> <p>18 being -- for being the manager, a percentage of Epiphany</p> <p>19 to give him positive incentive to find and acquire other</p> <p>20 surgery centers.</p> <p>21 <b>Q. And that wasn't your idea; that was the other</b></p> <p>22 <b>surgeons?</b></p> <p>23 A. I don't know whose idea it was. Became</p> <p>24 everybody's idea at some point.</p> <p>25 <b>Q. But you weren't totally thrilled with bringing</b></p>

<p style="text-align: right;">Page 98</p> <p>1 him on board?</p> <p>2 A. No, I wasn't totally thrilled. My office manager</p> <p>3 didn't like him, and I trust my office manager.</p> <p>4 Q. Why didn't she like him?</p> <p>5 A. She just didn't.</p> <p>6 Q. Okay. Now, you previously said when you told</p> <p>7 Barnes he needed to come in and discuss the company's</p> <p>8 finances, you got screamed at by the other board members</p> <p>9 that you were chasing him off?</p> <p>10 A. Actually, there's several instances of that, but</p> <p>11 I'll give you one example.</p> <p>12 Dr. Smith texted or emailed me or something that</p> <p>13 he was upset that he was taking so much time off. So I</p> <p>14 asked Barnes politely to come in and bring in his</p> <p>15 contract so we could go over how much time he was</p> <p>16 entitled to and so we could make sure he wasn't taking</p> <p>17 more or less than he was supposed to. That same surgeon</p> <p>18 called me back an hour later by phone and yelled at me</p> <p>19 because I was being mean to him by asking him how much</p> <p>20 time he was entitled to take off.</p> <p>21 Q. Dr. Smith?</p> <p>22 A. (Nods head.)</p> <p>23 Q. That seems weird.</p> <p>24 A. Yeah, doesn't it.</p> <p>25 Q. Now, previously you said Barnes claimed to the</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Barnes took off. Individually confront him? He</p> <p>2 ran. At the last meeting that I can remember him</p> <p>3 attending, he was arguing that we should close the east</p> <p>4 side and keep the west side -- no, am I getting this</p> <p>5 right?</p> <p>6 Yeah, close the west side and keep the east side</p> <p>7 going, and that made no sense to me because almost all</p> <p>8 the surgeons migrated to the west side. And I pointed</p> <p>9 that out to him. And very shortly thereafter on a</p> <p>10 Saturday he disappeared.</p> <p>11 Q. So you didn't get a chance to confront him</p> <p>12 yourself personally?</p> <p>13 A. No. He was there. He was arguing to the group,</p> <p>14 and I was arguing the opposite to the group. I think he</p> <p>15 wanted to close it because if he closed it, no one would</p> <p>16 have figured out that he was taking money.</p> <p>17 Q. So his last board meeting when this argument was</p> <p>18 going on, people didn't realize that he had taken it?</p> <p>19 A. Correct.</p> <p>20 Q. So he took off before his --</p> <p>21 A. Anybody figured it all out.</p> <p>22 Q. -- criminal activity essentially?</p> <p>23 A. Well, I'm supposed to keep my mouth shut about</p> <p>24 whether it's critical activity or whether he did it.</p> <p>25 Q. Let's just call it activity.</p>
<p style="text-align: right;">Page 99</p> <p>1 other doctors that you were getting more than your fair</p> <p>2 share, but you didn't know at the time that he was</p> <p>3 making these claims?</p> <p>4 A. No, I found out later that he was involved or the</p> <p>5 extent at least to which he was making the claims, but</p> <p>6 the other three surgeons reviewed everything and missed</p> <p>7 everything. This was the time when I was having all the</p> <p>8 surgeries. I just had a neck surgery and facing two</p> <p>9 more in my back. And so three of them including Becker</p> <p>10 was one.</p> <p>11 Q. Becker?</p> <p>12 A. I don't know the other two.</p> <p>13 Q. Smith?</p> <p>14 A. No, it wasn't Smith. Becker and a couple of the</p> <p>15 others reviewed it and couldn't find anything.</p> <p>16 Q. And Barnes claim doesn't make sense; right,</p> <p>17 because he held the checkbook?</p> <p>18 A. Correct. I made certain that I did not have it</p> <p>19 because I knew that people would try to say I was making</p> <p>20 too much. I realized that there was no place that I've</p> <p>21 ever been at that I didn't make more for them than I</p> <p>22 got.</p> <p>23 Q. Right.</p> <p>24 Did you ever individually confront Barnes or the</p> <p>25 other --</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Activity.</p> <p>2 Q. Okay. All right.</p> <p>3 Now, at the time when that was happening, did you</p> <p>4 know that he was making these acquisitions against you?</p> <p>5 A. No.</p> <p>6 Q. I know Tammy found out about the activity, but</p> <p>7 how did you find out that Barnes was behind your back</p> <p>8 making all these statements and --</p> <p>9 A. When the activity came to light, several of the</p> <p>10 surgeons apologized, and I heard from them that several</p> <p>11 others had said things as well.</p> <p>12 Q. Okay. You said previously that you thought</p> <p>13 Barnes was accusing you to deflect interest in his own</p> <p>14 activities?</p> <p>15 A. Correct. That's what my guess is. Pretty sure</p> <p>16 that's what -- I don't remember who said what, but I</p> <p>17 think the investigators would concur with that.</p> <p>18 Q. By investigators you mean the FBI?</p> <p>19 A. Yeah.</p> <p>20 Q. Did your forensic accountant have a chance to</p> <p>21 talk to Barnes?</p> <p>22 A. No.</p> <p>23 Q. He had already gone?</p> <p>24 A. Yeah. I don't know where he is.</p> <p>25 Q. To your knowledge did anyone else on the board do</p>

<p style="text-align: right;">Page 102</p> <p>1 any kind of investigation or audit?</p> <p>2 A. Three of them. Remember I talked three of them</p> <p>3 about six months before it all came to light did an</p> <p>4 investigation, but I suspect it was focused mostly on</p> <p>5 me, but that's just a suspicion.</p> <p>6 Q. And they found that everything was okay?</p> <p>7 A. With me, yeah.</p> <p>8 Q. I'm saying after Barnes?</p> <p>9 A. I assumed they looked at Barnes too. They should</p> <p>10 have.</p> <p>11 Q. But you're not aware of any investigation they</p> <p>12 did?</p> <p>13 A. I'm aware they investigated. I don't know who</p> <p>14 they investigated. They were supposed to be</p> <p>15 investigating. They told the group they were going to</p> <p>16 investigate all the goings on at the surgery center</p> <p>17 because they felt it could be better run or whatever.</p> <p>18 Q. Right, right.</p> <p>19 And they came back with everything is okay?</p> <p>20 A. Correct.</p> <p>21 Q. And that was about six months before --</p> <p>22 A. To the best of my memory. It was right before I</p> <p>23 went for surgery.</p> <p>24 Q. Right.</p> <p>25 And when everything went down -- and look we're</p>	<p style="text-align: right;">Page 104</p> <p>1 THE WITNESS: Somebody at B of A who then</p> <p>2 moved to -- I'm going to say it because the FBI told me</p> <p>3 they moved from Bank of America to Wells Fargo. I don't</p> <p>4 know if they moved to Chase. I can tell you that Bank</p> <p>5 of America did mess around with mine and took 7,000 out</p> <p>6 of one of my accounts and went to Palma to pay the</p> <p>7 office building, and it suddenly disappeared one day and</p> <p>8 appeared in the Surgery Center of Southern Nevada</p> <p>9 accounts. And Barnes came to me and said so and so did</p> <p>10 that and they're, you know, blah, blah, blah.</p> <p>11 So I think there may have been a falling out</p> <p>12 between the partners at one point. I call up B of A and</p> <p>13 screamed and they put the money back.</p> <p>14 BY MR. IQBAL:</p> <p>15 Q. This was before you found out all of --</p> <p>16 A. Yeah. You have to realize I was going from one</p> <p>17 surgery to another.</p> <p>18 Q. I get that.</p> <p>19 Prior to him accusing you and casting aspersions</p> <p>20 when you were in and out and going through the</p> <p>21 surgeries, did you have a good relationship with Barnes?</p> <p>22 A. Yeah, I thought it was okay.</p> <p>23 Q. Were you friends or just business --</p> <p>24 A. Business only.</p> <p>25 Q. Okay. Did you feel like you knew him well?</p>
<p style="text-align: right;">Page 103</p> <p>1 almost done.</p> <p>2 When everything went down, after that did the</p> <p>3 board do a formal audit? I know that they retained</p> <p>4 Marquis Aurbach and Jack -- his first name is Jack?</p> <p>5 A. Jack Wong (phonetic spelling).</p> <p>6 Q. Yeah.</p> <p>7 A. I was still on the board for all that.</p> <p>8 Q. After the Barnes mess comes to light, did they do</p> <p>9 any formal audit or report?</p> <p>10 A. Not at the time that I was with the board, but</p> <p>11 Jack did, you know, looked through the books.</p> <p>12 Q. His own investigation?</p> <p>13 A. Yeah. He told us to go to the FBI and Las Vegas</p> <p>14 Metropolitan Police.</p> <p>15 Q. Did Jack figure out how much was stolen?</p> <p>16 A. I think he estimated it pretty closely.</p> <p>17 Q. What was the estimate?</p> <p>18 A. Three million, three and a half million.</p> <p>19 Q. Wow.</p> <p>20 MR. CROWE: Wow.</p> <p>21 MR. IQBAL: Three and a half million stolen</p> <p>22 by the office manager.</p> <p>23 THE WITNESS: Yeah. With collusion by</p> <p>24 presumably the bank.</p> <p>25 MR. CROWE: Somebody at B of A.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. I'm surprised that he did this. I've gone over</p> <p>2 it with the police, and they say this is the classic</p> <p>3 pattern. They steal a little bit. Then they steal a</p> <p>4 little bit more. That's when I was still feeling good.</p> <p>5 He got away with a little bit. Then when I really went</p> <p>6 down, he put pedal do the metal.</p> <p>7 Q. And just took off?</p> <p>8 A. (Nods head.)</p> <p>9 Q. Okay. And you testified before that you don't</p> <p>10 think he has any of that money left?</p> <p>11 A. Given the fact that he has an emperor's package</p> <p>12 at one of the casinos we know about from an email that</p> <p>13 came to us, which wasn't supposed to come to us, I</p> <p>14 think, no, I don't think he does.</p> <p>15 Q. And what percentage of the money, the three</p> <p>16 million that Barnes took, what percentage do you think</p> <p>17 is owed to you just roughly?</p> <p>18 A. 17 to 21 percent depending on the time. That's</p> <p>19 how much I owned.</p> <p>20 Q. So it would be Epiphany Surgical --</p> <p>21 A. In addition to that, another 350,000 for the</p> <p>22 money he took directly out of Epiphany, but I don't know</p> <p>23 if that would be included in the other amount. I don't</p> <p>24 really know. I'm not an accountant. Some of it would</p> <p>25 have been due to Epiphany.</p>



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1 Q. Right.  
2 So it would be your Epiphany Surgical  
3 Solutions --  
4 A. Right. 69 percent of Epiphany Surgical Solutions  
5 money would have been mine, and then about 20 percent  
6 call it, it fluctuated a lot, of the other money that  
7 was stolen.  
8 Q. Of Flamingo Pecos?  
9 A. Flamingo Pecos.  
10 Q. Got it. Appreciate that. That makes sense.  
11 Just a couple more things.  
12 Now, I just want to be --  
13 Do you have --  
14 Do you have any knowledge or reason to think that  
15 Barnes was angry at you for any reason?  
16 A. No.  
17 Q. We're you angry with him for any reason before  
18 you found out?  
19 A. No.  
20 Q. Were you curious why this Flamingo Pecos wasn't  
21 making money?  
22 A. Yeah. But he had, you know, came up with, you  
23 know, pretty good reasons as to why and bank statements  
24 that looked real because they were real. They were  
25 on -- it was like, you know, one of those fake emails

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1 that you get from Bank of America, Bank of America  
2 statement with Bank of America there.  
3 Q. Wow.  
4 A. Okay. It wasn't like I was sleeping at the  
5 wheel. Even when I was having surgery, I was still  
6 having meetings and yelling at surgeons to get their  
7 crap from Bank of America. And I had a Bank of America  
8 representative at my side going over the bank records.  
9 Q. The last thing is the relationship with the other  
10 surgeons. And I want to focus just Tammy opens up the  
11 statements from Bank of America, is crying, she tells  
12 you, what did you do right after that?  
13 A. I don't know what order, but I called Bank of  
14 America to ask for the stuff, talked to one of them,  
15 called Smith because he was the president of the board.  
16 And I mostly left it in Smith's hands to call everybody  
17 else because I was having my own problems, as Smith  
18 knew, since he was taking care of my back.  
19 Q. Before and after that event, did your  
20 relationship with the surgeons change?  
21 A. Yeah. They weren't happy that we got all the  
22 money stolen.  
23 Q. Did they blame you?  
24 A. Some of them do.  
25 Q. Who do you think is ultimately responsible for

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1 that three million getting stolen?  
2 MR. CROWE: Objection. Calls for  
3 speculation.  
4 THE WITNESS: You know, I would say the  
5 person who took it or people, more likely it's more than  
6 one. It wasn't me. I couldn't even write checks.  
7 Didn't want to because then I definitely would be on the  
8 suspect list.  
9 MR. IQBAL: All right. Last question.  
10 BY MR. IQBAL:  
11 Q. Was it an inside job, in that was someone working  
12 with Barnes at Epiphany or at Flamingo Pecos?  
13 A. In my opinion?  
14 Q. In your opinion.  
15 A. I think there was somebody working with him at  
16 the bank and somebody working -- one or more somebodies  
17 who at least looked the other way at the surgery center.  
18 Q. A surgeon or are we talking about a PA?  
19 A. No. We're talking about the people who worked at  
20 the office because there were -- he should not have been  
21 able to do the checks without somebody noticing it.  
22 I mean, who agreed that he can write a check out  
23 for an emperor's package, who said buying baseball  
24 memorabilia was okay?  
25 Q. Did he have authority to write checks?

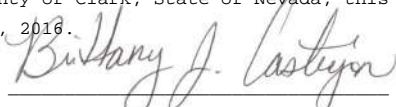
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1 A. I don't remember at this point if he could do it  
2 by himself. From my stuff he couldn't by himself.  
3 That's one of the reasons that Bank of America I was so  
4 pissed at because they don't have any records of him  
5 doing anything. There are all these signed check at  
6 Epiphany, which he did not have signing ability.  
7 Now what he had since I was missing working,  
8 maybe they gave him more power at the surgery center  
9 than I was aware of, but certainly not at Epiphany. I  
10 would have known about that because I had majority  
11 voting power.  
12 Q. You were the only one who signed the checks at  
13 Epiphany?  
14 A. Yeah. I was the only one that was entitled to  
15 sign checks according to Bank of America.  
16 Q. And then Bill Smith had authority with respect to  
17 Flamingo Pecos, and you had authority with respect to  
18 Flamingo Pecos?  
19 A. No. Actually, perhaps after we found out about  
20 Barnes, but I don't think I ever signed any checks from  
21 Flamingo Pecos. If I do, I don't remember, and it would  
22 have been after this was discovered. Before the fact I  
23 never wrote out any checks for anything because I didn't  
24 want to take the responsibility. If I wrote something,  
25 somebody would be questioning that I was somehow

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1 involved with the other entity.  
2 Q. Okay.  
3 MR. CROWE: Is that it?  
4 MR. IQBAL: That's it. Thank you, Dr.  
5 Tadlock.  
6 THE WITNESS: You're very welcome.  
7 MR. IQBAL: Off the record.  
8 (The proceedings concluded at 3:29 p.m.)  
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1 STATE OF NEVADA )  
2 ) SS:  
3 COUNTY OF CLARK )  
4 CERTIFICATE OF REPORTER  
5 I, Brittany J. Castrejon, a Certified Court  
6 Reporter licensed by the State of Nevada, do hereby  
7 certify: That I reported the CONTINUED 2004 EXAM OF  
8 CHARLES TADLOCK, M.D., on Monday, March 14, 2016, at  
9 1:02 p.m.;  
10 That prior to being deposed, the witness was duly  
11 sworn by me to testify to the truth. That I thereafter  
12 transcribed my said stenographic notes into written  
13 form, and that the typewritten transcript is a complete,  
14 true and accurate transcription of my said stenographic  
15 notes. That the reading and signing of the transcript  
16 was not requested.  
17 I further certify that I am not a relative,  
18 employee or independent contractor of counsel or of any  
19 of the parties involved in the proceeding; nor a person  
20 financially interested in the proceeding; nor do I have  
21 any other relationship that may reasonably cause my  
22 impartiality to be question.  
23 IN WITNESS WHEREOF, I have set my hand in my  
24 office in the County of Clark, State of Nevada, this  
25 27th day of March, 2016.  
  
Brittany J. Castrejon, CCR NO. 926

## EXHIBIT 7

# UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

ROBERT W. BARNES

Date of Original Judgment: December 28, 2016  
(Or Date of Last Amended Judgment)

## Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))  
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))  
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))  
☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

## AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16-cr-00090-APG-GWF-1

USM Number: 53822-048

Daniel Albregts

Defendant's Attorney

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))  
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)  
☐ Modification of Restitution Order (18 U.S.C. § 3664)

## THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1 of the Information  
☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.  
☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 669	Embezzlement in Connection with Health Care	2013	1


The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_  
☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 28, 2016

Date of Imposition of Judgment

  
Signature of Judge

ANDREW P. GORDON, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

March 28, 2017

Date

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :

18 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Due to the proximity of family, the court recommends the defendant be permitted to serve his term of incarceration at a facility in Victorville.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ by 12 p.m. on June 30, 2017 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

**SUPERVISED RELEASE**Upon release from imprisonment, you will be on supervised release for a term of : 3 years**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.  
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

**SPECIAL CONDITIONS OF SUPERVISION**

1. Gambling Addiction Treatment - You shall refrain from any form of gambling and shall participate in a program for the treatment of gambling addiction, at your own expense, as approved and directed by the probation officer, based upon your ability to pay.
2. Debt Obligations - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
3. Access to Financial Information - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
4. Gambling Prohibition - You shall not enter, frequent, or be involved with any legal or illegal gambling establishment or activity, except for the purpose of employment, as approved and directed by the probation officer.
5. Warrantless Search - You shall submit your person, property, residence, place of business and vehicle under your control to a search, conducted by the United States probation officer or any authorized person under the immediate and personal supervision of the probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.



DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$	\$	\$ 1,500,000.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
(see attached restitution list)		\$1,500,000.00	

**TOTALS**                      \$                     0.00                      \$                   1,500,000.00

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT W. BARNES  
CASE NUMBER: 2:16-cr-00090-APG-GWF-1

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A** ☒ Lump sum payment of \$ 1,500,100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

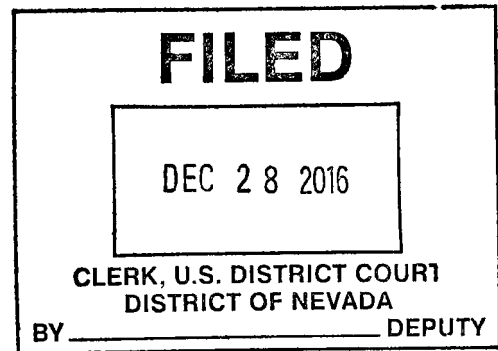
☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

(see attached final order of forfeiture)

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, ) 2:16-CR-090-APG-(GWF)  
 )  
Plaintiff, )  
 )  
v. ) Final Order of Forfeiture  
 )  
ROBERT W. BARNES, )  
 )  
Defendant. )

The United States District Court for the District of Nevada entered a Preliminary Order of Forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(1) and (2); Title 18, United States Code, Section 981(a)(1)(C) with Title 28, United States Code, Section 2461(c); Title 18, United States Code, Section 982(a)(7); and Title 21, United States Code, Section 853(p) based upon the plea of guilty by defendant Robert W. Barnes to the criminal offense, forfeiting the property and imposing an in personam criminal forfeiture money judgment set forth in the Plea Agreement and the Forfeiture Allegations of the Criminal Information and shown by the United States to have the requisite nexus to the offense to which defendant Robert W. Barnes pled guilty. Criminal Information, ECF No. 4; Plea Agreement, ECF No. 6; Arraignment and Plea, ECF No. 9; Preliminary Order of Forfeiture, ECF No. 12.

This Court finds the United States of America published the notice of forfeiture in accordance with the law via the official government internet forfeiture site, [www.forfeiture.gov](http://www.forfeiture.gov), consecutively from June 20, 2016, through July 19, 2016, notifying all potential third parties; and notified known third parties by personal service or by regular mail and certified mail return

1 receipt requested, of their right to petition the Court. Notice of Filing Proof of Publication, ECF  
2 No. 16.

3 On July 8, 2016, the United States Marshals Service personally served Hutchison &  
4 Steffen, LLC, as Registered Agent for Epiphany Surgical Solutions, LLC, with copies of the  
5 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal  
6 Service, ECF No. 14.

7 On July 6, 2016, the United States Marshals Service personally served William D. Smith,  
8 M.D., as Managing Member for Epiphany Surgical Solutions, LLC, with copies of the  
9 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal  
10 Service, ECF No. 14.

11 On July 6, 2016, the United States Marshals Service personally served William D. Smith,  
12 M.D., as Managing Member for Flamingo-Pecos Surgery Center, LLC, with copies of the  
13 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal  
14 Service, ECF No. 14.

15 On July 6, 2016, the United States Marshals Service personally served Charles H.  
16 Tadlock, M.D., as Managing Member for Epiphany Surgical Solutions, LLC, with copies of the  
17 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal  
18 Service, ECF No. 14.

19 On July 6, 2016, the United States Marshals Service personally served Charles H.  
20 Tadlock, M.D., as Managing Member for Flamingo-Pecos Surgery Center, LLC, with copies of  
21 the Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process –  
22 Personal Service, ECF No. 14.

23 On July 12, 2016, the United States Marshals Service personally served Gregory J.  
24 Morris, Ltd., as Registered Agent for VIP Surgery Center LLC, with copies of the Preliminary  
25 Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal Service, ECF  
26 No. 14.

1 On July 6, 2016, the United States Marshals Service personally served Eddy H. Luh, as  
2 Managing Member for VIP Surgery Center LLC., with copies of the Preliminary Order of  
3 Forfeiture and the Notice. Notice of Filing Service of Process – Personal Service, ECF No. 14.

4 On July 6, 2016, the United States Marshals Service personally served Thomas C. Yee, as  
5 Managing Member for VIP Surgery Center LLC., with copies of the Preliminary Order of  
6 Forfeiture and the Notice. Notice of Filing Service of Process – Personal Service, ECF No. 14.

7 On July 12, 2016, the United States Marshals Service personally served Lottie Barnes,  
8 with copies of the Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of  
9 Process – Personal Service, ECF No. 14.

10 On July 8, 2016, the United States Marshals Service personally served Michelle Barnes  
11 with copies of the Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of  
12 Process – Personal Service, ECF No. 14.

13 On June 28, 2016, the United States Attorney's Office served Charles Tadlock, M.D., as  
14 Managing Member for Flamingo-Pecos Surgery Center, LLC and Epiphany Surgical Solutions,  
15 LLC, with copies of the Preliminary Order of Forfeiture and the Notice through regular mail and  
16 certified mail, return receipt requested. Notice of Filing Service of Process – Mailing, ECF No.  
17 13.

18 This Court finds no petition was filed herein by or on behalf of any person or entity and  
19 the time for filing such petitions and claims has expired.

20 This Court finds no petitions are pending with regard to the property named herein and  
21 the time for presenting such petitions has expired.

22 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all  
23 right, title, and interest in the property hereinafter described is condemned, forfeited, and vested  
24 in the United States of America:

- 25 1. 2007 Honda Accord EX Gray 4D Sedan, VIN 1HGCM56857A164507, Nevada  
26 License Plate 452WVU;

2. 2011 EXP Limited 5.4L 4X4 Ford Expedition, Color: Sterling Gray Metallic, VIN 1FMJU2A53BEF36389, Nevada License Plate 929VJR;
3. 14k white gold cluster stud earrings with four princess cut diamonds surrounded by 16 round diamonds;
4. Ladies stainless steel Breitling Lady Colt A72345 Watch with blue Mother of Pearl dial, diamond bezel (28 diamonds), Serial No. 386210;
5. Ladies 14k white gold ring centered with one rectangle blue Tourmaline with 45 diamonds;
6. Ladies Tanzanite (approx. 40 carats) platinum ring with 152 brilliant diamonds;
7. Ladies 14k white gold with violetish red Garnet surrounded by 74 brilliant diamonds;
8. Ladies platinum oval shaped bluish green Tourmaline with 92 brilliant diamonds;
9. Ladies 14k white gold ring, pear shaped cabochon cut black opal with blue play of color and 50 diamonds;
10. Movado Womans watch with black in color face;
11. Tag Heuer lady's Watch silver in color;
12. Gucci Watch gold in color;
13. Necklace, silver in color, with Tiffany pendant heart shaped;
14. Necklace, silver in color, with floral design pendant;
15. Bracelet gold in color with green in color stones;
16. Bracelet gold in color appeared to be broken at time of seizure;
17. Bracelet clear stone type;
18. Pair of Earrings with green in color stones;
19. Metal ring, yellow in color with green in color stones;
20. Pair of Earrings tear drop shaped;
21. Pair of Earrings heart shaped;

22. Braided necklace, yellow in color;
23. Ring, silver in color with clear stones;
24. Pair of Earrings flower shaped;
25. Ring, silver in color with clear stones;
26. Pair of Earrings hoop shaped yellow in color;
27. Pair of Earrings, yellow in color with round white in color stones;
28. Thick Bracelet yellow in color;
29. Pair of Earrings, yellow in color;
30. Three (3) rings, yellow in color: One (1) with clear type stones, Two (2) with heart shaped designs;
31. Ring, white in color with clear stones;
32. Two (2) Rings yellow in color with blue in color stones;
33. Ring, yellow in color with green in color stone;
34. Ring, heart shaped with clear stones;
35. One (1) Ring yellow in color with white in color stones;
36. Five Bracelets: Two (2) yellow in color; Two (2) yellow in color with name plates on them "Lucas" and "Joshua"; One (1) yellow in color with green stones;
37. Necklace, white in color;
38. Necklace, white in color with tear drop pendant;
39. One (1) Necklace, white in color with pink in color stone; One (1) pair of earrings with pink in color stones;
40. One (1) round pendant yellow in color; and
41. Pair of Earrings, orange in color

(all of which constitutes property); and

that the United States recover from Robert W. Barnes the in personam criminal forfeiture money judgment of \$1,300,000, not to be held jointly and severally liable with any codefendants,

1 and that the property will be applied toward the payment of the money judgment; and the  
2 forfeiture of the money judgment and the property is imposed pursuant to Fed. R. Crim.  
3 P. 32.2(b)(4)(A) and (B); Fed. R. Crim. P. 32.2(c)(2); Title 18, United States Code, Section  
4 981(a)(1)(C) with Title 28, United States Code, Section 2461(c); Title 18, United States Code,  
5 Section 982(a)(7); Title 21, United States Code, Section 853(p); and Title 21, United States  
6 Code, Section 853(n)(7); that the money judgment shall be collected; and that the property and  
7 the collected amount shall be disposed of according to law.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all forfeited  
9 funds, including but not limited to, currency, currency equivalents, certificates of deposit, as well  
10 as any income derived as a result of the United States of America's management of any property  
11 forfeited herein, and the proceeds from the sale of any forfeited property shall be disposed of  
12 according to law.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk send copies  
14 of this Order to all counsel of record and three certified copies to the United States Attorney's  
15 Office, Attention Asset Forfeiture Unit.

16 DATED this 28<sup>th</sup> day of December, 2016.

17  
18 

19 \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



U.S. v ROBERT W. BARNES  
2:16-CR-00090-APG-GWF  
Restitution List

Bhatnagar Family Trust Pankaj Bhatnagar, MD	\$81,187.89
Burkhead Irrevocable Trust Daniel Burkhead, MD	\$39,587.89
Cubs Win, LLC Randall Weingarten, MD Dodd Hyer, MD	\$70,787.89
Epiphany Surgery Centers Charles Tadlock, MD	\$309,787.52
Grabow Family Trust Ryan Grabow, MD	\$22,687.89
Luong Estate Major LLC Minh Luong, DDS	\$52,587.89
Mercury Group, LLC Andrew Cash, MD	\$61,287.89
SAS Consulting LLC Scott Slavis, MD	\$31,787.89
The Julian Trust David Biesinger, DPM	\$12,287.89
Douglas Seip, MD	\$12,287.89
Fred Redfern, MD	\$12,287.89
George Gluck, MD	\$17,487.89
Howard Hack, MD	\$42,187.89
James Vahey, MD	\$61,287.89
Jason Garber, MD	\$64,287.89
John Anson, MD	\$49,987.89
Marjorie Belsky, MD	\$70,787.89
Matthew Ng, MD	\$31,787.89
Michael Valpiani, MD	\$42,187.89

Laurie Larson, MD	\$31,787.89
Larry Goldstein, MD	\$22,687.89
Ming Wei Wu, DO	\$9,687.89
Noah Levine, MD	\$22,687.89
R. Allen Byrd, PC	\$5,787.89
Sheldon Freedman, MD	\$61,287.89
Steve Becker, MD	\$42,187.89
Stuart Kaplan, MD	\$12,287.89
Terrance Kwiatkowski, MD	\$12,287.89
Timothy Wilson, DDS	\$5,787.89
T.J. O-Lee, MD	\$22,687.89
Thomas Vater, MD	\$25,287.89
William Muir, MD	\$12,287.89
William Smith, MD	\$126,687.89
	=====
TOTAL:	\$1,500,000.00

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	2:16-cr-0090-APG-GWF
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ROBERT W. BARNES,	)	<b><u>ORDER CONTINUING</u></b>
	)	<b><u>SELF-SURRENDER DATE</u></b>
Defendant.	)	
_____	)	

The District Court having considered the Stipulation of the parties and the circumstances surrounding this case,

**IT IS HEREBY ORDERED** that the self-surrender date for defendant BARNES currently scheduled for Friday, March 31, 2017 is vacated and same is continued to Friday, June 30, 2017, by 12:00 noon.

DATED this 28th day of March, 2017.

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE