

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ., LTD.  
2260 Corporate Circle, Suite 480  
4 Henderson, Nevada 89074  
(702) 642-3113 / (702) 642-9766 FAX  
5 Attorney for defendant/appellant

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8 SUPREME COURT  
9 STATE OF NEVADA

10 RESOURCES GROUP, LLC, a Nevada  
11 Limited Liability Company,

CASE NO.: 84992

12 Appellant,

13 vs.

14 U.S. BANK NATIONAL  
ASSOCIATION, ND, a national  
15 association,

16 Respondent.

17  
18 **JOINT APPENDIX VOLUME 7**

19  
20 Michael F. Bohn, Esq.  
Law Office of Michael F. Bohn, Esq., Ltd.  
2260 Corporate Circle, Suite 140  
21 Henderson, Nevada 89074  
(702) 642-3113/ (702) 642-9766 FAX  
22 Attorney for Defendant/Appellant

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01:36:28 1 Q. Why don't you tell everyone here in the court  
2 what you do for a living?

3 A. Well, I currently do a lot of depositions and  
4 trial testimony as a 30(b)(6) PMK for Alessi Koenig.  
01:36:44 5 I'm a California attorney.

6 Q. And can you explain to me why -- so you do a  
7 lot of depositions then, correct?

8 A. Hundreds and hundreds.

9 Q. Sounds like a lot of fun.

01:36:57 10 A. It's --

11 Q. What were you doing in 2010 and 2011?

12 A. I was part of a firm called Alessi Koenig. We  
13 were an HOA assessment collection law firm. We also  
14 perform general counsel services.

01:37:12 15 Q. Okay. And you said you had a law degree;  
16 right?

17 A. Yes. I'm a California lawyer.

18 Q. California lawyer.

19 Where did you go to school at, sir?

01:37:23 20 A. I -- law school or undergraduate?

21 Q. Law school is fine.

22 A. The University of La Verne. And then I  
23 finished up my last year at Pepperdine.

24 Q. Okay. So you were working at the law firm  
01:37:35 25 Alessi & Koenig in 2010 and 2011; correct?

01:37:39 1 A. Yes.

2 Q. Okay. What is Alessi & Koenig currently doing  
3 right now?

4 A. Alessi & Koenig because of all the litigation  
01:37:49 5 with the banks and the investors finally had to throw  
6 up the white flag and file Chapter 7 in December of  
7 2016.

8 Q. Okay. Are you familiar today with the  
9 property known as 4254 Rolling Stone Drive, Las Vegas,  
01:38:03 10 Nevada, 89103.

11 A. Yes.

12 Q. Okay. How are you familiar with that  
13 property, sir?

14 A. My understanding is that it is the subject  
01:38:11 15 property of this litigation.

16 Q. Okay. And are you familiar with that property  
17 outside of just being the subject of this litigation?

18 A. No.

19 Q. Did Alessi & Koenig perform any collection  
01:38:25 20 services on behalf of --

21 A. My understanding is that we did. I don't have  
22 a specific recollection of this file. I did speak  
23 with, as I often do prior to testifying or depositions,  
24 our paralegal Johnna Lepona, L-E-P-O-N-A, on my way to  
01:38:41 25 the hearing today. And she briefed me on the



01:38:44 1 particulars of the foreclosure.

2 Q. Okay. Can you take a look at Exhibit 7 in  
3 your binder.

4 A. Okay.

01:39:04 5 Q. Now, my Exhibit 7 runs as USB0026 through  
6 USB00 -- or USB0175. Does yours as well?

7 A. Yes.

8 Q. Okay. And it appears on the front page of  
9 Exhibit 7 that there's an affidavit of David Alessi as  
01:39:29 10 custodian of records for Alessi & Koenig LLC. Do you  
11 see what I'm talking about, sir?

12 A. Yes.

13 Q. Okay. On USB0028 there is, it looks like, a  
14 signature, and then your name David Alessi, Esquire?

01:39:46 15 A. Correct.

16 Q. Is that your signature there, sir?

17 A. Yes.

18 Q. So you testified as a custodian of records  
19 through this affidavit of custodian of records that  
01:39:52 20 these documents contained at USB02 -- 0026 through 0175  
21 were the true and correct collection file that Alessi &  
22 Koenig had on the property that brings us here today?

23 A. Yes, sir.

24 Q. Okay. And did you review these documents  
01:40:11 25 previously?

01:40:11 1 A. I'm sure I reviewed them back in November of  
2 2015. I don't have a specific recollection of  
3 reviewing them.

4 Q. Okay. Let me take a look. But Alessi &  
01:40:23 5 Koenig did conduct the foreclosure sale on this  
6 property?

7 A. That's my understanding, yes.

8 Q. And you have no reason to believe that Alessi  
9 & Koenig did not conduct a foreclosure sale on this  
01:40:31 10 property?

11 A. Correct.

12 Q. Okay. Let's go over to USB0034.

13 MR. BECKOM: Oh, and, I guess, as to the Court  
14 to the extent, I believe we already stipulated to this,  
01:40:44 15 but I would like to move -- we already entered.

16 THE COURT CLERK: Exhibit 7.

17 MR. BECKOM: All right. They're already in.

18 MS. BAKER: Why not.

19 THE WITNESS: Okay. I'm at 0034.

01:40:53 20 BY MR. BECKOM:

21 Q. Okay. Was this document contained in the  
22 Alessi & Koenig's collection file for the property that  
23 brings us here today?

24 A. I believe so. There's a AK, Bates No. 000003.

01:41:06 25 Q. Okay.

01:41:07 1 A. And this is a real property parcel record.  
2 And it would be standard practice for us to pull this  
3 document.

4 Q. Why would it be standard practice for you to  
01:41:18 5 pull that document?

6 A. We pull the real property parcel record to  
7 obtain information on the property.

8 Q. Okay. What kind of information would you be  
9 obtaining through USB0034 and USB0035?

01:41:34 10 A. We would be obtaining the owner's legal name,  
11 the property address as well as the off-site mailing  
12 address if there are any. We would also obtain the  
13 legal description.

14 Q. Understood. Anything else you would get from  
01:41:54 15 this document?

16 A. Um, that's about it.

17 Q. On USB0035, the very top where it says total  
18 taxable value. Do you see what I'm talking about?

19 A. It's a little bit blurry, but I know what  
01:42:19 20 you're talking about.

21 Q. Okay. Do you see up in the far -- and it's  
22 kind of cut off between two different pages back at  
23 USB0034. The top of that says 2010 to 2011. And then  
24 that column seems to go down on to the next page. But  
01:42:35 25 do you see at the bottom of that page where it says

01:42:38 1 total taxable value \$62,943?

2 A. Yes.

3 Q. Was Alessi & Koenig, are you aware at the time  
4 this document was pulled which looks like to be around  
01:42:51 5 2011 that this property which brings us here today was  
6 worth \$62,943 for tax purposes?

7 A. I don't know.

8 Q. You don't know?

9 A. I don't know if we would have been aware of  
01:43:08 10 that.

11 Q. Okay. Any reason why you would not know?

12 A. I don't know if the legal assistant or the  
13 member of the firm who was handling this foreclosure  
14 looked at that date of sale on this document at that  
01:43:21 15 time.

16 Q. Do you know who the member of Alessi & Koenig  
17 was that was handling this foreclosure at that time?

18 A. Not off the top of my head.

19 Q. Okay. And also in the first column where it  
01:43:35 20 says \$84,557 for taxable years 2009 through 2010, you  
21 might end up giving the exact same answer here. But  
22 was it Alessi Koenig's understanding that this property  
23 was \$84,557 for those taxable years according to the  
24 assessor?

01:43:58 25 A. When you say -- and you've deposed me before,

01:44:00 1 so I know we've been through this particular area.  
2 When you say the property was worth a certain amount of  
3 money, as I've testified many times before, my  
4 understanding of the value of a property differs based  
01:44:13 5 upon whether or not that property is purchased with  
6 good title through an escrow or whether or not that  
7 property is purchased at a foreclosure sale where you  
8 basically are purchasing a lawsuit.

9 So when you say what the property is worth  
01:44:28 10 that could mean two different things to me.

11 MR. BECKOM: Your Honor, I'd like to move to  
12 strike that testimony as impermissible expert  
13 testimony.

14 THE COURT: Counsel.

01:44:37 15 MR. VILKIN: I don't think it's expert  
16 testimony. It's just -- it's personal knowledge.

17 THE COURT: I don't know, what does the term  
18 impermissible expert testimony mean?

19 MR. BECKOM: He's speculating as to the value  
01:44:46 20 of the property. My understanding of Nevada law is  
21 that the owner of the property can testify as to the  
22 value of the property. Or the owner can testify --

23 THE COURT: Didn't you ask him about value?

24 MR. BECKOM: All right. Fair enough. I  
01:44:57 25 withdraw. I withdraw the --

01:45:02 1 THE COURT: Right? I mean, okay.

2 BY MR. BECKOM:

3 Q. Let me go back and come at this a different  
4 way then. So go ahead and repeat -- go ahead and  
01:45:13 5 restate your testimony as far as the value of the  
6 property, at least your understanding of it.

7 A. Well, just that if an -- if a property is  
8 purchased through an escrow, the normal means of  
9 purchasing a property, the buyer obtains clear title.

01:45:32 10 And the value of that property for that reason and  
11 others is worth more, in my opinion, than a property  
12 that is purchased, for instance, an HOA foreclosure  
13 sale, especially in Nevada between 2012 and 2015, where  
14 you're not obtaining clear title.

01:45:55 15 You're inheriting what seems to be never  
16 ending lawsuits. And so, obviously, the analysis or  
17 the calculus in determining the value of that  
18 particular property at that particular purchase would  
19 be different than were one to purchase a property  
01:46:11 20 through an escrow where they would get clear title.

21 Q. Okay. So this was Alessi & Koenig's -- was  
22 this Alessi & Koenig's specific position in 2011?

23 A. We didn't have a position in 2011. Alessi &  
24 Koenig still doesn't have a position. I'm just  
01:46:28 25 testifying to what I feel is common sense. It's not a

01:46:33 1 position of Alessi & Koenig necessarily. We made no  
2 representations to anybody as to values of property.  
3 We weren't overly interested in values of property.

4 Our main focus, as you know from deposing me  
01:46:49 5 prior, is to make sure that we do our job correctly on  
6 behalf of our client. We didn't engage in a lot of  
7 speculation.

8 Q. Understood. But you did mention, you know, I  
9 guess, rather despondently never ending lawsuits;  
01:47:02 10 correct?

11 A. Correct.

12 Q. Okay. Were you aware of these never ending  
13 lawsuits in 2011 when this document was pulled?

14 A. No.

01:47:13 15 Q. Okay. Any reason why not?

16 A. They hadn't started yet.

17 Q. They hadn't started yet. Did you expect in  
18 2011 that there would be never ending lawsuits as a  
19 result of your sales?

01:47:27 20 A. I don't think anybody expected all of this. I  
21 don't think anybody predicted it. Like I said, we were  
22 focused on doing our job, and we didn't engage in a lot  
23 of speculating or speculation.

24 Q. So you did not expect -- so you expected these  
01:47:49 25 properties to be sold free and clear?

01:47:51 1 A. No. I did not say that. We didn't have a  
2 position on that. To expect for the property to be  
3 sold free and clear would have required speculation.  
4 And as I testified moments ago, we did not engage in  
01:48:03 5 speculation.

6 Q. Understood. Can I get you to go over to  
7 USB0089.

8 A. Yes.

9 Q. Have you seen this document before,  
01:48:23 10 Mr. Alessi?

11 A. I don't have a specific recollection of having  
12 seen this document before. I have certainly seen  
13 documents like this before.

14 Q. Okay. I want to direct you down to bottom  
01:48:38 15 here where it says, signature of authorized agent for  
16 Glenview West Townhomes Association. Do you see what  
17 I'm talking about?

18 A. Yes.

19 Q. And then it was signed by a Mr. Ryan Kerbow.  
01:48:52 20 Do you see what I'm talking about?

21 A. Correct, yes.

22 Q. Who is Mr. Kerbow?

23 A. Ryan Kerbow is a California and Nevada  
24 attorney. He no longer works for the firm. I cannot  
01:49:03 25 remember the name of the firm that he currently works



01:49:05 1 for. But I do keep in touch with Ryan periodically.

2 Q. Okay.

3 A. He was a lawyer that worked for Alessi &  
4 Koenig.

01:49:14 5 Q. Why would he be signing this document on  
6 behalf of the Glenview West Townhomes Association?

7 A. I would be speculating. You would have to ask  
8 him. Our policy, though, was that we signed the deeds  
9 of trust -- I mean the trustee's deed upon sale as  
01:49:32 10 agent for the association.

11 Q. But was Mr. Kerbow the attorney, the Nevada  
12 attorney, that was responsible for processing this  
13 foreclosure on behalf of Glenview West?

14 A. I wouldn't say that. We had, and I don't know  
01:49:49 15 which attorneys, Nevada attorneys worked for the firm  
16 at this time. Certainly Robert Koenig was a long  
17 time -- was a partner in the firm. I know Ryan was an  
18 employee of the firm. I don't know if there were any  
19 other Nevada attorneys at the firm, who they were, or  
01:50:02 20 what role they had in this foreclosure.

21 Q. But if Mr. Kerbow's signature is on this  
22 trustee deed upon sale at USB0089, he would have had,  
23 at least, some hand in the sale of this property,  
24 correct?

01:50:16 25 A. Well, yes. He signed the trustee's deed upon

01:50:18 1 sale.

2 Q. Okay. Do you remember Mr. Kerbow's other  
3 duties at Alessi & Koenig?

4 A. He provided general counsel services to  
01:50:27 5 associations. And, I believe, at this time under the  
6 rules of the multiple jurisdictional law firm, he was  
7 our resident Nevada agent or resident Nevada attorney.

8 Q. Did he engage in any active litigation? Did  
9 he represent any clients in active litigation as part  
01:50:44 10 of an -- as part of your practice?

11 A. Did this -- his particular client or any  
12 clients?

13 Q. Mr. Kerbow, did he represent anyone in regards  
14 to civil litigation in this jurisdiction, that being  
01:50:56 15 Nevada?

16 A. I don't know if Alessi & Koenig performed any  
17 civil litigation or general counsel services for  
18 Glenview West Townhomes Association.

19 Q. But does he perform any civil litigation at  
01:51:10 20 all?

21 A. Does he or did he?

22 Q. Did he?

23 A. We -- 2012, we did not do a lot of civil  
24 litigation. I don't know if he was performing any at  
01:51:27 25 this time. It's possible he may have been formed --

01:51:31 1 may have been. It's also possible that he may not have  
2 been.

3 Q. Has Mr. Kerbow ever represented anyone while  
4 an attorney at Alessi & Koenig in quiet title  
01:51:43 5 litigation relating to homeowners association  
6 foreclosure services?

7 A. Representing?

8 Q. A purchaser post sale?

9 A. I don't know if Ryan Kerbow has represented a  
01:51:54 10 purchaser post sale. Our office has represented  
11 purchasers post sale. I don't know if Ryan has.

12 Q. Did they represent any purchasers in 2010?

13 A. I doubt, no.

14 Q. Did they represent any purchasers in 2011?

01:52:07 15 A. I doubt it. Really, the HOA sales didn't  
16 start happening until 2012.

17 Q. Okay. Did Mr. Kerbow or Alessi & Koenig ever  
18 represent Mr. Haddad in any kind of quiet title -- and  
19 Mr. Iyad Eddie Haddad in any kind of quiet title  
01:52:28 20 litigation?

21 A. I'm not sure. I believe that there was some  
22 relationship with Mr. Haddad for a brief period of  
23 time. I'm not sure. You know, I'm a California  
24 attorney. I wasn't involved in the Nevada caseload  
01:52:44 25 extensively.

01:52:44 1 I do seem to recall that there may have been  
2 some issue that Mr. Haddad had retained our firm for,  
3 but I don't remember exactly what it was. It would not  
4 be unusual for an investor to look to Alessi & Koenig  
01:53:03 5 for its expertise post sale, so wouldn't surprise me.

6 But I just can't give you many specifics on that.

7 Q. But generally, though, you would provide post  
8 sale services to investors, correct?

9 A. Not generally. It would be anomaly, but we  
01:53:20 10 have before.

11 Q. And had you done that in -- but you can't  
12 quite recall whether you did that in 2011 or 2012?

13 A. It would surprise me if in 2011 there was any  
14 of that -- any need for that service. In 2012 I'm not  
01:53:38 15 so sure.

16 Q. Okay. So did at any point in time did Alessi  
17 & Koenig have an attorney-client relationship with Iyad  
18 Eddie Haddad?

19 A. Again, I'm not sure. I wasn't involved in any  
01:53:54 20 litigation wherein Alessi & Koenig represented  
21 Mr. Haddad. But again, I'll just repeat, I believe,  
22 there may have been a matter that we represented  
23 Mr. Haddad on for short period of time. I'm just not  
24 exactly sure of the specifics.

01:54:09 25 Q. Do you remember generally what you represented

01:54:11 1 him on?

2 A. No.

3 Q. Do you remember if it was involving quiet  
4 title litigation?

01:54:16 5 A. No.

6 Q. Okay. Let's go ahead and go over to USB0047.

7 A. So 0047 looks to be an unrecorded notice of  
8 delinquent assessment lien. Unsigned.

9 Q. Okay. Why would this unrecorded notice of  
01:54:59 10 delinquent assessment lien be in your collection file?

11 A. So back in 2006, 2007, our entire office went  
12 paperless. So we have just an electronic filing system  
13 and filing program. And when a document -- you see  
14 these bold areas of the document, those bolded areas  
01:55:22 15 are date of sales from the program that get mail merged  
16 into the document. Those data sales are always in the  
17 program regardless of document.

18 When a notice of delinquent assessment lien is  
19 printed to be mailed and notarized and recorded, a copy  
01:55:38 20 of that notice of delinquent assessment lien is  
21 actually saved prior to it being signed or recorded  
22 into the letters and notices tab of our program.

23 Q. Okay. Let's go back one page to USB0046.

24 A. Okay. So that is a copy of the cover letter  
01:55:56 25 that would have accompanied the lien on 0047 or some

01:56:04 1 other delinquent assessment lien.

2 Q. Okay. So this would be the letter. And this  
3 letter, 0046, would accompany 0047 during the  
4 collection process. You would send that out to  
01:56:19 5 individuals?

6 A. I don't know. Yes. Except that I would say,  
7 you know, I can't testify as to whether or not 0047 was  
8 the enclosure with the cover letter or if a signed and  
9 notarized version of 0047 was the enclosure with the  
01:56:35 10 cover letter.

11 I can just testify that a notice of delinquent  
12 assessment lien similar to the one or exactly like the  
13 one on 0047 would have been enclosed with the cover  
14 letter on 0046.

01:56:52 15 Q. Okay. I'm looking at the bottom of 0046. The  
16 documents that were provided by Alessi & Koenig which  
17 you testified to the authenticity to pursuant to the  
18 earlier affidavit we discussed. There is a, looks like  
19 a certified mail receipt at the bottom of the cover  
01:57:11 20 letter that you previously reference at 0046?

21 A. Yes.

22 Q. Okay. Looks like it go -- we can agree that  
23 it goes out to the Edwards, George R Trust at 4254  
24 Rolling Stone Drive, correct?

01:57:22 25 A. Yes.

01:57:23 1 Q. Did you send this notice of lien to anyone  
2 else at all?

3 A. Did we send the notice of delinquent  
4 assessment lien to the delinquent owner? If you're  
01:57:34 5 asking if we sent it to the bank, no, we did not.

6 If the delinquent owner had a off-site  
7 address, we would have sent it to that address as well.

8 Q. Understood. But you would not send the notice  
9 of delinquent assessment lien to any form of deed of  
01:57:49 10 trust holder on the property pursuant to the policies  
11 and procedures of Alessi & Koenig at this time?

12 A. Correct.

13 Q. Okay. And so we can agree that then -- you  
14 have no reason to believe that US Bank ever received  
01:58:03 15 this notice of lien?

16 A. I can't testify to that. They wouldn't have  
17 received it from us mailing it to them.

18 Q. Okay. Let's go on to USB0049.

19 A. There is the title report from First American  
01:58:22 20 Title?

21 Q. You've seen this document before, sir?

22 A. I do not have a specific recollection of  
23 seeing this document, but I have certainly seen this  
24 form of document before.

01:58:33 25 Q. Okay. And why would this title report for

01:58:37 1 First American Title be in the collection file?

2 A. We use this document to help us ascertain the  
3 parties in interest, the parties with a recorded  
4 interest on the property that we are foreclosing on.

01:58:52 5 Q. Okay. And this would assist you in mailing  
6 out the appropriate notices to all the lienholders and  
7 everyone the title denoted?

8 A. Correct.

9 Q. Okay. Let's go over to US -- and that would  
01:59:05 10 be the title report we're referring to, I guess, we're  
11 both talking about, goes to USB0049 to USB0053; is that  
12 your understanding, Mr. Alessi?

13 MR. VILKIN: Objection, misstates the  
14 evidence.

01:59:19 15 THE COURT: I'll sustain. Rephrase.

16 BY MR. BECKOM:

17 Q. Can you identify for me where this title  
18 report begins and ends?

19 A. The title report begins on USB0049 and ends on  
01:59:35 20 USB0053.

21 Q. Okay. And, I guess, you would rely on this  
22 document for the parties to -- you would rely on this  
23 document to determine which parties to mail foreclosure  
24 notices to; correct?

01:59:51 25 A. This is -- this would be part of the body of



01:59:56 1 documents that we would rely on.

2 Q. Okay. Go over to USB0051.

3 A. Yes.

4 Q. What is your understanding of this page right  
02:00:13 5 here, sir?

6 A. This page, subsection D, shows the following  
7 deeds of trusts affecting the land. And then it gives  
8 you a list. It shows a deed of trust dated March 25,  
9 2009.

02:00:34 10 Q. Okay.

11 A. And you have one March 20 -- yeah. And  
12 there's also a claim of lien from Republic Services.

13 Q. Okay.

14 A. And then it also shows -- well, then on  
02:00:46 15 subsection 5 it shows the notice of delinquent  
16 assessment lien recorded by Glenview West.

17 Q. And, I guess, and you can correct me if I'm  
18 wrong here, but you previously testified that you would  
19 rely on this title report to mail the notices out;  
02:01:01 20 correct?

21 A. My testimony was that this would be part of  
22 the documents that we would rely on.

23 Q. Okay. We can both agree that the trustee  
24 listed on this title report is US Bank Trust Company;  
02:01:10 25 correct?

02:01:11 1 A. Yes.

2 Q. And we can also both agree that the  
3 beneficiary on this title report is US Bank National  
4 Association, ND; correct?

02:01:20 5 A. Yes.

6 Q. Would Alessi & Koenig typically mail -- as  
7 part of your procedures, would you typically mail  
8 documents to those two entities based on this title  
9 report?

02:01:29 10 A. It depends. It depends if there were any  
11 assignments. And that's why I say this is part of what  
12 we rely on. If there was an assignment on the deed of  
13 trust, that would be relevant.

14 Q. Would you rely on this document to mail out  
02:01:49 15 the notice of default on the homeowners association  
16 lien?

17 A. Again, this would be part of what we rely on  
18 to mail out the notice of default.

19 Q. Okay. What would be the other part you would  
02:02:02 20 rely on?

21 A. We do in-house research. Clark County has  
22 always had great online information available vis-à-vis  
23 the assessor's page and the recorders' page, where we  
24 can find assignments or judgments that the title plant  
02:02:21 25 might have missed.

02:02:21 1 Q. Okay. But you would just use the Clark County  
2 Assessor's website to supplement this title report?

3 A. Correct.

4 Q. Okay. And you would make sure that whoever  
02:02:31 5 was listed on the title report got the appropriate  
6 mailings as part of the policies and procedures?

7 A. Usually. I can imagine a situation where  
8 whoever is listed on the title report would be a former  
9 holder of a deed of trust, and the title report did not  
02:02:50 10 show an assignment. You know, the tens of thousands of  
11 foreclosures that we did, I'm sure that's happened.

12 Q. Okay.

13 A. But you're correct. In large part, the title  
14 report forms the foundation of what we rely upon to  
02:03:05 15 mail the notice of default.

16 Q. And would you think in your, I guess, based on  
17 your policies and procedures it would not follow Alessi  
18 & Koenig's policies and procedures to mail this to  
19 anyone other than these two entities, US Bank Trust or  
02:03:19 20 US Bank National Association unless there was some form  
21 of assignment; correct?

22 A. Well, every file is different. And I would  
23 like -- you know, I would feel more comfortable going  
24 through the file before I answer that question.

02:03:29 25 Q. Not that --

02:03:29 1 A. Because every file is different. I know that  
2 the mailing department would engage in their own  
3 analysis. So, again, this is part of it, but I don't  
4 want to commit to this being everything.

02:03:40 5 Q. Okay. Go over to USB0075.

6 A. Yes.

7 Q. Do you know what this document is that we're  
8 looking at, sir?

9 A. There is -- it's a certified mail receipt  
02:04:24 10 showing that a document was mailed to Edward George  
11 Trust. It also lists some other entities on it.

12 Q. What --

13 A. This looks to be a document that came from our  
14 program.

02:04:42 15 Q. Do you know what the purpose of this list of  
16 addresses up here would be?

17 A. The list of these addresses -- I don't know --  
18 I don't have a doc -- the list of these entities at the  
19 top of the document would be the entities that the  
02:05:15 20 notice of default -- looks to be the entities, just  
21 leafing through this, that the notice of default was  
22 mailed to.

23 Q. And how are you -- how are you drawing that  
24 conclusion, sir?

02:05:29 25 A. By the order that the paper is in the file.

02:05:33 1 Q. Which -- do you see the numbers in the bottom  
2 right-hand corner, the Bates No.?

3 A. Yes.

4 Q. Can you just identify for me, and also the  
02:05:43 5 Court, which Bates range you're relying on to, I guess,  
6 draw the conclusion that these were the mailing  
7 addresses for the notice of default which Alessi &  
8 Koenig sent?

9 A. I am looking at Bates -- I'm going to use the  
02:06:02 10 AK Bates 44 through AK48.

11 Q. 48?

12 A. Yes.

13 Q. Okay. So is it your understanding that if an  
14 entity is not listed on USB0075 and as you just  
02:06:17 15 referred it to A&K44, then Alessi & Koenig did not mail  
16 notice to anyone that was not on this list?

17 A. I mean, there's a lot of papers in this file.  
18 I mean, I would have to -- I wouldn't be able to tell  
19 you that off -- yet in the testimony.

02:06:37 20 Q. Well, I'll tell you what. We've previously  
21 talked about that title report where we discussed US  
22 Bank National Association, ND as being listed on that  
23 title report. Do you recall that, sir?

24 A. Yes.

02:06:52 25 Q. Okay. And then I think you also just

02:06:55 1 testified that this list right here at USB0075 is the  
2 list of people that received the notice of default.  
3 Can we agree on that as well?

4 A. Bear with me if you don't mind. I'm trying to  
02:07:14 5 locate a status report. I see one on AK70 or USB101.  
6 But it looks to be an incomplete status report. And  
7 the -- if I -- if I could -- if you could direct me to  
8 a complete status report which is off the -- which is a  
9 part of our document production that would be helpful  
02:07:33 10 to me.

11 Q. Well, I'll tell you what, why don't you take a  
12 moment, sir, since you were the custodian of records  
13 for Alessi & Koenig on this collection file that we've  
14 discussed.

02:07:49 15 A. Yes.

16 Q. Correct. Would you like to take a moment and  
17 see if you can find some document that indicates that  
18 Alessi & Koenig sent US Bank National Association the  
19 notice of default for this foreclosure for the property  
02:08:03 20 that brings us here today.

21 A. So I'm looking at AK01. And you can see  
22 there's an entry 4-5-2011, 10-day notice of default  
23 mailings.

24 Q. Where -- you are looking at USB0032?

02:08:34 25 A. Yeah.

02:08:35 1 Q. AK0001?

2 A. And 0033.

3 Q. What date did you refer to, sir?

4 A. I'm looking at the entry 4-5-2011, 4-12-2011.

02:08:53 5 Those appear to relate to the mailing shown on AK

6 USB75.

7 Q. And does that indicate to you at all that

8 US -- that Alessi & Koenig sent the notice of default

9 to US Bank National Association, sir?

02:09:17 10 A. It does not.

11 Q. Okay.

12 A. It indicates US Recordings as, but I do not

13 see US Bank.

14 Q. Okay. And you have no -- you don't have any

02:09:34 15 information -- because I believe you testified earlier

16 that it was the policies and procedures of Alessi &

17 Koenig to mail it out -- mail out the notice of default

18 to the entities contained in the title report, correct?

19 A. Against who?

02:09:47 20 Q. We talked about that title report earlier from

21 First American Title; do you recall?

22 A. Yeah. Yeah.

23 Q. Okay.

24 A. That was one -- that is one of the sources.

02:09:55 25 So it's possible that there's an assignment not shown

02:09:58 1 on the report. That's why I'm looking for the actual  
2 relevant operative deed of trust at that time so that I  
3 can help you better.

4 Q. No. Take -- no. Take your time.

02:10:39 5 A. Okay. So if you look on AK26, it looks as  
6 though we mailed the notice of default to the entity on  
7 the left corner of the document US Recordings, 2925  
8 Country Drive.

9 And then turning back to the mailings, I  
02:11:06 10 believe, yes, that was one of the entities. So that's  
11 where that address came from. The deed of trust shown  
12 on USB57, my testimony is that the NOD was mailed to US  
13 Recordings at 2925 Country Drive in St. Paul,  
14 Minnesota, as reflected on the deed of trust on USB57.

02:11:43 15 Q. Okay. But that is not -- but we can agree --  
16 let me go back and find it. That is not the entity  
17 that we discussed earlier on that title report;  
18 correct?

19 A. Correct.

02:11:51 20 Q. Okay. Is there any reason why you would have  
21 an entity pop up on a title report and then you would  
22 mail it to a different entity?

23 A. I can speculate as to the reason. I -- but I  
24 don't have any direct knowledge of why.

02:12:14 25 Q. Does this procedure comply with the policies



02:12:18 1 and procedures of Alessi & Koenig to process

2 nonjudicial HOA foreclosure as they stood in 2011?

3 A. Without knowing more information about the  
4 file, I cannot tell you.

02:12:29 5 Q. Okay. Do you know who would have made the  
6 determination to mail the notice of default to US  
7 Recordings versus US Bank?

8 A. I mean, your -- you're asking me to go back  
9 several years. I don't.

02:12:55 10 Q. Okay. Looking at USB0077. Would it have  
11 been -- take a minute. I know giving trial testimony  
12 isn't exactly the way I like to spend my Mondays, so  
13 take your time.

14 A. What was the question?

02:13:19 15 Q. USB0077. Let me know when you get there.

16 A. Yes, that is a copy of -- a recorded copy of  
17 the notice of default recorded March 29, 2011.

18 Q. Okay. Who is Mary Indalecio?

19 A. She was a former employee of Alessi & Koenig.

02:13:54 20 Q. Would it have be Ms. Indalecio who would have  
21 made the professional determination to mail it the US  
22 Recordings as opposed to US Bank?

23 A. I don't know.

24 Q. Okay. Your system doesn't happen to  
02:14:07 25 automatically populate with mailing addresses that you

02:14:10 1 get from title report; does it?

2 A. No.

3 Q. Okay. How do the mailing -- I believe you  
4 said that USB0075 was a print-off from your computer  
02:14:21 5 system; correct?

6 A. Yes.

7 Q. How do those addresses get in there?

8 A. Those addresses are manually entered. So what  
9 may have happened is the -- whoever was working on this  
02:14:34 10 file would have taken the instrument number, the book  
11 number of this deed of trust and then pulled the deed  
12 of trust that you see in the file. And then they made  
13 a determination from that document to mail to the  
14 entity they mailed to.

02:14:50 15 Q. Okay. Let's go ahead and go over to USB0081.

16 A. Yes.

17 Q. Now, what is this that we're looking at, sir?

18 A. This is the same type of document that we  
19 previously looked at. However, as you can see, there

02:15:33 20 were additional addresses entered into those data  
21 fields including the Ombudsman's Office. This would be  
22 the entities that we, Alessi & Koenig, mailed the  
23 notice of trustee sale to.

24 Q. Okay.

02:15:47 25 A. And if you see the handwritten 24230, that

02:15:51 1 should match the trustee sale number on the recorded  
2 document.

3 Q. Understood. Now, question. There's a lot  
4 more addresses on USB0081 than there are on USB -- I  
02:16:06 5 think it was 0075. Do you know why?

6 A. No.

7 Q. Okay. We can agree, though, that it's still  
8 being sent to US Recordings; correct?

9 A. Yes.

02:16:18 10 Q. And then also on the notice of sale it looks  
11 like Alessi & Koenig now add in US Bank National  
12 Association and US Bank Trust Company; correct?

13 A. US Bank National Association, correct. I  
14 don't see -- oh, yes. And US Bank Trust Company.

02:16:43 15 Correct.

16 Q. Okay. Is there any reason why you guys would  
17 have included by, I'm sorry, "you guys" I mean Alessi &  
18 Koenig. Why you would have included US Bank National  
19 Association and US Bank Trust Company on the notice of  
02:16:56 20 sale but not on the notice of default?

21 A. I don't know. Without looking at the file  
22 further I don't know.

23 Q. Okay.

24 A. I would note that the notice of default was --  
02:17:15 25 well, strike that.

02:17:23 1 Q. What were you going to say about the notice of  
2 default, sir?

3 A. I was just looking at the dates, but it  
4 wasn't -- it wasn't anything.

02:17:30 5 Q. So is there any reason -- so, again. Is there  
6 any reason why you would send US Bank National  
7 Association the notice of trustee sale but not the  
8 notice of default?

9 A. Without looking at the file further, I cannot  
02:17:43 10 give you an answer. I don't know why.

11 Q. Okay. But it is US -- it is Alessi & Koenig,  
12 or it was Alessi & Koenig's policies and procedures as  
13 of 2011 to send the deed of trust holder both the  
14 notice of default as well as the notice of sale?

02:17:59 15 A. Well, I mean, when you say deed of trust  
16 holder, that could mean a lot of different things to  
17 me. It could mean any one of those three entities.  
18 They're all on the deed of trust as entities that  
19 possibly -- I mean, I will leave that to the Court --  
02:18:20 20 are authorized to accept mailing on behalf of the deed  
21 of trust. So there may be more than one entity  
22 beneficiary, servicer ...

23 Q. I guess I'll just rephrase that question then.  
24 Was it Alessi & Koenig's policies and procedures in  
02:18:40 25 2011 to mail the notice of default to the deed of trust

02:18:44 1 holder?

2 A. The servicer of the deed of trust holder, the  
3 beneficiary, are you talking about the beneficiary?

4 Q. Any party listed on the deed of trust.

02:18:54 5 A. We -- our policy was to mail to at least one  
6 of those parties.

7 Q. One of them?

8 A. At least one of the parties, or the agent, or  
9 the beneficiary, the servicer of the deed of trust --  
02:19:04 10 of the deed of trust that the NOD.

11 Q. Okay. But we can -- we can -- can we agree  
12 that, I guess, once again, US Bank National Association  
13 did not the receive the notice of default?

14 A. I would not testify to that.

02:19:20 15 Q. Any reason why?

16 A. Well, we mailed the notice of default to US  
17 Recordings. And if you -- if I recall the deed -- they  
18 were on the deed of trust as an agent of the  
19 beneficiary. So in that way we did mail the deed --  
02:19:47 20 the NOD to the holder of the deed of trust.

21 Q. Okay. So it's your testimony then that  
22 mailings to US Recordings in your -- according to at  
23 least based on your review of this record Alessi &  
24 Koenig would have been of the opinion that mailing to  
02:20:03 25 US Recordings would have been mailing to US Bank?

02:20:06 1 A. I would leave that to the Court.

2 Q. But would that be sufficient for Alessi &  
3 Koenig's purposes?

4 A. Again, without looking further at the file and  
02:20:15 5 looking -- you know, again, I'm -- I wouldn't speculate  
6 on that, that that's who that we mailed it to. Whether  
7 or not that constitutes adequate mailing, I will leave  
8 to the Court.

9 Q. Okay. Let's go to USB0084.

02:20:42 10 A. So 0084 is a copy of the notice of trustee  
11 sale, again, signed by Ryan Kerbow on behalf of  
12 Glenview West Townhomes.

13 Q. We can still agree that Mr. -- I guess,  
14 Mr. Kerbow was involved in the foreclosure process of  
02:20:59 15 this property; correct?

16 A. Yes. By this time in the process, when we're  
17 getting ready to set a property for sale, there's a  
18 three review process that happens. The legal assistant  
19 that handled the property up until this time, and then  
02:21:18 20 at one time it was a fella name Bronco who was replaced  
21 by a fella named George. Those individuals constituted  
22 our trustee sale department. And they would review the  
23 file. And then we would have a licensed Nevada  
24 attorney review the file.

02:21:34 25 Q. And in this case that would have been

02:21:35 1 Mr. Kerbow?

2 A. That's my assumption, yes.

3 Q. Would the foreclosure have gone -- was it  
4 Mr. Kerbow who would green light these foreclosures to  
02:21:43 5 move forward?

6 A. Or whoever the Nevada attorney reviewing the  
7 file was, yes.

8 Q. And in this case --

9 A. That would be --

02:21:49 10 Q. -- his signature on the notice of sale leads  
11 you to believe it was Mr. Kerbow?

12 A. Yes.

13 Q. Okay. Taking a look at notice of -- and this  
14 is the notice of trustee sale that was sent out  
02:22:02 15 pursuant to mailing list earlier; correct, sir?

16 A. Yes.

17 Q. Okay. Do you know is this a form or is this  
18 something that's drafted from scratch every time?

19 A. The notice of trustee sale?

02:22:15 20 Q. Yes, sir.

21 A. Again, it's a mail merge document. The bold  
22 lettering in capitals are merged from data fields  
23 within the program. And that's what creates this  
24 document. So the template already exists.

02:22:31 25 Q. Okay. Do you know who initially drafted the

02:22:34 1 template?

2 A. No.

3 Q. Okay. I want you to go down to the very last  
4 paragraph of this document, sir.

02:22:51 5 A. Yes.

6 Q. On USB0084. Do you see what I'm talking  
7 about, sir?

8 A. Yes.

9 Q. So there's a -- looks like there's a what you  
02:23:02 10 consider to be just like your standard language in that  
11 paragraph for a foreclosure. This is not one of the  
12 merge fields, correct?

13 A. Correct.

14 Q. Okay. Do you see in the second sentence where  
02:23:14 15 it says, Said sale will be made without covenant or  
16 warranty, expressed or implied, or regarding title,  
17 possession, or encumbrances to paying the remaining  
18 balance of sum of the note, homeowners assessment, or  
19 other obligations served by this lien.

02:23:31 20 Do you see what I'm talking about?

21 A. Yes.

22 Q. Why is that language in there?

23 A. Well, it's boilerplate language as you know.

24 And it speaks for itself. It's there to make that

02:23:45 25 statement.



02:23:45 1 Q. To make that statement?

2 A. Right.

3 Q. With regards to the portion notice of trustee  
4 sale it says that there's no covenant or warranty,  
02:23:53 5 express or implied, regarding title, possession, or  
6 encumbrances. Is your understanding that you were  
7 cautioning potential purchasers that there may be a  
8 title issue on this property?

9 A. That we are what?

02:24:06 10 Q. Is it your understanding that that language is  
11 to caution potential purchasers that there may be an  
12 issue with title when they purchase this property?

13 A. I'm not sure that that language is in there to  
14 caution potential purchasers. Rather than to -- like I  
02:24:27 15 said, it's -- our job is not to caution anyone. So I  
16 wouldn't -- I would answer that question, no, that's  
17 not the reason that language is in there.

18 Q. Would you then, I guess, clarify for me what  
19 the purpose of that language was regarding no warranty  
02:24:41 20 with title?

21 A. It's just to make that statement.

22 Q. Just to make that statement?

23 A. Boilerplate language in notices of trustee  
24 sales. And so it's in there to make that statement.  
02:24:55 25 But we -- the statement speaks for itself. I wouldn't

02:25:00 1 go so far as to say it's in there for any particular  
2 purpose to caution the investors. We just didn't think  
3 of it that way.

4 Q. Would you ever look at a purchaser and say,  
02:25:11 5 Hey, you're going to get title to this house at the  
6 conclusion of this HOA sale?

7 A. No.

8 Q. Any reason why?

9 A. Again, we didn't -- our office was very  
02:25:20 10 careful not to speculate. And so we didn't engage in  
11 those types of conversations.

12 Q. So this language is basically just, you know,  
13 buyer beware --

14 (Court Reporter interrupts)

02:25:30 15 A. I'm sorry.

16 Q. Buyer beware you get what you get. You don't  
17 throw a fit.

18 A. No. Again, we would -- our job was to just  
19 ensure that we performed the nonjudicial foreclosure  
02:25:47 20 correctly. What type of title the investor got, we  
21 really didn't have a dog in that fight. That was  
22 not -- that was not a concern of ours.

23 Q. Okay. You also, I guess, cautioned them about  
24 possession. Would you ever have told a HOA purchaser  
02:26:02 25 at your HOA foreclosure sale that they would 100

02:26:06 1 percent have possession of this property?

2 A. Again, we did not engage in those types of  
3 conversations with investors.

4 Q. Okay. And encumbrances. What is your  
02:26:12 5 understanding of that term?

6 A. A deed of trust, a judgment lien, anything  
7 that would need to be paid out before the remaining  
8 equity of the property would be paid to the seller.

9 Q. Okay. So that was just -- so it's -- can we  
02:26:30 10 agree then that that was just cautioning purchasers  
11 that, Hey, again, you get what you get. You don't  
12 throw a fit. There may be an encumbrance on this  
13 property?

14 A. Again, I don't know that this language was  
02:26:42 15 necessarily geared toward purchasers or toward the  
16 homeowner that was being -- I mean, it's just  
17 boilerplate language. And I just -- I would be going  
18 too far in my testimony if I said that the language is  
19 there -- was there for a reason relating to purchasers  
02:26:58 20 to caution them or to -- it was just language that we  
21 had put in there.

22 I mean, this is 2011, so I don't know the  
23 genesis of this. All I can tell you that this is  
24 pretty standard boilerplate notice of trustee sale  
02:27:14 25 language.

02:27:17 1 Q. So there's just -- so, I guess, I'm confused.  
2 Is there no reason that language is in there at all?

3 A. Well, the language speaks for itself. I can  
4 just tell you that we didn't have it in our state of  
02:27:27 5 mind we're going to put this language in there to  
6 caution purchasers. That wasn't our job.

7 Q. What was the purpose of that language then; do  
8 you recall?

9 A. To have the notice of trustee sale comport  
02:27:37 10 with what our Nevada attorneys felt was industry  
11 standard or required. I don't know how much thought.  
12 I wasn't involved in that decision.

13 Q. Okay. Did you ever express to anyone about  
14 your sales that they would be, you know, I guess,  
02:27:59 15 subject to a mortgage?

16 A. No. Again, we did not engage in that type of  
17 representation.

18 Q. Did you ever discuss with anyone that there  
19 might be litigation involved over these properties when  
02:28:13 20 you sold them?

21 A. I mean, there was litigation but there -- we  
22 didn't have those types of conversations. Well, strike  
23 that. You said have I ever discussed with anyone?

24 Q. Yeah.

02:28:26 25 A. I'm sure that the attorneys in our office

02:28:28 1 discussed it.

2 Q. Okay. So there was discussions amongst the  
3 attorneys in your office regarding the litigation over  
4 these properties?

02:28:38 5 A. Well, I mean, this is September 2011. So this  
6 file happens to be one of the older files. And so if  
7 you're asking me in September of 2011, I don't recall  
8 if those types of discussions would have taken place  
9 then. Looking at the trustee deed upon sale, I know  
02:29:02 10 that the property sold in early 2012. So this is --  
11 this is a sort of at the beginning of when the  
12 litigation all started.

13 Q. Let's go to USB00897. Again, thank you for  
14 coming here and testifying. I know this isn't, like,  
02:29:28 15 the funnest way to spend a Monday afternoon.

16 A. 0089?

17 Q. Yes, sir.

18 A. Okay. Okay. That is the trustee's deed upon  
19 sale that I just mentioned it's dated or recorded  
02:29:39 20 January 31, 2012.

21 Q. Okay. Actually, you know what, I might have  
22 one more question. So look, what is this document that  
23 we're looking at, sir?

24 A. Well, it's exactly what it says. It's a  
02:30:04 25 trustee's deed upon sale. It's a deed that the trustee

02:30:08 1 records on behalf of the HOA in this case, vesting  
2 title in the owner in the investor who was the  
3 successful bidder at the public auction.

4 Q. Okay. Looks like this trustee's deed -- are  
02:30:28 5 you able to tell me how much this property sold for  
6 January 25, 2012, based on this document?

7 A. The amount paid by grantee buyer at the  
8 trustee sale was \$5,331 per this document.

9 Q. Okay. So going back to USB0080, I just want  
02:30:51 10 to compare and contrast these documents for a second.  
11 Looks like there was a sentence down here that says the  
12 total amount of the unpaid balance and the obligation  
13 secured by the property to be sold in a reasonable  
14 estimated cost expenses and advances at the time of the  
02:31:07 15 initial publication of the notice of sale is \$5,370.  
16 Do you see what I'm talking about, sir?

17 A. Yes.

18 Q. Okay. Now, going back to the notice of  
19 trustee's deed upon sale, it appears that this property  
02:31:22 20 sold for less than the total amount due on the debt.  
21 Can we agree on that, sir?

22 A. Yes.

23 Q. Is there any reason why?

24 A. I can't give an answer to that without looking  
02:31:41 25 at the file at this time.

02:31:42 1 Q. Okay. Going back to 0075 looks like this sale  
2 went -- was held at 4:00 p.m. at 930 South Fourth  
3 Street, Las Vegas, Nevada 89101. Do you see what I'm  
4 talking about, sir?

02:32:07 5 A. Yes.

6 Q. Is that where Alessi & Koenig was holding  
7 their HOA homeowner force sale at this time?

8 A. Yes.

9 Q. Do you recall going down to the specific sale,  
02:32:19 10 sir, at that address?

11 A. No. I didn't attend the sales. I didn't  
12 attend the sales. I would walk by them when we were  
13 having them in our conference room occasionally and  
14 peek my head in. But I did not, in general, attend the  
02:32:37 15 sales.

16 Q. Okay. You just kind of step in every once in  
17 a while? Say hi to everybody?

18 A. Yeah.

19 Q. Okay. So let me ask you this plaintiff  
02:32:52 20 Resources -- or defendant as countermotion Resources  
21 Group is here today with, I guess, their  
22 representative, Mr. Iyad Eddie Haddad. Are you -- have  
23 you met Mr. Haddad before?

24 A. I have met Mr. Haddad.

02:33:06 25 Q. When was the first time you met Mr. Haddad?

02:33:08 1 A. I don't recall.

2 Q. Would you have known him in 2010.

3 A. I don't recall. I've met him at our HOA  
4 trustee sales I believe.

02:33:18 5 Q. At your HOA trustee sales?

6 A. I believe, yes.

7 Q. I'm confused. Didn't you say you didn't  
8 attend those sales?

9 A. They were at -- at some point they were at our  
02:33:27 10 office. And if I was in the office, as you know  
11 Mr. Haddad was one of the more active investors in the  
12 industry. He attended, I believe, if not all our  
13 sales, most of our sales. So I saw -- had occasion to  
14 see him around the office at times on the days of the  
02:33:45 15 sales. Just as I would any other investor.

16 Q. That's fair. Did you ever shoot the breeze  
17 with him? Have -- make small talk? Anybody like that?

18 A. I have no specific recollection. I mean, I  
19 would say, Hi, Eddie. How you doing? I don't recall  
02:34:00 20 any in-depth conversations with him about anything of  
21 substance.

22 Q. Okay. Did you have any in-depth -- short  
23 conversations with him of any substance?

24 A. Nothing of substance. Nothing, nothing that I  
02:34:13 25 can recall. Mr. Haddad and his entities have no



02:34:18 1 relationship to Alessi & Koenig or myself. We have no  
2 interest in his entities, and vice versa.

3 Q. Do you recall ever hearing Mr. Haddad discuss  
4 that he was getting these properties free and clear of  
02:34:38 5 a mortgage?

6 A. No.

7 Q. Okay. Do you recall having any conversation  
8 with Mr. Haddad that he thought these -- that this  
9 litigation was going to be subject to a lawsuit?

02:34:51 10 A. I don't recall a conversation like that.

11 Q. Okay. Do you recall Mr. Haddad ever  
12 demonstrating general awareness of the contested nature  
13 of his title in any way, shape, or form?

14 A. No. I don't recall that.

02:35:08 15 Q. Okay. Do you ever recall any purchaser  
16 generally discussing the outcome of lawsuits involving  
17 HOA foreclosure properties?

18 A. I recall sometime around the Supreme Court  
19 decision in SFR the investors talking about that  
02:35:34 20 obviously after the decision came down at one of our  
21 subsequent sales. And I have a general recollection of  
22 some scuttlebutt about lawsuits winding their way  
23 through various districts courts. I don't have any  
24 specific recollection of any specific conversations  
02:35:55 25 with Mr. Haddad to that effect.

02:35:58 1 Q. What do you mean by -- and just because, like,  
2 my vocabulary is about this big because I've got a six  
3 year old. What did you mean by scuttlebutt?

4 A. Well, you know, if a case would -- if a  
02:36:08 5 holding would emanate from one of the district courts,  
6 the investors would talk about it. I remember seemed  
7 like a natural thing for them to do at the sales. Hey,  
8 did you hear about this ruling that came out of this  
9 judge's chamber -- I mean, of the courtroom. I don't  
02:36:25 10 recall Mr. Haddad specifically being involved in any of  
11 those conversations. I don't recall him not being  
12 involved in those conversations.

13 My testimony, though, is that around the  
14 office, I think we had our sales every other Wednesdays  
02:36:39 15 when the dozen or so investors would come in, and there  
16 was a shake up in the courts on a ruling, they would  
17 talk about it.

18 Q. And that's just a general habitual thing that  
19 investors did?

02:36:55 20 A. I can recall it happening. I don't know  
21 habitual. I can recall it happening, I don't want to  
22 give you a number, a couple of times.

23 Q. You know, you talk about, I guess, the ruling  
24 in SFR. I know everybody knows what we're talking  
02:37:13 25 about, but we have to be clear for the record here. I

02:37:15 1 mean, what do you mean the ruling in SFR? What are you  
2 talking about?

3 A. Well, where the Supreme Court of Nevada ruled  
4 that the nonjudicial foreclosure sale by an HOA, to put  
02:37:25 5 it in a nutshell, wiped out the mortgage.

6 Q. Okay. Potentially, there's a lot of stuff  
7 going on.

8 A. Right.

9 Q. But all right. But, like, so you talk about  
02:37:36 10 that, you know, I think you referred to it as a  
11 scuttlebutt. Like, you know, all these scuttlebutts,  
12 like, were they going on before that SFR decision came  
13 down?

14 A. Like I testified, if a decision came out of a  
02:37:49 15 district -- a lower court, they were -- I can recall on  
16 a couple of occasions those decisions being discussed,  
17 you know, before or after a trustee sale. You know,  
18 during this time was sort of beginning of the whole HOA  
19 trustee sale phenomenon. You know, but by 2013, 2014,  
02:38:15 20 we had a dozen, two dozen people in our conference  
21 rooms. And certainly there were discussions about what  
22 was happening in the industry among the investors. I  
23 can testify to that. I don't -- I didn't engage in  
24 that. I purposefully stayed away from all of that for  
02:38:32 25 this very reason.

02:38:34 1 Q. Fair enough. But, I mean, like, when they're  
2 talking about the scuttlebutts you're talking about,  
3 like, you know, just general conversation?

4 A. Talking shop.

02:38:43 5 Q. Talking shop. Like, thank you for giving me a  
6 better word to use. When they're talking about shop  
7 prior to SFR, are they coming here saying, Hey, I got  
8 this property free and clear of a mortgage. Court rule  
9 said so?

02:38:55 10 A. No. The investors I don't -- there would be  
11 no point in that kind of a conversation. You know, it  
12 really doesn't matter what we think or the investor  
13 thinks. It matters what the Court thinks. So, again,  
14 our job was to conduct a proper sale. And whatever  
02:39:12 15 title the investor got or didn't get, that was up for a  
16 Court to determine. We were fully aware of that.

17 Q. I know there may not have been a point to it.  
18 Was there at any point in time, did you hear these  
19 conversations go on where anybody thought, you know,  
02:39:24 20 you hear somebody say, Hey, I lost this property  
21 because some judge ruled against me. Or, Hey, I got  
22 this property free and clear. Would you hear those  
23 kinds of conversations?

24 A. I don't want to say never. But I don't have a  
02:39:35 25 specific recollection of a conversation like that. If

02:39:37 1 there was a conversation like that, I might have heard  
2 it once or twice.

3 Q. Once or twice?

4 A. Yeah.

02:39:42 5 Q. So would it be fair to say that once or twice  
6 maybe you heard somebody talk about how they lost a  
7 lower court ruling and their property was, you know, up  
8 on appeal? Or they lost it? Or something like that?

9 A. I don't have -- I don't have a specific  
02:39:55 10 recollection, but if pressed I would say that I was  
11 probably heard a conversation like that or two.

12 Q. Okay. And that was just -- while, you know,  
13 we're talking, what, the beginning of 2012. A long  
14 time ago. You don't remember specifically would have  
02:40:12 15 those conversations, but you remember them going on?

16 A. No. I don't remember them going on at the  
17 beginning of 2012. In fact, I would be surprised if  
18 those types of conversation were happening at this  
19 time.

02:40:21 20 Q. Okay.

21 A. Because as I testified moments ago, this was  
22 really the beginning of the whole HOA foreclosure  
23 phenomenon.

24 Q. Do you know, say, with 100 percent certainty  
02:40:34 25 that you've never heard Mr. Haddad talk about losing a

02:40:38 1 property in a lower court proceeding?

2 A. I cannot say with 100 percent certainty that.

3 Q. Why is that?

4 A. Because I don't have a photographic memory of  
02:40:48 5 everything that's happened to me in my life over the  
6 last seven years.

7 Q. You and me both. Okay.

8 A. I can tell you I have no recollection of that.

9 Q. You have no recollection. But you can't say  
02:41:00 10 with 100 percent certainty that it never happened?

11 A. I mean, correct.

12 Q. Okay. Here we do. Let's go back to USB0 -- I  
13 apologize. I speak really fast at times. USB0077.

14 A. Yes.

02:42:05 15 Q. What is this document that we're looking at,  
16 sir?

17 A. There is a recorded notice of default and  
18 election to sell on behalf of the homeowners  
19 association.

02:42:14 20 Q. Okay. And this is the one that Alessi &  
21 Koenig would have filed the property records; correct?

22 A. Yes.

23 Q. Okay. I want to take a look at -- you see  
24 that. This is the same thing you said where they were  
02:42:36 25 merged code, and they can be bold and capitalized would

02:42:40 1 be what would be merged in this document; correct?

2 A. Yes.

3 Q. Okay. And this is the notice of default that  
4 dealt with the subject the property that brings us here  
02:42:51 5 today; correct?

6 A. Yes.

7 Q. I'm looking at this. And it says -- it talks  
8 about how not -- looking at midway through the second  
9 paragraph it says notwithstanding the fact that your  
02:43:12 10 property is in foreclosure, you may offer your property  
11 for sale and provide that the sale is -- sorry. I'll  
12 slow down.

13 All right. Actually, I'm going to start with  
14 the big boldface letters.

02:43:35 15 Remember that you may lose your legal rights  
16 if you do not take prompt action. Notice is hereby  
17 given that Alessi & Koenig is appointed trustee agent  
18 under the above lien dated January 4, 2011. Executed  
19 by Glenview West Townhomes Association to secure  
02:43:52 20 assessment obligations in favor of said association  
21 pursuant to the terms contained in the declaration of  
22 Covenants conditions and restriction. It says CC&Rs in  
23 parentheses. Do you see what I'm talking about?

24 A. Yes.

02:44:04 25 Q. So it was your understanding that you were

02:44:05 1 selling this property pursuant to the CC&Rs?

2 A. Pursuant to the CC&Rs to the extent the  
3 provisions in the CC&Rs are not voidable or voided due  
4 to conflicting with NRS 116. I don't know if the CC&Rs  
02:44:28 5 had a mortgagee protection clause in them. But that  
6 immediately jumps to mind as to a provision in the  
7 CC&Rs that may or may not be relevant.

8 Q. So you -- Alessi & Koenig was aware that  
9 sometimes there were mortgage protection clauses in  
02:44:41 10 CC&Rs?

11 A. We were.

12 Q. Okay. Did you ever take an effort to try to  
13 clarify? I believe you talked about how that was void,  
14 correct, pursuant to Nevada law?

02:44:53 15 A. Well, no, I said, may. Again, we didn't --  
16 I'm going to say this as clearly as I can. Alessi &  
17 Koenig did not engage in speculation as to whether or  
18 not, for instance, a provision like that would be  
19 enforceable.

02:45:07 20 Q. Okay.

21 A. We were aware of it. But that, again, our --  
22 it -- so a mortgage protection clause is a clause that  
23 states that the mortgage survives the sale of a  
24 property via HOA foreclosure.

02:45:22 25 Now whether or not that provision is



02:45:24 1 enforceable that wasn't -- we did not feel like it was  
2 our job to make a determination internally or  
3 represent -- or in representing -- in representations  
4 made to the investors.

02:45:35 5 Q. Did you ever -- these -- like these notice of  
6 default and notice of sale, these are documents that  
7 are advertised to the public; correct?

8 A. They are. The notice of default is recorded.  
9 I don't know if I would say it's advertised to the  
02:45:50 10 public. The notice of trustee sale is posted in three  
11 conspicuous places within the county of the sale.

12 It's also published in a newspaper with  
13 general circulation in the county of the sale.

14 We also would post the notice of trustee sale  
02:46:10 15 on a trustee sale calendar on our website that the  
16 public could access.

17 Q. Okay. Here we go. You said the notice of  
18 trustee sale --

19 A. Yes.

02:46:29 20 Q. -- would have made these representations.

21 And I am -- did you take any action with the  
22 notice of trustee sale to clarify that that mortgage  
23 protection clause, or the one that you were speaking to  
24 because the mortgage protection clauses really weren't  
02:46:52 25 validated by statute?

02:46:54 1

A. No.

2

Q. Why?

3

A. Because we purposefully and consciously stayed out that arena. We did not take a position one way or

02:47:02 5

another on that issue.

6

Q. Did you take any -- when you were staying out of that arena, did you take any action to try to maximize the number of bidders that would attend these sales?

9

02:47:16 10

A. Well, I mean, we certainly used all of the tools that the statute required such as posting the sale in three conspicuous places, like the public library. We certainly published the sale in the newspaper for three consecutive weeks. And we did take one additional action that was not statutorily required to let the public know about the sale. And that's the trustee sale calendar that was on our home page of our website. Other than that, we did not do anything.

02:47:40 15

19

Q. Okay. So you weren't trying to maximize the number of bidders at the sale?

02:47:57 20

21

A. We were hoping that there would be at least one bidder to pay our client in full.

23

Q. Okay.

24

A. Our job was to get our client paid.

02:48:17 25

Q. Let's go over to USB001 -- USB0164.

02:48:35 1 A. Uh-huh.

2 Q. Dying to talk about this, huh, sir?

3 A. You're right. For the 500th time.

4 Q. So USB0164 Section 11 subordination lien to  
02:48:53 5 the mortgage. Do you see what I'm talking about?

6 A. Yes, sir.

7 Q. And it says the lien of the assessments  
8 provided for herein shall be subordinate to the lien of  
9 any first mortgage. What is your understanding of that  
02:49:05 10 provision?

11 A. What do you mean?

12 Q. What does that say?

13 A. Whether or not it's enforceable? My  
14 understanding of that provision is that -- could you be  
02:49:24 15 a little more specific?

16 Q. Sure. Do you think that this is telling  
17 everyone that the lien of the assessments is  
18 subordinate to the first mortgage?

19 A. I would leave that up to the Court to  
02:49:37 20 determine.

21 Q. What is your -- what is your take on that? I  
22 mean, you are a California attorney; correct?

23 A. That's correct. And I'm also the founder of  
24 the largest assessment collection foreclosure firm in  
02:49:47 25 the state of Nevada. And I know enough by now to not

02:49:51 1 speculate as to whether or not a Court -- what courts  
2 are going to do on this issue. So we just don't  
3 speculate. I see the provision. It's -- I just cannot  
4 give you any testimony as to its import.

02:50:04 5 Q. Did you ever hear of any purchasers at any of  
6 your sales conducted by Alessi & Koenig discussing  
7 these kinds of subordination clauses?

8 A. Not to my recollection.

9 Q. Okay. Did you ever see any purchaser at your  
02:50:17 10 HOA foreclosure sales act confused about what they were  
11 getting or buying?

12 A. You know, I no -- I -- no. I can't answer  
13 that yes or no. I didn't know these investors well  
14 enough to know whether they were acting confused or not  
02:50:41 15 confused. Or ...

16 Q. So did you ever see anyone at any of your  
17 sales say something to the effect of, Hey, why did that  
18 guy just purchase that HOA foreclosure property, he's  
19 crazy.

02:50:56 20 THE MARSHAL: Counsel, I was having a hard  
21 time tracking on that one.

22 MR. BECKOM: I'm sorry.

23 THE MARSHAL: I'm sure Madam Clerk is  
24 suffering through.

02:51:01 25 MR. BECKOM: Is she winking at you over there?

02:51:02 1 THE MARSHAL: I just saw the puzzlement on her  
2 face. And I was trying to follow you too.

3 Just for good luck measure. I'm not trying to  
4 hurt her or anything.

02:51:11 5 MR. BECKOM: No. That's fair enough.

6 BY MR. BECKOM:

7 Q. Did you ever see anybody like, you know,  
8 reaction to one of your homeowners association  
9 foreclosure say, Hey, that guy is crazy for buying that  
02:51:24 10 thing. Like, you know, why would he do that?

11 A. You know, again, I just peek my head in. I  
12 don't have any recollection of that. Um, yeah.

13 Q. Okay. Would you consider to be bidding  
14 depressed -- actually, have you ever been to a sale, a  
02:51:43 15 foreclosure sale under a deed of trust?

16 A. That's a good question. I don't recall. You  
17 know, I never -- I never went to a deed of -- a  
18 foreclosure sale under a deed of trust for purposes of  
19 representing an investor client or for purposes of  
02:52:09 20 purchasing a property myself. But I have been down to  
21 Nevada Legal News crying sales on behalf of HOAs. Or  
22 we were crying sales on behalf of HOAs post  
23 October 2015. I've been down there a couple of times  
24 this year. And I may have walked by a parking lot  
02:52:28 25 while a trustee was conducting a foreclosure sale. I

02:52:31 1 don't know.

2 Q. Okay.

3 A. I've never bid on any property at a bank  
4 foreclosure sale.

02:52:37 5 Q. So, but you did say you poked your head in to  
6 these HOA foreclosure sales periodically; correct?

7 A. Correct.

8 Q. So let me just ask you this. You know, based  
9 on your perception of these HOA foreclosure sales that  
02:52:50 10 you poke into periodically that your company runs, in  
11 your opinion would these sales be described as  
12 depressed in terms of the bidding that you saw going  
13 on?

14 A. Depressed?

02:53:02 15 Q. Yes.

16 A. What do you mean by depressed?

17 Q. Do you think people were bidding up adequate  
18 amounts for a house?

19 A. As I testified earlier, well, I can think of  
02:53:18 20 no better example of a free market than a public  
21 auction. So the investors were bidding up to a point  
22 that that they felt made sense vis-à-vis the risk and  
23 the litigation. So I would not say anything was  
24 depressed.

02:53:36 25 Q. And they were aware of the risk in this

02:53:38 1 litigation at the time this building was going on?

2 A. You would have to ask them. My assumption  
3 would be yes.

4 Q. Okay. I guess, one more time for the Judge's  
02:53:49 5 sake because I don't think you actually answered the  
6 question. Based on your perceptions from, you know,  
7 being the custodian of records the company that runs  
8 these sales, in your opinion, was the bidding at these  
9 sales depressed in terms of value of a house?

02:54:05 10 A. No. Not in lieu of the type of title that the  
11 investors were getting and the fact that they were  
12 basically inheriting a lawsuit, the investors bid  
13 against each other. If any investor felt that the  
14 property was worth more, any investor in the public,  
02:54:25 15 they would have been there to bid that property up.

16 It really was a function of the, I would say,  
17 uncertainty and risk. So I would say that the price  
18 that was paid for these properties at public auction  
19 was the fair market value at that time.

02:54:46 20 Q. I understand. And then so based on your --  
21 they were actually based on your own perception in  
22 attending these sales in your opinion, these purchasers  
23 were aware of these issues in title defect which is why  
24 the price was so low?

02:54:57 25 A. That would be my assumption, yes.

02:54:58 1 Q. Okay.

2 A. I mean, yeah. Fair enough.

3 MR. BECKOM: The Court's indulgence.

4 BY MR. BECKOM:

02:55:42 5 Q. You know what, Mr. Alessi, again, probably  
6 have to ask you some more questions after Mr. Vilkin  
7 here does an excellent job here. But I think I'm done  
8 for right now. Again. Thank you very much for coming  
9 here and testifying.

02:55:54 10 A. My pleasure.

11 MR. VILKIN: Your Honor, we've been going an  
12 hour and 25 minutes for this witness. I estimate I  
13 have a half hour to 45 minutes with the witness. Would  
14 now be a good time to take a short break?

02:56:04 15 THE COURT: Yeah, we can do that. Thank you,  
16 sir.

17 MR. VILKIN: Thank you.

18 THE MARSHAL: Fifteen, your Honor.

19 THE COURT: Fifteen.

02:56:09 20 THE MARSHAL: Yes, sir.

21 -o0o-  
(Recess)  
22 -o0o-

23 THE COURT: We can continue on.

24 MR. VILKIN: Thank you, your Honor.

25 \\\



03:23:48 1

2

## CROSS-EXAMINATION

3

BY MR. VILKIN:

4

Q. Mr. Alessi, would you look at Exhibit 7, pages

03:23:52 5

32 and 33. I'm referring to the USB32 and 33.

6

A. Yes.

7

Q. Okay. What are those two pages?

8

A. These are a copy of the entries in our status report. So Alessi &amp; Koenig had an online status report

03:24:42 10

that our clients, the HOA management company, and the

11

HOA board of directors could access 24/7 online with a

12

username and password.

13

The status report looked a little bit

14

different than these documents. These two documents,

03:25:00 15

they're called the back end of the report. This is the

16

area in our electronic program where we enter the

17

information for the status report. This information is

18

then converted into a prettier document with an Alessi

19

&amp; Koenig letterhead. But the substance is exactly the

03:25:18 20

same.

21

Q. Okay. And how does information get from your employees into this document?

23

A. The information is, for the most part, entered in through a series of drop-down menu items, so as to

24

03:25:36 25

avoid misspellings. So you can see here on AK1

03:25:42 1 pre-lien sent regular and certified mail. That's a  
2 pretty -- a very standard task that our office performs  
3 so that this would be a drop-down item.

4 Q. But is it correct that your employees would  
03:25:57 5 only enter information into this after they performed  
6 whatever task they're describing?

7 A. At or around the time they performed it, yes.

8 Q. Okay. And what happened on December 20th,  
9 2010? The second entry?

03:26:22 10 A. No contact from property owner.

11 Q. What about the second entry on December 20,  
12 2010, on USB32?

13 A. Lien recordation was sent via regular and  
14 certified mail.

03:26:34 15 Q. What does that mean?

16 A. That --

17 Q. Who was IT sent to?

18 A. That document is sent to the delinquent  
19 homeowner.

03:26:41 20 Q. What exactly is sent to the homeowner? What  
21 is that referring to?

22 A. So earlier in my testimony we had reviewed a  
23 lien, what I call a lien cover letter as well as the  
24 lien enclosure. USB46 and 47.

03:27:06 25 Q. Okay. And what -- there's an entry for

03:27:08 1 April 5, 2011. Can you describe what that means?

2 A. So within ten days of the notice of recording  
3 the notice of default our office mails a copy of the  
4 notice of default to the delinquent homeowner and any  
03:27:27 5 parties with a recorded interest in the property, i.e.,  
6 the bank or its agent.

7 Q. And in this case can you look at USB75 in  
8 Exhibit 7?

9 A. Yes.

03:27:58 10 Q. And is that a mailing list that your firm  
11 created that you sent the notice of default to  
12 certified?

13 A. Yes.

14 Q. And then going back to 32, USB32 in Exhibit 7,  
03:28:31 15 what happened on October 26, 2011?

16 A. A notice of trustee sale was mailed to, again,  
17 all parties in interest. In addition to the parties in  
18 interest, the notice of trustee sale is mailed to the  
19 Ombudsman's Office.

03:28:55 20 Q. And is the mailing list that you used to mail  
21 that document contained on USB81?

22 A. Yes.

23 Q. And then on the USB82 and 83 are those the  
24 mailing receipts for the mailing of the notice of sale?

03:29:14 25 A. Yes.

03:29:15 1 Q. And that notice of sale was sent to US Bank at  
2 its address in Fargo, North Dakota, correct?

3 A. Yes.

4 Q. What date was that sent, the notice of sale?

03:29:35 5 A. It was sent -- a little hard to read the  
6 stamp. It's -- it looks like October 2017 -- I'm  
7 sorry, 2011.

8 Q. Well, does USB32 give you that information?

9 A. The entry is October 26, as I said, on or  
03:30:11 10 around the time of the mailing. So it would have  
11 been -- we can also go to the -- just bear with me. So  
12 October 26, 2011.

13 Q. That's when the notice of sale was mailed?

14 A. That would be my testimony.

03:30:57 15 Q. I'm sorry, sir.

16 A. Yes, that would be my testimony.

17 Q. And October 26, 2011, is approximately -- it's  
18 a little more than 90 days before the sale date in this  
19 case on January 25th --

03:31:13 20 A. Yes.

21 Q. -- 2012? Is there any reason you can think of  
22 why if you mailed the notice of sale to US Bank at its  
23 Fargo, North Dakota, address they wouldn't have gotten  
24 it within 90 days?

03:31:30 25 A. That would be beyond something I would be

03:31:33 1 comfortable testifying to. I would have -- I would be  
2 speculating.

3 Q. Okay. What date did the notice of sale set  
4 the sale for?

03:31:43 5 A. The notice of sale set the sale for  
6 November 16, 2011.

7 Q. Okay. And, but the sale didn't occur that  
8 day, correct?

9 A. Correct.

03:31:56 10 Q. What happened on that date?

11 A. It was postponed.

12 Q. And how did you accomplish a postponement?

13 A. Our --

14 Q. What was your policy and practice in that  
03:32:06 15 regard?

16 A. Our office would postpone a sale orally at the  
17 time and place of the sale.

18 Q. Is that what you believe happened on  
19 November 16, 2011?

03:32:17 20 A. Yes.

21 Q. And so anybody attending the sale on  
22 October 16, 2011, would have been aware that the sale  
23 had been postponed to January 25, 2012?

24 A. Yes.

03:32:38 25 Q. Now, if you would, staying within Exhibit 7,

03:32:41 1 can you look at 41 to 43, USB41 to 45?

2 A. Yes. This is an account ledger which is  
3 provided to our office by the management company on  
4 behalf of the HOA.

03:32:54 5 Q. Okay. When did this account for Mr. Edwards  
6 first become delinquent?

7 A. It looks like in February of 2010. The owner  
8 stopped paying their assessments.

9 Q. Okay. And if you could look at in the same  
03:33:30 10 exhibit USB120 to 126.

11 A. Yes.

12 Q. Were there any payments on this account  
13 between February 1st, 2010, and the date of sale on  
14 January 25, 2012?

03:34:09 15 A. One payment of \$414.40.

16 Q. What date was that?

17 A. December 2011.

18 Q. December 28, 2011?

19 A. Yes.

03:34:20 20 Q. And that's reflected on USB125?

21 A. Yes.

22 Q. Take a look if you would at USB85.

23 A. Yes.

24 Q. And that's a payment that Alessi & Koenig  
03:34:37 25 received from Robert Hazel for \$700?

03:34:40 1 A. Yes.

2 Q. And how did you handle distribution of that  
3 money?

4 A. As you can see on the status report, the  
03:34:50 5 association was paid \$414.40 of it. That is the entry  
6 on the 26th of November with a remaining balance being  
7 retained by Alessi & Koenig towards its fees and costs.

8 Q. You're referring to USB33 in Exhibit 7;  
9 correct?

03:35:17 10 A. Yes.

11 Q. And could you explain to the Court why Alessi  
12 & Koenig kept \$264 and \$414 was given to the HOA at  
13 that time?

14 A. That would just be based upon the relationship  
03:35:31 15 with the client. There were different ways of  
16 distributing partial payments depending on the  
17 homeowners association client and/or the management  
18 company. Oftentimes, the client would have us pay  
19 ourselves in a pro rata proportion to what was owed.

03:35:56 20 In other words if our office was owed \$50 and  
21 the HOA was owed \$50. And a check came in for \$50, we  
22 would split that equal to what each entity was owed.  
23 Other times it was always just a 50/50 split. Some  
24 associations asked us to pay them everything upfront.

03:36:15 25 And some associations allowed for us to take our fees

03:36:19 1 upfront.

2 Q. Okay.

3 A. It was a case-by-case basis.

4 Q. Looking again at in Exhibit 7 at USB125. Does  
03:36:29 5 that reflect a payoff to the HOA of all past due  
6 assessments?

7 A. Yes, and late charges and late fees.

8 Q. Okay. And for what time period did that pay  
9 off occur? In other words what physical or calendar  
03:36:51 10 time period were the past due assessments unpaid, and  
11 then paid to the HOA based on this document?

12 A. Well, the owner, as you can see on USB124 made  
13 it -- it looks like their payment January of 2010. So  
14 all of 2010 and 2011 through February of 2012. 26  
03:37:31 15 months.

16 Q. And the only payment on that account during  
17 that period credited to the HOA was the \$414.40?

18 A. Correct.

19 Q. And looking at USB125, there was a payment of  
03:37:48 20 \$2,995.60 to the HOA; is that correct?

21 A. Yes.

22 Q. Where did that money come from?

23 A. That money came from the sale.

24 Q. The proceeds from the sale --

03:38:02 25 A. Yes.



03:38:02 1 Q. -- from the buyer?

2 A. Yes.

3 Q. If you could look at in Exhibit 7 pages 49.

4 Let's start with 49.

03:38:24 5 A. Counsel, just very quickly, could you refresh  
6 my memory as to when the sale was? The date?

7 Q. January 25, 2012.

8 A. Okay. And then what was your question?

9 Q. Can you look at USB49.

03:38:48 10 A. Yes.

11 Q. Okay. And I believe you were asked earlier by  
12 counsel what pages constituted this property report;  
13 correct?

14 A. Yes.

03:38:59 15 Q. And --

16 A. I believe I said 49 through 53.

17 Q. Well, my question is: Did this property  
18 report include attachments?

19 A. I don't know.

03:39:19 20 Q. Well, take a look at 54 through 73. Were  
21 documents 54 through 73, did they accompany this title  
22 report?

23 A. They could have.

24 Q. And is -- I think you testified earlier that  
03:39:42 25 the deed of trust is included in that group; correct?

03:39:46 1 A. Yes.

2 Q. And do you know whether your staff then looked  
3 at the deed of trust. And that's where they got the US  
4 Recordings in St. Paul, Minnesota address for your  
03:40:02 5 notice of default mailing list?

6 A. I believe that was my testimony, yes.

7 Q. Is there anything in your file that indicates  
8 that your company or the HOA had any contact from US  
9 Bank on this foreclosure?

03:40:35 10 A. No.

11 Q. Is there anything in your file that indicates  
12 that US Bank requested or gave notice to the HOA that  
13 it had a secured interest on the property or that it  
14 wanted copies of notices?

03:40:52 15 A. No.

16 MR. VILKIN: Nothing further. Thank you.

17 MR. BECKOM: I have no further questions.

18 THE COURT: Okay. Sir, you're now released.

19 THE WITNESS: Thank you.

03:41:07 20 THE MARSHAL: Watch your step, sir.

21 THE WITNESS: Yeah.

22 THE COURT: All right.

23 MR. BECKOM: Yeah, no. I'd like to call

24 Mr. Iyad Eddie Haddad to the stand.

03:41:29 25 THE COURT: Okay.

03:41:39 1 IYAD EDDIE HADDAD,  
2 having been first duly sworn to testify to the truth,  
3 the whole truth and nothing but the truth, was examined  
4 and testified as follows:

03:41:44 5 THE COURT CLERK: Please be seated. And if  
6 you will state and spell your name for the record,  
7 please.

8 THE WITNESS: It's Eddie Haddad. E-d-d-i-e.  
9 H-A-D-D-A-D. My birth given name is Iyad, I-Y-A-D.

03:41:58 10  
11 DIRECT EXAMINATION

12 BY MR. BECKOM:

13 Q. Good afternoon, Mr. Haddad. Thank you for  
14 being here today.

03:42:07 15 A. Good afternoon.

16 Q. Seems kind of like a redundant question, but  
17 what brings you here today, sir?

18 A. Quiet title action.

19 Q. Okay.

03:42:14 20 A. On this one particular property on Rolling  
21 Stone.

22 Q. Are you familiar with the property at 4254  
23 Rolling Stone Drive?

24 A. Yes. Somewhat.

03:42:21 25 Q. Somewhat?

03:42:22 1 A. Yes.

2 Q. How are you familiar with that property, sir?

3 A. It's a property acquired at an HOA sale back

4 in 2012, I believe.

03:42:30 5 Q. Did you acquire that property in 2012, sir?

6 A. Yes.

7 Q. Okay. Let me ask you a couple of questions

8 about your background, sir. What do you do for a

9 living?

03:42:40 10 A. I'm a real estate broker.

11 Q. Okay.

12 A. My brokerage is Great Bridge Properties. And

13 it's a sole proprietorship.

14 Q. Okay.

03:42:48 15 A. It's been around for over 20 years.

16 Q. Okay. So is there any other owner or

17 brokerage affiliated with Great Bridge Properties other

18 than you?

19 A. No.

03:42:57 20 Q. Okay. Do you employ people with Great Bridge

21 Properties?

22 A. No.

23 Q. Okay. Is that the only live business you're

24 involved in is just selling real estate and buying real

03:43:08 25 estate, or brokering real estate transactions?

03:43:10 1 A. Yes.

2 Q. Are you involved with the purchase and sale of  
3 foreclosure properties?

4 A. Yes.

03:43:14 5 Q. Okay. Let me go over to Exhibit 12, USB466.  
6 And I apologize. The Bates number on these  
7 documents are very tiny on the left.

8 A. Okay.

9 MR. VILKIN: Did you say 486?

03:43:47 10 MR. BECKOM: 466.

11 MR. VILKIN: Thank you.

12 BY MR. BECKOM:

13 Q. Let me know when you get there, sir.

14 A. Yes, I'm there.

03:43:57 15 Q. Have you seen this document before, sir?

16 A. Yes. It looks pretty familiar.

17 Q. Okay. What is it that we're looking at?

18 A. Trustee's deed upon sale.

19 Q. And this is the trustee's deed upon sale for  
03:44:10 20 4254 Rolling Stone Drive Trust; correct?

21 A. Yes.

22 Q. And it looks like the purchaser is the 4254  
23 Rolling Stone Drive Trust?

24 A. Yes.

03:44:21 25 Q. Okay.

03:44:24 1 MR. BECKOM: To the extent it wasn't admitted  
2 already, I would move to admit USB466. This is  
3 Exhibit 12 466 through 467.

4 MR. VILKIN: No objection.

03:44:38 5 THE COURT CLERK: Is 12 being admitted in its  
6 entirety?

7 MR. BECKOM: We can admit to its entirety.

8 THE COURT CLERK: Was that stipulated?

9 MR. VILKIN: Yes. I'll stipulate we can  
03:44:45 10 admit. No objection to Exhibit 12.

11 THE COURT CLERK: Okay.

12 THE COURT: So stipulated.

13 (Exhibit 12 admitted).

14 BY MR. BECKOM:

03:44:53 15 Q. Okay.

16 THE COURT: And admitted.

17 MR. BECKOM: Fantastic.

18 BY MR. BECKOM:

19 Q. All right. So what is your relationship, sir,  
03:45:03 20 to the 4254 Rolling Stone Drive Trust?

21 A. Trustee.

22 Q. You are the trustee of that trust?

23 A. Yes.

24 Q. Okay. And what is your job as the trustee of  
03:45:19 25 that trust?

03:45:20 1 A. Manage the affairs of the trust.

2 Q. Manage the affairs of the trust. Okay. Was  
3 the 4254 Rolling Stone Drive Trust incorporated prior  
4 to -- well, actually, let me come at this a different  
03:45:34 5 way. It looks like that this deed says that there was  
6 a public auction on January 25, 2012; is that correct?

7 A. Yes. I don't dispute that.

8 Q. Okay. Do you -- were you at a sale, an HOA  
9 foreclosure property and specifically 4254 Rolling  
03:45:51 10 Stone Drive on January 25, 2012?

11 A. You know I attend five sales a week, 52 weeks  
12 a year. This was five years ago, but I would not  
13 refute that at all.

14 Q. Okay. So you have no specific recollection of  
03:46:05 15 the specific sale, but you believe in all likelihood  
16 you did attend?

17 A. Yes. That's correct.

18 Q. Okay. This trust here, it's a very specific  
19 name for a trust. Was this trust incorporated prior to  
03:46:19 20 purchasing this property?

21 A. I would say right at the time of the sale.

22 Q. Right at the time of the sale?

23 A. Yes.

24 Q. Does this trust hold any other assets beside  
03:46:29 25 4254 Rolling Stone Drive -- beside 4254 Rolling Stone

03:46:31 1 Drive?

2 A. No.

3 Q. Any reason why?

4 A. It's set up as a trust to hold one property.

03:46:41 5 Q. Why did you only put one property in this  
6 trust?

7 A. I don't know. My attorney advised me to do  
8 so.

9 Q. Okay. Who was the attorney at that time?

03:46:59 10 A. I don't recall.

11 Q. Okay.

12 A. Could have been Michael Bohn.

13 Q. Okay. Looks like this deed of trust or this  
14 trustee's deed upon sale was signed by Mr. Ryan Kerbow.

03:47:14 15 Do you see that name at the bottom?

16 A. Yes.

17 Q. Okay. Do you know Mr. Kerbow outside of just  
18 his capacity as an individual processing HOA  
19 foreclosures?

03:47:27 20 A. No.

21 Q. Mr. Kerbow ever done legal work for you?

22 A. Yes.

23 Q. What kind of legal work has Mr. Kerbow done  
24 for you?

03:47:35 25 A. So if I acquired a property that didn't have a



03:47:43 1 lender that would dispute their, you know, the title to  
2 the property, my title companies at that time would  
3 have required a quiet title action. Quiet title action  
4 would have to be brought on a free and clear property,  
03:47:59 5 let's say, where there was no deed of trust that would  
6 be extinguished before I can get title insurance.

7           So Ryan Kerbow would have easily done a quiet  
8 title action just as easy as Michael Bohn, let's say,  
9 or any other attorney and would have done it because he  
03:48:26 10 would have already had the file. He would have to file  
11 with the Court. Get permission from the Court to quiet  
12 title a proper at sale. And then I wouldn't be able to  
13 get title insurance.

14           Q.    So you would retain Mr. Kerbow as your  
03:48:41 15 personal attorney at different points in time?

16           A.    Couple of times.

17           Q.    Couple of times?

18           A.    Yeah.

19           Q.    Do you remember the approximate time frame  
03:48:49 20 that this was done?

21           A.    I would say right around this time, maybe.

22           Q.    So during at the time of this sale, Mr. Kerbow  
23 was also one of your attorneys?

24           A.    Let's put it this way. If I acquired a  
03:49:05 25 property from Alessi & Koenig and it happened to be

03:49:10 1 free and clear, I could have approached Alessi & Koenig  
2 to take an additional fee to complete the quiet title  
3 action so I can get title insurance from my title  
4 company.

03:49:24 5 Q. Okay. So you had a pretty close relationship  
6 with Alessi & Koenig then?

7 A. Close relationship?

8 Q. Yes.

9 A. I don't know what you mean by close  
03:49:30 10 relationship. But if you mean to the extent of did I  
11 hire them to do quiet titles actions on free and clear  
12 properties, yes, I would have.

13 Q. So they are advising you of the legal  
14 ramifications of an HOA foreclosure at the time of this  
03:49:43 15 sale?

16 A. Let's put it this way. They would have  
17 assessed -- what Ryan Kerbow would have assessed if  
18 there was any conflict of interest and as a lawyer  
19 would have advised if there was any conflict of  
03:49:54 20 interest. He would not have accepted the task of  
21 obtaining quiet title action on a free and clear  
22 property.

23 Q. Okay. But you did receive legal advice from  
24 Mr. Kerbow in regards to homeowner association  
03:50:05 25 foreclosures?

03:50:08 1 A. No. I wouldn't say that.

2 Q. What would you say?

3 A. I would say he would take a file and obtain  
4 quiet title action if the property was free and clear.

03:50:19 5 Strictly free and clear property.

6 Q. Okay.

7 A. I should say property that at the time of sale  
8 did not have any first deeds of trust that would be,  
9 you know, disputing or that would have a claim against  
03:50:40 10 a property.

11 Q. Okay.

12 A. All property acquired in NRS 116 eventually  
13 becomes free and clear. But if there is to be any  
14 dispute, then I don't think I would have approached  
03:50:54 15 Ryan Kerbow. But if there was going to be no dispute,  
16 I would have approached him to take a fee to actually  
17 do the quiet title action because it would be done in  
18 60 or 90 days rather than seven years of litigation.

19 Q. It has been quite some time.

03:51:14 20 Let me ask you this question. You said that,  
21 you know, you would retain him to litigate matters  
22 which were free and clear; correct? Was that your  
23 testimony? Or am I messing that up?

24 A. Couple of times. Couple of times only.

03:51:29 25 Q. Okay. But you would retain him for free and

03:51:33 1 clear properties?

2 A. If I looked at the county recorder's office,  
3 and I saw that there was no potential litigants, and  
4 that there was no deeds of trust recorded prior to the  
03:51:53 5 NRS 116 sale, then I could potentially give the file to  
6 Ryan Kerbow.

7 Q. Interesting. Okay. So you would follow the  
8 property records looking for deeds of trust. And then  
9 if there was no deed of trust, you would retain  
03:52:12 10 Mr. Kerbow?

11 A. I think I've already testified and I've -- in  
12 any deposition with you, probably is you'd ask me do I  
13 do any work? What kind of work I would do to prepare  
14 for a sale? And then I would have, in the deposition,  
03:52:26 15 would have said that I consult with a Nevada Legal  
16 News. And I would consult with a county recorder's  
17 office. And anything of record would show up prior to  
18 bidding.

19 So, yes, I would know if there was a deed of  
03:52:42 20 trust that is to be extinguished or not.

21 Q. But you do not, but it sounds like, and you  
22 don't dispute that you do a difference at least in your  
23 retention of Mr. Kerbow between properties that had no  
24 deed of trust on them and properties that had a deed of  
03:52:56 25 trust on them?

03:52:58 1 A. Yes. Very few would have no deeds of trusts  
2 on them, but certainly some.

3 Q. I want to dig a little bit deeper in that  
4 then. Why? Why would it be different if there was no  
03:53:10 5 deed of trust on the property versus a deed of trust on  
6 the property?

7 A. Again, the time and expense of litigation.

8 Q. And you were -- were you aware of the time and  
9 the expense of this litigation at the time that you  
03:53:22 10 were purchasing these properties?

11 A. I would say yes.

12 Q. And you were expecting there to be a contest  
13 over title to the property at the time you purchased it  
14 if there was a deed of trust attached to the property?

03:53:35 15 A. I would expect that there would be additional  
16 time and additional expense whenever there was a deed  
17 of trust recorded against a property prior to the  
18 NRS 116 sale.

19 Q. So at the time that you purchased this  
03:53:53 20 property on January 25, 2012, right at the beginning of  
21 a brand-new year. You go and you purchase this  
22 property. And it sounds like you would look on the  
23 recorder's website, and you would see a deed of trust  
24 on there, is that correct?

03:54:08 25 A. That's always been my testimony. Yes; that is

03:54:09 1 correct.

2 Q. Okay. And if you saw one on there, you would  
3 think, Well, this is going to involve litigation?

4 A. Not necessarily. Potentially. Not

03:54:21 5 necessarily.

6 Q. Potentially?

7 A. Potentially.

8 Q. And you were aware of that fact prior to  
9 purchasing this property at the sale?

03:54:31 10 A. Yes. But, I mean, even if I showed up to the  
11 auction and didn't know what I was doing, the law is  
12 the law. And, you know, even if I showed up not  
13 expecting to extinguish a deed of trust, guess what,  
14 NRS 116 still says the deed of trust is extinguished.

03:54:53 15 Q. Okay. Let me ask you a real quick question  
16 just because we got to get a complete record. Throwing  
17 a soft ball one because it's late in the day. I'm sure  
18 you got to get home and get some -- USB -- and I'll  
19 need a magnifying glass. USB468, sir.

03:55:27 20 You seen this document before, sir?

21 A. Yes.

22 Q. And then I'm going to go over to USB469. And  
23 it says by Resources -- right there it says by  
24 Resources Groups LLC, Nevada Limited Liability Company,  
03:55:44 25 Iyad Haddad, manager. You see what I'm talking about?

03:55:49 1 A. Yes.

2 Q. Is that your signature there, sir?

3 A. Yes.

4 Q. So this is just basically -- it's not a

03:55:53 5 transfer between two unrelated entities. Because you

6 previously testified you're the trustee of Rolling

7 Stone Drive Trust; correct?

8 A. Yes.

9 Q. And then you transferred it over into a

03:56:02 10 limited liability company; correct?

11 A. Yes.

12 Q. Okay. And that limited liability company

13 appears to be, looks like the trustee of the Bourne

14 Valley Court Trust; correct?

03:56:12 15 A. Yes.

16 Q. Any reason why you did that, sir?

17 A. I don't recall, but that would be probably

18 protected because I would have gotten advice from my

19 attorney at the time to do so.

03:56:22 20 Q. So you're basically saying is you don't

21 remember, but you think it was probably told to you by

22 a lawyer?

23 A. Yes. I would have consulted with my attorney

24 before I did that?

03:56:30 25 Q. Okay. And do you recall who your attorney was

03:56:32 1 at the time?

2 A. Probably Michael Bohn at that time, again.

3 Q. Okay. And did you have any other attorneys at  
4 all involving this property?

03:56:40 5 A. Yes.

6 Q. Who?

7 A. Ryan Alexander being one of them.

8 Q. Is this the first legal proceeding that -- by  
9 legal proceeding I would define this broadly like  
03:56:49 10 lawsuit, bankruptcy, anything like that. Is this the  
11 first legal proceeding you've been involved in  
12 involving this property?

13 A. I don't -- I don't recall. Involving this  
14 property?

03:56:58 15 Q. Yes.

16 A. Oh, I don't recall.

17 Q. Let's go ahead and flip over to Exhibit 11.

18 MR. BECKOM: If I recall correctly this is not  
19 one of our stipulated exhibits; correct? This is the  
03:57:11 20 bankruptcy record?

21 MS. BAKER: What number?

22 MR. BECKOM: Exhibit 11.

23 MS. BAKER: No. It's not admitted.

24 MR. BECKOM: Okay.

03:57:19 25 MR. VILKIN: I will agree to Exhibit 11 can be



03:57:22 1 admitted.

2 MR. BECKOM: Then I would move to admit  
3 Exhibit 11 for all purposes.

4 THE COURT: It will be admitted.

03:57:29 5 (Exhibit 11 admitted)

6 MR. BECKOM: Okay.

7 BY MR. BECKOM:

8 Q. Go ahead and take a look at USB313. On the  
9 top left-hand corner it says in re The Bourne Valley  
03:57:50 10 Court Trust; do you see what I'm talking about, sir?

11 A. Yes.

12 Q. Okay. And then down below there it says 4254  
13 Rolling Stone Drive. You see what I'm talking about,  
14 sir?

03:58:15 15 A. I don't. Is that on --

16 Q. It would be fourth from the bottom.

17 A. Yes, I do.

18 Q. Okay. And that's the same property you were  
19 just talking about as far as the trustee's deed upon  
03:58:26 20 sale and the quitclaim deed to Bourne Valley Court  
21 Trust and all that other good stuff, correct?

22 A. Yes.

23 Q. Okay. And let me see. If you seen this  
24 document before, sir?

03:58:36 25 A. Yes.

03:58:36 1 Q. Where have you seen this?

2 A. Through your deposition, I believe.

3 Q. Through my deposition?

4 A. Yes.

03:58:41 5 Q. Okay. Take a look, and I would look -- I

6 would note at the top it says docket, Docket Entry

7 No. 11 in this bankruptcy case. Do you see what I'm

8 talking about, sir?

9 A. On the top of this page?

03:58:58 10 Q. Yes, sir.

11 A. Yes.

12 Q. Okay. Let's go over a couple of pages here to

13 USB329.

14 A. Okay.

03:59:22 15 Q. Let me know when you get there, sir.

16 A. I'm there.

17 Q. Awesome. Do you see that portion where it

18 says: I, the registered agent of the corporation named

19 as debtor in this case declare under penalty of perjury

03:59:35 20 that I have read the forgoing summary and schedules

21 consisting of 18 sheets and that they are true and

22 correct to the best of my knowledge, information and

23 belief?

24 A. I see that, yes. That's what it says.

03:59:48 25 Q. Okay. And then there's right below that you

03:59:50 1 see where it says, /s/ Eddie Haddad?

2 A. Yes.

3 Q. Okay. Did you review these bankruptcy  
4 documents on behalf of the Bourne Valley Court Trust?

04:00:05 5 A. Well, first of all, that's -- my signature is  
6 not on it even though it says signature. I can't  
7 recall if I reviewed them before Ryan Alexander filed  
8 them or not.

9 Q. Would you let Mr. Alexander file documents  
04:00:19 10 without having you looked at them?

11 A. No. Generally speaking I would have directed  
12 him to file, but would I have read every word, every  
13 sentence, every letter, probably not.

14 Q. Okay.

04:00:28 15 A. It's just trust that my attorney is doing his  
16 job.

17 Q. Okay. So would he just give you documents,  
18 and you say, I trust what you're doing, you can sign  
19 right there?

04:00:36 20 A. Generally speaking, yes.

21 Q. Okay.

22 A. But there's no signature here. This would  
23 have been probably electronically filed I would say.

24 Q. Do you have any reason to believe that  
04:00:44 25 Mr. Alexander would misrepresent your signature on a

04:00:48 1 petition?

2 A. Misrepresent? No.

3 Q. Okay.

4 A. Not misrepresent.

04:00:52 5 Q. Let's go back again.

6 A. But, you know, attorneys don't cross all their  
7 Ts, and dot their Is, do they?

8 Q. I should hope they do.

9 A. Sometimes maybe not.

04:01:02 10 Q. Let's go back then what we were just talking  
11 about. USB313, sir.

12 A. I'm sorry. One more time.

13 Q. 313 it's going to say schedule A, real  
14 property at the top.

04:01:31 15 Now, I think we're talking about before where  
16 we noted that, you know, we have 4254 Rolling Stone  
17 Drive, Las Vegas, Nevada, 89103 was included on this  
18 schedule A; correct?

19 A. As a disputed lien, yes.

04:01:47 20 Q. Well, I have another question though. Like  
21 over there, do you see the column where it says on the  
22 top current value of debtor's interest in property?

23 A. Yes.

24 Q. And it says \$35,000?

04:01:59 25 A. Yes.

04:02:01 1 Q. And this is -- and so, like, a couple of pages  
2 back here, you know, we have that testimony under  
3 penalty of perjury of USB329 which you don't dispute  
4 that you signed -- that you didn't sign that document,  
04:02:13 5 you just don't remember signing it; correct?

6 A. I think we already went over that. I think I  
7 made a pretty lengthy explanation of electronic  
8 signature, authorization. I probably would not have  
9 read every, you know, sentence or, you know.

04:02:29 10 Q. Okay. But you don't dispute that this  
11 bankruptcy petition for the Bourne Valley Court Trust  
12 says this property is worth \$35,000?

13 A. Yes, that's correct.

14 Q. Okay. Let's go over to USB318. Again, this  
04:03:03 15 is just for clarity sake. We both agree that you  
16 authorized the filing of the bankruptcy of the Bourne  
17 Valley Court Trust; correct?

18 A. Yes; that is correct.

19 Q. Okay. What happened with that bankruptcy?

04:03:12 20 A. It was dismissed.

21 Q. Do you remember why?

22 A. You'd have to ask my attorney. I'm not a  
23 technical expert, but I know for a fact it was  
24 dismissed.

04:03:21 25 Q. Well, that's fair. If you asked me why some

04:03:25 1 of my cases got dismissed, I probably couldn't tell  
2 you.

3 A. Right.

4 Q. Or potentially forgot. Who knows. Let's take  
04:03:32 5 a look at USB318.

6 Do you see the very bottom where it says  
7 Southwest Financial Services.

8 A. Yes.

9 Q. And then over in the -- there's a provision  
04:03:55 10 that says date claim was -- and the second column over  
11 at the top it says: Date claim was incurred. Nature  
12 of lien. And description in value of property subject  
13 to lien. Do you see what I'm talking about, sir?

14 A. Are we talking about in each box? Or --

04:04:20 15 Q. There's a second --

16 A. Or --

17 (Court Reporter interrupts)

18 Q. Sorry.

19 A. I do see the column.

04:04:25 20 Q. Okay.

21 A. Yes.

22 Q. Down here, it says, you know, very bottom,  
23 right next to Southwest Financial Services, it says  
24 first mortgage, 4254 Rolling Stone Drive, Las Vegas,  
04:04:39 25 Nevada, 89103. Do you see what I'm talking about, sir?

04:04:45 1 A. Yes.

2 Q. And at the top it looks like that the  
3 bankruptcy information at the top says it was entered  
4 on June the 13th, 2012, correct?

04:04:57 5 A. Yes.

6 Q. So do you dispute at all that in -- well, I  
7 guess, we can both agree that this is about the sale  
8 took place January 25, 2012, correct?

9 A. Yes.

04:05:11 10 Q. And then we can both agree that this took  
11 place maybe about like five months after that sale?

12 A. (No audible response.)

13 Q. Can we agree to that, sir?

14 A. Yes.

04:05:25 15 Q. Maybe not exactly. But five months after this  
16 sale we have a document a few pages back where it was  
17 testified under penalty of perjury, which you think you  
18 might, may or may not have authorized, but you're not  
19 sure, that says that there's a first mortgage on the  
04:05:42 20 property that brings us here today. Do you dispute  
21 this fact, sir?

22 A. Repeat the question one more time, please.

23 Q. Did you represent to the Federal Bankruptcy  
24 Court in June 13, 2012, that this property was subject  
04:05:58 25 to a first mortgage?

04:06:00 1 A. No. No, that was not what I represented.

2 Q. Can you explain to me then at the bottom why  
3 it includes a first mortgage listed on 4254 Rolling  
4 Stone Drive?

04:06:12 5 A. You have to be truthful with the Court. You  
6 have to disclose who is making a claim against a  
7 property. In this particular instance I would imagine  
8 that my attorney at the time would have put the  
9 mortgage company as a disputed -- in the disputed  
04:06:30 10 column there, that's the third narrow column. Says  
11 disputed.

12 Q. Okay.

13 A. So we can't lie to the Court. We have to tell  
14 the Court the truth that there's a creditor that is  
04:06:43 15 claiming something, but we are disputing their claim.

16 Q. So you were aware of a claim by the first  
17 mortgage against 4254 Rolling Stone Drive, Las Vegas,  
18 Nevada, as of June 13th, 2012?

19 A. Again, as I reiterated earlier, I was familiar  
04:07:04 20 with this creditor prior to showing up to the auction  
21 and bidding on the property.

22 Q. Okay.

23 A. So the answer is yes. I was familiar with  
24 this creditor prior to the auction, at the auction, and  
04:07:18 25 I was familiar with their claim after the auction as



04:07:22 1 well.

2 Q. Do you recall when you got served with process  
3 in this instant lawsuit?

4 A. I do not.

04:07:27 5 Q. Okay. Looks like there's a -- let's go back  
6 to that Schedule A, USB313. You see what I'm talking  
7 about, sir?

8 A. Okay. yes.

9 Q. So the Bourne Valley Court Trust owned all  
04:08:06 10 these properties contained in this -- contained on this  
11 list?

12 A. At the time, yes.

13 Q. Are they all properties you purchased at an  
14 HOA foreclosure?

04:08:15 15 A. I believe they're all properties purchased at  
16 HOA sales, yes.

17 Q. Okay.

18 A. Pursuant to NRS 116.

19 Q. And at no -- and, like, it looks like all  
04:08:23 20 these properties as you go down the column, where it  
21 shows those values, it says value. At no point in time  
22 did you think that there was some kind of condition  
23 affecting value on those properties at least as stated  
24 in the schedule under penalty of perjury in June of  
04:08:37 25 2012?

04:08:39 1 A. I do not understand your question.

2 Q. It's okay. I get confused looks all the time.

3 A. Okay.

4 Q. But all of these -- none of these properties

04:08:49 5 you seem to be testifying are worth some kind of de

6 minimis sum because of some title defect; correct?

7 A. I'm sorry. I'm not prepared to testify on

8 anything else but 4254 Rolling Stone Drive.

9 Q. But you wouldn't dispute that you didn't think

04:09:07 10 there was any kind of title issue on these properties

11 that would diminish their value?

12 A. I'm only prepared to testify on 4254 Rolling

13 Stone Drive.

14 Q. Do you know the answer to that question, sir?

04:09:17 15 A. I do not.

16 Q. Okay. Going back over to USB318, I think you

17 said that you purchased all those properties a couple

18 of pages back at HOA foreclosure auctions?

19 A. Let me go back to 313.

04:09:47 20 Q. Take your time.

21 A. I don't recall, but it sure seems that way.

22 Q. Okay. And then over here on USB318 you list

23 them all as being subject to a first mortgage?

24 A. No.

04:10:03 25 Q. What did you list then?

04:10:06 1 A. No. I believe my attorney listed them as  
2 disputed claims. Again, we've been through this  
3 before. Each one of these here says disputed claim.

4 Q. Okay.

04:10:19 5 A. By law you have to disclose all creditors  
6 claims that was done here. But then you also, you  
7 know, disclose whether they're disputed or undisputed,  
8 so they're clearly marked as disputed claims.

9 Q. Okay. Let's go over to USB324, sir. Do you  
04:10:55 10 see where it lists, second from the top, says Law  
11 Offices Les Zieve. You see what I'm talking about?

12 A. Yes.

13 Q. And it says you have an unpaid lien on 4254  
14 Rolling Stone Drive.

04:11:08 15 A. Okay.

16 Q. Okay. Did you think you had a lien by a Law  
17 Offices of Les Zieve?

18 A. I don't know.

19 Q. Okay.

04:11:15 20 A. I really cannot comment on that. I'm not  
21 prepared to comment on that, your Honor.

22 (Reporter clarification)

23 Q. Les Zieve, L-E-S Z-I-E-V-E.

24 A. All I can think of is Law Offices of Les Zieve  
04:11:34 25 representing the first mortgage disputed creditor

04:11:41 1 maybe.

2 Q. Okay.

3 A. I'm not sure.

4 Q. Okay. Sounds like that you were, I guess,  
04:11:46 5 aware of, you know, some kind of dispute with the first  
6 mortgage holder at least in June of 2012?

7 A. Well, again, I was aware of a disputed first  
8 deed, you know, creditor the day of the auction, or  
9 even before the auction.

04:12:05 10 Q. Okay. Let's go over to USB327. And, I guess,  
11 just, you know, in passing it's -- you know, if you  
12 look, I guess, it's one, two, three, four from the  
13 bottom. You see property management agreement with  
14 4254 Rolling Stone Drive?

04:13:06 15 A. Yes.

16 Q. And then it says Great Bridge Properties over  
17 there on the left, correct?

18 A. Yes.

19 Q. That is your company?

04:13:13 20 A. Yes.

21 Q. Okay. Let me go over here and take a look  
22 starting at USB343. Have you seen this document  
23 before, sir?

24 A. Can't say that I have. No.

04:14:01 25 Q. Okay. Are you familiar with the term motion

04:14:05 1 to value collateral?

2 A. It's been a while. I don't recall the  
3 explanation that my attorney gave me for it.

4 Q. Okay. Let's go over to page 2, USB344. So  
04:14:25 5 you would have no knowledge of -- you would have no  
6 knowledge authorizing your attorney to file a motion  
7 stating that Southwest Financial Services had a lien of  
8 \$50,000?

9 A. Is that what I said? Was that my testimony?

04:14:48 10 Q. Would you have knowledge or not?

11 A. Exactly would I have knowledge of what?

12 Q. Would you be aware of -- would you have  
13 authorized Mr. Alexander to file a property stating  
14 that there was a first mortgage encumbering this  
04:15:08 15 property? Because if you look back here, this motion  
16 had to do with, let me see, 4254 Bourne Valley Court  
17 Trust. Actually let's go ahead and move over here a  
18 little bit further. Let's go to USB348.

19 You've seen this document before, sir?

04:15:39 20 A. Yes.

21 Q. What is it that we're looking at?

22 A. Comparative market analysis.

23 Q. Comparative market analysis. What is a  
24 comparative market analysis?

04:15:51 25 A. Here is some comps to justify a value.

04:15:58 1 Q. Okay. It says if you look at in the left-hand  
2 corner it says Great Bridge Properties. Do you see  
3 what I'm talking about?

4 A. Yes.

04:16:06 5 Q. So your company Great Bridge Properties, did  
6 they perform of this comparative market analysis?

7 A. Cheryl Van Elsis is an independent contractor.

8 Q. Okay.

9 A. And she would have been done this comparative  
04:16:17 10 market analysis.

11 Q. Okay. Would you have asked her to do this  
12 comparative market analysis?

13 A. Probably Brian Alexander would have.

14 Q. Okay. Let's go ahead and flip on over to  
04:16:43 15 USB340 -- 356. This is that same comparative market  
16 analysis that was done by your company or the  
17 independent contractor on behalf of your company. So  
18 can we agree it looks like at the top there's some  
19 notations up here. Looks like there's a case number.

04:17:08 20 Says this was filed on 11-7-2012. Do you see what I'm  
21 talking about?

22 A. Yes.

23 Q. Was it -- do you have any knowledge about  
24 whether or not this is the document that was filed in  
04:17:18 25 the bankruptcy of Bourne Valley Court Trust?

04:17:22 1 A. I mean, you're asking me a question that's a  
2 rhetorical question. I mean, it says case  
3 No. 12-16387.

4 Q. So you don't dispute that?

04:17:41 5 A. I don't know. You'd have to look. I don't  
6 know how to even search these records, but ...

7 Q. Did you have your -- did you have Cheryl Van  
8 Ellis -- or Elsis on behalf of Great Bridge Properties  
9 do an appraisal where she had a recommended listing  
04:17:56 10 price of \$33,000?

11 A. No. That would have been Ryan Alexander and  
12 Cheryl.

13 Q. Okay. And then going back here to USB344.

14 A. You skipped over all the sales that took place  
04:18:32 15 that justifies that value.

16 Q. So you -- so you believe that value is  
17 justified?

18 A. Absolutely, 100 percent. It would have to be  
19 justified to be admitted.

04:18:44 20 Q. Well, here's -- all right. Well, that's fine.

21 A. Those are all factual numbers.

22 Q. That's fair. And then down here back on  
23 that -- well, actually. I'm sorry. I'm being rude.  
24 You haven't gotten back to the page yet.

04:19:00 25 A. That's okay. No problem.

04:19:01 1 Q. USB344. Says subject property. 4254 Rolling  
2 Stone Drive, Las Vegas, Nevada, 89103. Do you see  
3 where I'm talking about?

4 A. Yes.

04:19:16 5 Q. Okay. And then below that it says first  
6 mortgage Southwest Financial Services. Do you see what  
7 I'm talking about?

8 A. Yes.

9 Q. And then below that it says assignee first  
04:19:29 10 mortgage US Bank?

11 A. Yes.

12 Q. Did you authorize -- well, actually one other  
13 thing before I ask you this next question.

14 And then at the very last page USB347 of the  
04:19:42 15 motion, if you want to take a moment and cruise on over  
16 to that portion.

17 A. 347, okay. Yes.

18 Q. So USB347 you see the very last paragraph  
19 where it says wherefore?

04:19:57 20 A. Yes.

21 Q. Says wherefore debtor prays this Court  
22 evaluate the property in accordance with the appraisal  
23 attached hereto. And then two, bifurcate the first  
24 mortgage claims of secured creditor and to secure  
04:20:10 25 unsecured claims. Do you see what I'm talking about,



04:20:13 1 sir?

2 A. Yes.

3 Q. Okay. Did you ask or -- and this is -- this  
4 was filed. We can both agree this was filed November 7  
04:20:19 5 of 2012; correct?

6 A. Yes.

7 Q. And did you authorize Mr. Alexander to attempt  
8 to bifurcate the first mortgage lien of 4254 Rolling  
9 Stone Drive, Las Vegas, Nevada?

04:20:34 10 A. Yes. That's what it seems like. At the time,  
11 the law was unclear. SFR had not come out. And there  
12 was lots of litigation to go forward to certify the  
13 extinguishment issue.

14 Q. But in November of 2012 you thought this  
04:20:55 15 property was subject to a mortgage?

16 A. No. That is not correct.

17 Q. Then can you explain why you authorized the  
18 filing of this motion?

19 A. If we go back to one of those documents that  
04:21:04 20 we -- first of all, NRS was adopted by Nevada  
21 legislature in '91. So the extinguishment to the tune  
22 of nine months directly proceeding the institution of  
23 an action has been law since 1991, not since 2012.

24 However, there was some cases going up to the  
04:21:26 25 Nevada Supreme Court, and the Nevada Supreme Court was

04:21:30 1 going to clarify the issue. So at the time the issue  
2 was not clarified.

3 Anyhow that's where we're at at the time. But  
4 if you take a look at USB325 I believe it was, you can  
04:21:48 5 see where I'm talking about where the loan was  
6 disputed. The lien was disputed.

7 Q. But it sounds like to me, Mr. Haddad -- and  
8 you are the trustee of both the 4254 Rolling Stone  
9 Drive Trust as well as the managing member of the  
04:22:11 10 Resources Group, the trustee for the Bourne Valley  
11 Court Trust, correct?

12 A. Yes.

13 Q. Sounds to me that you had a pretty firm  
14 knowledge that US Bank was going to be lurking around  
04:22:20 15 at the time you were filing these documents and,  
16 indeed, has a serious and legitimate concern about it?

17 A. I don't know if that's -- if that was going to  
18 be the case or not. Nobody can predict the future.

19 Q. But you at least seemed to be concerned enough  
04:22:37 20 to authorize the filing of this bankruptcy listing US  
21 Bank as a creditor, correct?

22 A. As a disputed creditor, yes.

23 Q. Okay.

24 A. I'm sorry. That was page USB324 actually is  
04:22:52 25 where that shows up, 4254 Rolling Stone Drive as a

04:22:56 1 disputed claim.

2 Q. Okay. Appreciate your honesty, sir.

3 A. Yes.

4 Q. Let's go back to USB466, Exhibit 12.

04:23:22 5 A. Exhibit 12?

6 Q. Yes, sir.

7 A. Okay.

8 Q. And this is the trustee's deed upon sale from

9 the sale that you attended, correct?

04:23:49 10 A. Yes.

11 Q. Okay. And that's the signature of your

12 attorney we went over before, Mr. Kerbow, correct?

13 A. No. That's not correct. He was not my

14 attorney at the time of this purchase. He was not my

04:24:06 15 attorney at the time of this purchase. He was the

16 attorney for the trustee.

17 Q. So let's go through. You don't quite recall,

18 but because you go -- I mean, how many sales you go to

19 a year, sir?

04:24:22 20 A. Five days a week, 52 weeks a year.

21 Q. That's a lot of sales.

22 A. Yes.

23 Q. Don't even take two weeks off. You're a hard

24 working man, right?

04:24:32 25 So do you recall where this sale took place

04:24:35 1 at?

2 A. I don't.

3 Q. If I --

4 A. If you allow me some time to look through the  
04:24:40 5 document, it will probably talk about where the sale  
6 took place.

7 Q. That's fine.

8 A. Maybe not. However, if you allow me to take a  
9 look at the notice of trustee sale --

04:25:01 10 Q. Well, let's walk through that a little bit  
11 first then.

12 A. Sure.

13 Q. So, like, you don't remember the specific  
14 sale. But do you have, like, a standard process you  
04:25:09 15 follow when you're getting ready to attend these sales?

16 A. Standard, sure.

17 Q. What is that? What do you do?

18 A. Show up 10, 15 minutes early. Make sure the  
19 traffic doesn't, you know, cause me to show up late.

04:25:24 20 Q. How do you know where to go?

21 A. On the notice of trustee sale.

22 Q. Where do you generally get the notice of  
23 trustee sale before you head down there?

24 A. Clark County recorder's website.

04:25:34 25 Q. You go to the actual Clark County Recorder's

04:25:37 1 website?

2 A. And the Nevada Legal News.

3 Q. Okay. I'm going to see if I can help you out  
4 and see if I can help you find notice of sale, sir.

04:26:14 5 A. Would that be USB462?

6 Q. Fastest document locator in the west, sir.

7 Thank you.

8 A. It's right there.

9 Q. So this -- so you've identified -- so you've  
04:26:36 10 seen this document before, sir?

11 A. Yes.

12 Q. Okay.

13 A. Most likely it's been a while. But I can't  
14 recall, but most likely.

04:26:44 15 Q. But this is the type of document you review?

16 A. Yes.

17 Q. Okay. Why don't you take a minute and take a  
18 look at this and see if you can't remember where the  
19 sale took place?

04:26:54 20 A. 4:00 p.m. at 930 South Fourth Street,  
21 Las Vegas, Nevada, 89101.

22 Q. Where is that at?

23 A. Downtown.

24 Q. Downtown. Any specific business location?

04:27:03 25 Middle of street?

04:27:05 1 A. Fourth Street would be right around  
2 Charleston. Probably 930 South Fourth is the Nevada  
3 Legal News.

4 Q. Okay. Do you attend sales at Nevada Legal  
04:27:15 5 News often?

6 A. Yes.

7 Q. It sounds like you attend sales frequently  
8 because you say you go to sales seven days a week, 52  
9 weeks a year.

04:27:23 10 A. Five days a week, 52 weeks a year.

11 Q. So you do take two days off.

12 A. Yes.

13 Q. Good man. Saturday and Sunday sacred.

14 So you probably -- I mean, like, can we agree  
04:27:38 15 that you've been to a bunch of sales at the Nevada  
16 Legal News?

17 A. Yes.

18 Q. Okay. Do you only purchase at HOA foreclosure  
19 sales? Or do you purchase at other types of sales?

04:27:48 20 A. I purchase NRS 116 sales, NRS 107 sales, and  
21 Clark County Treasurer's Office sales.

22 Q. Okay. So you're pretty, like, you know,  
23 knowledgeable about the entire spectrum of foreclosure  
24 auctions?

04:28:00 25 A. I have experience, yes.

04:28:01 1 Q. Okay. I think do you drive down there? Take  
2 Uber? Do you walk down there? Take a bus? How do you  
3 get down to Nevada Legal News?

4 A. Typically drive.

04:28:13 5 Q. Drive. And then park your car?

6 A. Yes.

7 Q. Walk in there? At 4:00 p.m. in front of  
8 Nevada Legal News, like, on a typical day, what would  
9 you see?

04:28:24 10 A. I don't recall. This was a long time ago.

11 Q. Would there be a lot of people there?

12 A. I don't recall.

13 Q. How about the bidding at this sale. I'm  
14 assuming there's bidding; correct?

04:28:43 15 A. Yes.

16 Q. Okay. Do you recall how much money you paid  
17 on this property?

18 A. According to the trustee's deed, the winning  
19 bid was \$5,000 -- \$5,331.

04:29:02 20 Q. Okay. And you don't dispute that that's the  
21 amount of money?

22 A. I don't dispute that.

23 Q. Okay. How much money would you typically  
24 bring down with you to an HOA foreclosure sale?

04:29:12 25 A. For security purposes I don't think that's a

04:29:14 1 good question for me to answer. But plenty to pay for  
2 the property.

3 Q. Would you bring more than \$10,000?

4 A. Is that -- I think that's a trade secret. You  
04:29:27 5 know, I'm not going to talk about.

6 MR. VILKIN: You can answer it.

7 THE WITNESS: Frequently, yes.

8 BY MR. BECKOM:

9 Q. More than \$10,000? Would you bring more than  
04:29:35 10 \$20,000?

11 MR. VILKIN: Your Honor, I let him ask the  
12 questions, but I don't see the relevance to this.

13 THE COURT: I'll sustain.

14 THE WITNESS: Thank you.

04:29:45 15 BY MR. BECKOM:

16 Q. When you go to the bidding at an HOA  
17 foreclosure sale, would you consider that -- to that to  
18 be a, I guess, a lively process? Like, would there be  
19 a lot of bidders there in January of 2012?

04:30:06 20 A. If you're talking about NRS 116 sales?

21 Q. Um-hum.

22 A. It would be a lot less bidding going on than,  
23 let's say, October 20 of 2014, the day after the SFR  
24 decision came out.

04:30:24 25 Q. Okay. Would you describe the bidding as



04:30:26 1 depressed when --

2 A. No.

3 Q. -- compared to, let's say, a 107 sale?

4 A. No. I wouldn't call it depressed. I would  
04:30:33 5 call it, you know, uncertainty about how much time and  
6 how much money it would cost to litigate to get clear  
7 title.

8 Q. But it wasn't the same type of bidding that  
9 you would see at a 107 foreclosure sale?

04:30:51 10 A. Well, let's put it this way. NRS 107 sales,  
11 you still have risks commensurate with property  
12 condition, evictions, can't get into the property, you  
13 don't know what you're buying. Under NRS 116 you have  
14 the very same, what you call, risks. Add to it the  
04:31:31 15 heavy, heavy which I call litigation. The heavy, heavy  
16 can be \$4,000 a month. And now we've been fighting  
17 over five years on this. So, you know, purchase at a  
18 NRS 116 sale is just a start of spending lots and lots  
19 of money to get clear title.

04:31:55 20 Q. And you were of this opinion in, let's say,  
21 January 24, 2012, the day before the sale?

22 A. I would have been anticipating some  
23 litigation, yes.

24 Q. Okay.

04:32:19 25 MR. BECKOM: The Court's indulgence one

04:32:20 1 moment.

2 BY MR. BECKOM:

3 Q. Do you have any specific recollection about  
4 how many people actually bid on this property at the  
04:32:44 5 sale; do you?

6 A. According to this trustee's deed, the opening  
7 bid equals the bid by the winning bidder. So I would  
8 say no other bidder.

9 Q. So you were the only bidder at this sale?

04:32:59 10 A. I would say I'm not sure if I was the only  
11 person present. I'm not sure about that. I don't  
12 recall. But according to the numbers here, I would  
13 have been the highest bid.

14 Q. So nobody else bid on the sale except for you  
04:33:10 15 based on your review of the trustee's deed?

16 A. Yes, correct.

17 Q. Okay. Is that a frequent occurrence?

18 A. Is it frequent?

19 Q. Yes.

04:33:18 20 A. Not anymore.

21 Q. Was it a frequent occurrence in 2012?

22 A. I think the Nevada Supreme Court really taught  
23 everybody what's at stake.

24 Q. Was this a frequent occurrence in 2005?

04:33:29 25 A. Yes, I would say. Yes, I would say; right?

04:33:32 1 Q. So the big sale with you being the only bidder  
2 there, the bidding was depressed?

3 A. No, not depressed. No. This was truly the  
4 market value because it cannot be disputed that a well  
04:33:48 5 publicized, well advertised, well recorded sale, and,  
6 you know, it's public, it's open to the public, anybody  
7 can come and bid, that truly is the definition of the  
8 highest value of a property.

9 Q. And so when that happened, nobody else showed  
04:34:09 10 up at least for this property?

11 A. Well, yes. That's correct.

12 MR. BECKOM: I have no further questions at  
13 this time.

14 THE COURT: Okay. Is it better? How much  
04:34:19 15 longer do you have, sir? Can we be done in 15 or ...?

16 MR. VILKIN: I'm hoping.

17 THE COURT: Okay.

18 MR. VILKIN: Yeah, it's possible.

19 THE COURT: All right.

04:34:26 20

21 CROSS-EXAMINATION

22 BY MR. VILKIN:

23 Q. Mr. Haddad, as I recall your testimony on the  
24 issue of when you first hired Mr. Kerbow, you indicated  
04:34:36 25 some uncertainty as to when that occurred. And then

04:34:40 1 later in your testimony you seemed to indicate that he  
2 was not your attorney as of the date of the sale on  
3 January 25, 2012; is that correct?

4 A. That is correct.

04:34:51 5 MR. VILKIN: Your Honor, may I show the  
6 witness some documents to try to refresh his  
7 recollection on when he first hired Mr. Kerbow.

8 THE COURT: Yes, you may, sir. You may  
9 approach.

04:35:06 10 BY MR. VILKIN:

11 Q. Mr. Haddad, if you would just review those to  
12 yourself and tell me when you've had a chance to review  
13 those.

14 A. I reviewed these with you.

04:35:18 15 Q. Well, I -- just review them and tell me when  
16 you're done --

17 A. Okay.

18 Q. -- reviewing them.

19 A. Yes. I am done.

04:35:30 20 Q. Okay. And were you involved in a lawsuit that  
21 was captioned Paradise Canyon Resort Owners Association  
22 versus Resources Group?

23 A. Yes, I was.

24 Q. Okay. And was that lawsuit filed on  
04:35:47 25 January 18, 2012?

04:35:50 1 A. Yes, it was.

2 Q. And who was representing Resources Group as  
3 the defendant in that lawsuit?

4 A. Preston Rosay. (Phonetic)

04:36:01 5 Q. No. I'm asking about the Paradise Canyon  
6 Resort case.

7 A. Yes. Who was defending? I'm sorry who?

8 Q. The Paradise -- look at the captions.

9 A. Uh-huh.

04:36:14 10 Q. The Paradise Canyon Resort versus Resources  
11 Group case.

12 A. Correct.

13 Q. Who was representing Resources Group?

14 A. The plaintiff Resources Group.

04:36:25 15 Q. No. I think you're looking at -- take a look.  
16 Look at the caption at the top.

17 A. Um-hum.

18 Q. Paradise Canyon Resort Owners Association  
19 versus Resources Group.

04:36:43 20 A. True. Defendant Fidelity National Title  
21 defendant Paradise Owners Association.

22 Q. Okay.

23 A. I'm on page 1.

24 Q. You're on the wrong page.

04:36:56 25 A. Sorry.

04:36:58 1 Q. Look at the caption Paradise Canyon versus  
2 Resources Group.

3 A. Oh, yes. So that's page 3. Okay.

4 Q. Okay.

04:37:04 5 A. Sorry about that.

6 Q. Okay. And what date was that case filed?

7 A. January 18, 2012.

8 Q. Okay. And was Resources Group the defendant  
9 in that case?

04:37:14 10 A. Yes, it was.

11 Q. And who was representing Resources Group?

12 A. Michael Bohn.

13 Q. Okay. Who was the plaintiff in that case?

14 A. Paradise Canyon Resort Owners Association.

04:37:23 15 Q. And who was representing Paradise Canyon  
16 Resort Owners Association?

17 A. Robert Koenig AKA, Ryan Kerbow.

18 Q. Well, is Robert Koenig the Koenig of Alessi &  
19 Koenig?

04:37:34 20 A. Yes; that is correct.

21 Q. And take a -- were you involved in a case  
22 captioned Houston Family Trust versus El Parque  
23 Homeowners Association?

24 A. What page? Yes, I was.

04:37:51 25 Q. Okay. And were you a defendant in that case?

04:38:03 1

A. Yes.

2

Q. And what date was that case filed on?

3

A. April 9 of 2012.

4

Q. And who represented you in that case?

04:38:14 5

A. Ryan Kerbow.

6

Q. Okay. Do you believe that April 9, 2012, is

7

the first time Mr. Kerbow represented you in any quiet

8

title action?

9

A. That is correct. We were against each other

04:38:50 10

prior to that in Paradise.

11

Q. Okay. And what is your position with

12

Resources Group?

13

A. I'm the manager of Resources Group.

14

Q. And Resources Group is an LLC; correct?

04:39:03 15

A. Yes; that is correct.

16

Q. And you testified earlier, I believe, that you

17

were the trustee of 4254 Rolling Stone Drive Trust?

18

A. Yes.

19

Q. Is that true?

04:39:11 20

A. So I'm the manager of Resources Group LLC, and

21

Resources Group LLC is the trustee for the trust.

22

Q. Okay. So you were incorrect when you said

23

that you personally were the trustee. It was actually

24

Resources Group was the trustee. You're the manager of

04:39:26 25

Resources Group; correct?

04:39:27 1 A. I apologize for that. My attorney Michael  
2 Bohn, who is not here, would have set that up a long  
3 time.

4 Q. We'll sanction him for that.

04:39:40 5 Now, when you went to the sale of this  
6 particular property on January 25, 2012, what  
7 information did you have about the property prior to  
8 the sale?

9 A. I would have reviewed the Nevada Legal News.  
04:39:57 10 I would have reviewed the Clark County Recorder's  
11 website. All kind of title information I would have  
12 had. Physically, you know, seeing the outside of the  
13 property.

14 Q. When you say all kind of title information,  
04:40:12 15 what are you talking about?

16 A. Anything of Clark County Recorder's website,  
17 the entire record would have come up for me.

18 Q. So all the recorded documents on the property?

19 A. All the recorded documents.

04:40:23 20 Q. Okay. Did you ever see any other documents  
21 concerning the property?

22 A. No. Nothing else. Only recorded documents.

23 Q. Okay. Did you get any information about this  
24 property from either the HOA or Alessi & Koenig, the  
04:40:33 25 sales trustee prior to the sale?



04:40:35 1

A. No.

2

Q. Did you have any information about any dispute  
3 between the holder of the first deed of trust and the  
4 HOA about the property?

04:40:46 5

A. No.

6

Q. Did you have any information about whether  
7 notices were sent or not sent to the first trust deed  
8 holder prior to the sale?

9

A. No.

04:40:56 10

Q. Did you talk to anyone at the sale prior to  
11 the sale about the property?

12

A. No.

13

Q. Now, when you -- before you purchased the  
14 sale, were you able to inspect the inside of the  
15 property?

04:41:09 15

16

A. Absolutely not. That's very, very rare.

17

Q. Okay. And so was that a risk that you  
18 considered yourself taking in terms of buying the  
19 property?

04:41:22 20

A. Absolutely.

21

Q. Okay. And when the appraisal was done by the  
22 independent contractor from your office several months  
23 later, did she get a chance to inspect the inside of  
24 the property?

04:41:33 25

A. No.

04:41:34 1 Q. She did not?

2 A. You'll have to ask her. I don't know if she  
3 did or not.

4 Q. Take a look at Exhibit 11.

04:41:45 5 A. She would have had her own instructions from  
6 the attorney.

7 Q. Well, take a look at Exhibit 11, USB359 and  
8 360. And now -- I'm sorry. Let me withdraw that  
9 question.

04:42:15 10 So you don't know whether she went inside the  
11 property or not.

12 A. I don't know. That would have been Cheryl and  
13 the attorney.

14 MR. VILKIN: One second, your Honor. Nothing  
04:43:36 15 further. Thank you, your Honor.

16 THE COURT: All right. Anything else?

17 MR. BECKOM: One brief follow up.

18 BY MR. BECKOM:

19 Q. On this document this register of actions that  
04:43:44 20 Mr. Vilkin showed you.

21 A. Yes.

22 Q. You go there. I think he was referring to a  
23 Houston Family Trust. It's the third to the last page.  
24 Let me know when you get there, sir.

04:43:58 25 A. Third to the last from the packet. Yes, I'm

04:44:02 1 there.

2 Q. Okay. So right there third from the bottom it  
3 says defendant Resources Group LLC, correct?

4 A. Yes.

04:44:11 5 Q. And then on the right-hand side it says Ryan  
6 M. Kerbow?

7 A. Yes. Correct.

8 Q. And so that's who you are here on behalf of  
9 today, Resources Group LLC, in regards to 4254 Rolling  
04:44:26 10 Stone Drive?

11 A. Yes.

12 Q. And so Mr. Kerbow was actually not even just,  
13 you know, your personal attorney for multiple purposes,  
14 but he was also actually the attorney for the Resources  
04:44:36 15 Group, the entity that purchased this property?

16 A. (No audible response.)

17 Q. Do you dispute that based on this document?

18 A. So I don't think that Ryan Kerbow was the  
19 attorney for 4254 Rolling Stone Drive Trust. I don't  
04:44:58 20 believe that's the case.

21 Q. That's not what I asked, though. What I did  
22 ask was is -- was he the attorney for Resources Group  
23 LLC in this action that Mr. Vilkin just presented to  
24 you?

04:45:11 25 A. Not per se -- not for Resources Group, but

04:45:15 1 Resources Group as a trustee of a trust.

2 Q. Okay. And then he was also -- if you will go  
3 back and take a look at your, I think it was your  
4 trustee's deed that we spoke of, where you obtained  
04:45:28 5 title to this property, Exhibit 12, USB466, he was  
6 also --

7 A. I'm sorry.

8 Q. -- the authorized agent for Glenview West  
9 Townhomes Association and the individual that signed  
04:45:42 10 the deed on behalf of Glenview West?

11 A. What document again?

12 Q. I apologize. USB466 at Exhibit 12.

13 A. Ryan Kerbow is a professional attorney. And  
14 if he had any issue with conflicts of interest, he  
04:46:02 15 would have certainly, you know, let me know or he would  
16 have refused the work.

17 Q. But he was your attorney in that court case we  
18 just discussed, that A-12-659764-C. And he represented  
19 Resources Group, it looks like, beginning in April of  
04:46:22 20 2012 sometime?

21 A. As a trustee for a different trust.

22 Q. I understand. And then also if we go back to  
23 USB462. This is the notice of sale that you testified  
24 as reviewing in order to figure out where to go and  
04:46:37 25 where to go buy this property. That document is also

04:46:44 1 signed by Mr. Kerbow; is it not?

2 A. Yes.

3 Q. Okay. And so we can both agree that he was  
4 both the attorney for the Resources Group as well as  
04:46:53 5 the attorney that signed the notice of sale on behalf  
6 of Glenview West?

7 MR. VILKIN: Misstates the evidence.

8 BY MR. BECKOM:

9 Q. I disagree. I think that actually that  
04:47:04 10 100 percent is --

11 THE COURT: You can ask him the question. Go  
12 ahead.

13 MR. BECKOM: Do what?

14 THE COURT: Overruled. Rephrase it.

04:47:10 15 MR. BECKOM: Okay.

16 BY MR. BECKOM:

17 Q. So we can agree that Mr. Kerbow represented  
18 the Resources Group LLC; correct, based on this  
19 document your attorney just presented to you to refresh  
04:47:21 20 your recollection?

21 A. As a trustee for a particular trust. Right.

22 Q. But is that a yes or a no?

23 A. According to this document, yes.

24 Q. And then USB462, can we both agree that  
04:47:34 25 Mr. Kerbow also signed this notice of sale?

04:47:37 1 A. Yes.

2 Q. Okay.

3 MR. BECKOM: I have no further questions at  
4 this time, your Honor.

04:47:41 5

6 RECROSS-EXAMINATION

7 BY MR. VILKIN:

8 Q. Mr. Haddad, on what date did Mr. Kerbow  
9 represent you in the Houston Family Trust case?

04:47:52 10 A. According to this document, April 9, 2012.

11 MR. VILKIN: Nothing further. Thank you.

12 THE COURT: Okay.

13 You're released, sir.

14 THE WITNESS: Thank you.

04:48:05 15 THE COURT: Okay. Gentlemen, 10:30 a.m.?

16 MR. VILKIN: Yes.

17 MR. BECKOM: 10:30 tomorrow.

18 THE COURT: Okay.

19 MR. VILKIN: Thank you, your Honor.

04:48:11 20 THE COURT: Enjoy your evening.

21 MR. HADDAD: Thank you, your Honor.

22

23 (Proceedings were concluded.)

24

25

\* \* \* \* \*

## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO  
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPH ALL OF THE  
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE  
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID  
8 STENOGRAPH NOTES WERE TRANSCRIBED INTO TYPEWRITING AT  
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE  
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND  
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE  
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF  
15 NEVADA.

16  
17 /s/ Peggy Isom  
18 PEGGY ISOM, RMR, CCR 541  
19  
20  
21  
22  
23  
24  
25

<b>BY MR. BECKOM:</b> <b>[26]</b> 17/12 18/17 21/15 28/23 34/12 36/20 56/24 61/13 67/13 83/21 87/19 91/1 101/15 138/5 141/3 152/11 154/11 155/13 155/17 166/6 189/7 189/14 191/1 199/17 202/7 202/15 <b>BY MR. VILKIN:</b> <b>[15]</b> 45/4 46/11 47/2 49/17 50/17 53/22 55/1 55/23 59/11 60/23 77/23 142/2 192/21 193/9 203/6 <b>BY MS. BAKER:</b> <b>[4]</b> 68/13 71/12 73/8 78/21 <b>MR. BECKOM:</b> <b>[83]</b> 6/15 7/4 8/13 8/17 8/24 16/23 18/16 21/8 21/11 28/22 30/4 30/12 30/20 31/3 31/7 32/9 32/25 33/4 33/14 33/16 33/18 33/25 34/3 34/10 36/15 44/23 46/6 46/20 50/13 53/19 54/18 55/20 56/21 59/5 60/11 61/9 62/3 62/10 62/13 63/6 63/15 63/18 64/1 64/4 64/17 64/22 65/11 66/8 66/15 66/19 71/11 82/5 82/15 82/18 82/25 83/18 87/12 87/16 90/10 90/18 90/23 137/21 137/24 138/4 141/2 151/16 151/22 154/9 154/25 155/6 155/16 165/17 165/21 165/23 166/1 166/5 190/24 192/11 199/16 202/12 202/14 203/2 203/16 <b>MR. GEISENDORF:</b> <b>[4]</b> 6/11 16/21 64/5 65/18 <b>MR. HADDAD: [4]</b>	6/21 34/9 83/6 203/20 <b>MR. VILKIN: [84]</b> 6/6 6/9 6/19 6/24 7/1 7/9 7/24 8/10 8/22 9/1 9/10 9/25 12/25 21/10 28/21 30/6 31/5 31/24 36/17 45/1 49/10 49/13 50/11 56/18 59/8 60/14 60/18 61/8 62/4 62/8 62/20 62/23 63/11 63/21 63/25 64/7 64/10 64/12 64/16 65/14 65/17 65/19 66/7 66/16 68/3 68/8 71/4 71/8 78/16 80/9 80/19 80/25 81/4 81/6 81/8 81/13 81/16 81/24 82/3 82/10 82/14 82/20 83/4 90/14 101/12 141/10 141/16 141/23 151/15 154/8 154/10 155/3 155/8 165/24 189/5 189/10 192/15 192/17 193/4 199/13 202/6 203/10 203/15 203/18 <b>MS. BAKER: [21]</b> 9/13 9/16 10/2 10/5 66/20 66/22 67/1 68/12 71/2 71/7 77/20 78/18 79/19 79/25 80/10 80/12 80/15 80/18 87/17 165/20 165/22 <b>THE COURT</b> <b>CLERK: [13]</b> 17/5 18/15 33/20 33/23 34/2 34/5 67/6 83/13 87/15 152/4 155/4 155/7 155/10 <b>THE COURT: [130]</b> 6/3 6/7 6/13 6/22 6/25 7/2 7/8 7/23 7/25 8/12 8/16 9/2 9/11 9/14 9/17 9/21 10/4 12/24 16/19 16/22 21/12 30/18 30/22 31/4 31/6 31/23 31/25 32/23 33/1 33/12 33/15 33/17 33/19 33/22	33/24 34/7 36/18 44/25 46/10 46/22 49/7 49/12 50/15 53/20 54/19 55/22 56/20 59/7 60/17 62/6 62/9 62/12 62/16 62/22 63/5 63/8 63/12 63/17 63/23 64/3 64/8 64/11 64/13 64/20 65/5 65/13 65/15 65/22 66/3 66/10 66/13 66/17 66/21 66/25 67/25 68/7 68/10 71/5 71/10 73/7 78/17 79/23 80/1 80/11 80/13 80/16 80/20 80/23 81/2 81/5 81/7 81/10 81/15 81/17 82/2 82/4 82/8 82/13 82/16 82/23 83/3 83/5 83/7 83/17 90/13 90/16 90/22 90/25 101/14 141/14 141/18 141/22 151/17 151/21 151/24 155/11 155/15 166/3 189/12 192/13 192/16 192/18 193/7 199/15 202/10 202/13 203/11 203/14 203/17 203/19 <b>THE MARSHAL:</b> <b>[18]</b> 9/20 9/22 10/1 62/18 65/25 66/5 66/12 67/22 68/1 68/4 80/22 83/8 137/19 137/22 137/25 141/17 141/19 151/19 <b>THE WITNESS:</b> <b>[18]</b> 17/8 46/23 49/14 53/21 54/20 60/13 60/19 62/17 67/9 80/21 83/16 87/18 151/18 151/20 152/7 189/6 189/13 203/13 <b>\$</b> <b>\$10,000 [2]</b> 189/3 189/9 <b>\$1170 [1]</b> 16/13 <b>\$130 [2]</b> 11/2 70/22	<b>\$2,995.60 [1]</b> 149/20 <b>\$20,000 [1]</b> 189/10 <b>\$201.09 [1]</b> 10/16 <b>\$264 [1]</b> 148/12 <b>\$33,000 [1]</b> 180/10 <b>\$35,000 [4]</b> 11/5 12/18 169/24 170/12 <b>\$4,000 [2]</b> 35/12 190/16 <b>\$4,662 [1]</b> 35/12 <b>\$414 [2]</b> 16/14 148/12 <b>\$414.40 [3]</b> 147/15 148/5 149/17 <b>\$48,000 [1]</b> 11/5 <b>\$5,000 [1]</b> 188/19 <b>\$5,331 [4]</b> 11/4 13/8 123/8 188/19 <b>\$5,370 [1]</b> 123/15 <b>\$50 [3]</b> 148/20 148/21 148/21 <b>\$50,000 [4]</b> 10/13 22/5 22/6 178/8 <b>\$62,943 [2]</b> 89/1 89/6 <b>\$700 [2]</b> 11/11 147/25 <b>\$84,557 [2]</b> 89/20 89/23 , <b>'91 [1]</b> 182/21 - <b>-o0o [6]</b> 64/19 64/20 82/12 82/13 141/21 141/22 / <b>/s [2]</b> 168/1 204/17 <b>0</b> <b>000003 [1]</b> 87/24 <b>0026 [1]</b> 86/20 <b>0033 [1]</b> 108/2 <b>0034 [1]</b> 87/19 <b>0046 [4]</b> 99/3 99/14 99/15 99/20 <b>0047 [6]</b> 98/7 98/25 99/3 99/7 99/9 99/13 <b>0075 [2]</b> 112/5 124/1 <b>0084 [1]</b> 115/10	<b>0089 [1]</b> 122/16 <b>0154 [1]</b> 69/20 <b>0175 [1]</b> 86/20 <b>03 [1]</b> 29/9 <b>0308 [2]</b> 28/23 29/3 <b>0329 [1]</b> 2/10 <b>054 [1]</b> 69/22 <b>1</b> <b>10 [1]</b> 185/18 <b>10 percent [1]</b> 14/17 <b>10-day [1]</b> 107/22 <b>100 [1]</b> 119/25 <b>100 percent [5]</b> 130/24 131/2 131/10 180/18 202/10 <b>106 [1]</b> 11/20 <b>107 [4]</b> 187/20 190/3 190/9 190/10 <b>10:00 a.m [1]</b> 9/1 <b>10:30 [1]</b> 203/17 <b>10:30 a.m [1]</b> 203/15 <b>11 [14]</b> 71/25 72/3 72/18 74/1 74/4 136/4 165/17 165/22 165/25 166/3 166/5 167/7 199/4 199/7 <b>11 percent [1]</b> 11/6 <b>11-7-2012 [1]</b> 179/20 <b>116 [11]</b> 14/25 133/4 160/12 161/5 162/18 163/14 174/18 187/20 189/20 190/13 190/18 <b>12 [9]</b> 154/5 155/3 155/5 155/10 155/13 184/4 184/5 201/5 201/12 <b>126 [1]</b> 147/10 <b>1286 [1]</b> 2/19 <b>12C [1]</b> 65/2 <b>13 [1]</b> 172/24 <b>1300 [2]</b> 67/24 68/6 <b>13th [2]</b> 172/4 173/18 <b>14 [2]</b> 11/2 73/25 <b>15 [4]</b> 64/10 66/17 185/18 192/15 <b>16 [8]</b> 57/5 59/14 60/5 61/4 61/15
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<b>1</b> <b>16...</b> [3] 146/6 146/19 146/22 <b>16387</b> [1] 180/3 <b>17</b> [9] 28/17 28/19 28/20 30/6 34/1 48/1 49/4 50/13 50/17 <b>17A</b> [2] 34/3 34/7 <b>17th</b> [3] 38/3 39/22 57/25 <b>18</b> [4] 76/5 167/21 193/25 195/7 <b>1991</b> [1] 182/23 <b>1:00</b> [6] 7/17 64/3 64/7 65/2 66/12 68/1 <b>1:00 p.m</b> [1] 63/2 <b>1:30</b> [1] 81/20 <b>1st</b> [3] 67/20 78/16 147/13	144/15 145/7 145/12 145/17 146/6 146/19 146/22 147/17 147/18 149/14 <b>2012</b> [49] 11/4 11/13 12/16 15/1 51/12 58/25 75/9 78/12 91/13 95/23 96/16 97/12 97/14 122/10 122/20 123/6 130/13 130/17 145/21 146/23 147/14 149/14 150/7 153/4 153/5 156/6 156/10 162/20 172/4 172/8 172/24 173/18 174/25 177/6 179/20 182/5 182/14 182/23 189/19 190/21 191/21 193/3 193/25 195/7 196/3 196/6 197/6 201/20 203/10 <b>2013</b> [2] 16/9 128/19 <b>2014</b> [2] 128/19 189/23 <b>2015</b> [3] 87/2 91/13 138/23 <b>2016</b> [1] 85/7 <b>2017</b> [5] 1/21 6/1 67/20 78/16 145/6 <b>207</b> [2] 78/3 78/5 <b>20th</b> [1] 143/8 <b>212</b> [1] 78/6 <b>23</b> [1] 65/21 <b>24</b> [2] 8/21 190/21 <b>24/7</b> [1] 142/11 <b>24230</b> [1] 111/25 <b>2470</b> [1] 3/5 <b>25</b> [12] 102/8 123/6 141/12 146/23 147/14 150/7 156/6 156/10 162/20 172/8 193/3 197/6 <b>25th</b> [4] 11/4 11/13 51/12 145/19 <b>26</b> [6] 48/18 144/15 145/9 145/12 145/17 149/14 <b>26th</b> [1] 148/6 <b>28</b> [2] 58/15 147/18	<b>29</b> [1] 110/17 <b>2925</b> [3] 39/14 109/7 109/13 <b>2:00</b> [3] 7/20 80/25 81/3 <b>2:00 p.m</b> [1] 63/1 <b>2:30</b> [1] 65/14 <b>3</b> <b>3.99</b> [3] 22/22 22/23 22/24 <b>3.99 percent</b> [1] 22/20 <b>30</b> [3] 74/10 75/19 84/4 <b>30-year</b> [1] 74/10 <b>300</b> [1] 39/2 <b>309</b> [1] 3/6 <b>31</b> [1] 122/20 <b>313</b> [2] 169/13 175/19 <b>32</b> [2] 142/5 144/14 <b>3211</b> [1] 2/21 <b>3212</b> [1] 2/22 <b>33</b> [2] 142/5 142/5 <b>347</b> [1] 181/17 <b>356</b> [1] 179/15 <b>360</b> [1] 199/8 <b>3:00</b> [1] 64/7 <b>3rd</b> [1] 37/7 <b>4</b> <b>4-12-2011</b> [1] 108/4 <b>4-5-2011</b> [2] 107/22 108/4 <b>4.75 percent</b> [1] 22/16 <b>41</b> [1] 147/1 <b>4254</b> [38] 10/7 13/14 23/6 26/11 35/18 37/10 37/12 42/8 69/9 77/10 78/8 85/9 99/23 152/22 154/20 154/22 155/20 156/3 156/9 156/25 156/25 166/12 169/16 171/24 173/3 173/17 175/8 175/12 176/13 177/14 178/16 181/1 182/8 183/8 183/25 196/17 200/9 200/19 <b>43</b> [1] 147/1 <b>4325</b> [3] 38/3 39/22 57/25	<b>44</b> [1] 106/10 <b>45</b> [3] 69/22 141/13 147/1 <b>466</b> [2] 154/10 155/3 <b>467</b> [1] 155/3 <b>47</b> [1] 143/24 <b>476-3211</b> [1] 2/21 <b>476-3212</b> [1] 2/22 <b>48</b> [1] 106/11 <b>486</b> [1] 154/9 <b>49</b> [3] 150/3 150/4 150/16 <b>4:00</b> [1] 64/7 <b>4:00 p.m</b> [3] 124/2 186/20 188/7 <b>5</b> <b>50</b> [3] 74/14 76/10 148/23 <b>50/50</b> [1] 148/23 <b>500th</b> [1] 136/3 <b>52</b> [4] 156/11 184/20 187/8 187/10 <b>53</b> [1] 150/16 <b>537</b> [1] 39/1 <b>54</b> [3] 69/23 150/20 150/21 <b>541</b> [2] 1/24 204/17 <b>55117</b> [1] 39/15 <b>5691</b> [1] 2/11 <b>58103</b> [3] 38/4 39/23 58/1 <b>5868</b> [1] 3/8 <b>6</b> <b>60</b> [3] 35/12 75/14 160/18 <b>685-0329</b> [1] 2/10 <b>7</b> <b>702</b> [5] 2/10 2/11 2/21 2/22 3/8 <b>73</b> [2] 150/20 150/21 <b>75</b> [1] 74/11 <b>75 percent</b> [3] 74/6 76/13 76/14 <b>8</b> <b>83</b> [1] 144/23 <b>866-339-5691</b> [1] 2/11 <b>873-5868</b> [1] 3/8 <b>89012</b> [1] 2/20 <b>89074</b> [1] 3/7 <b>89101</b> [2] 124/3	186/21 <b>89103</b> [6] 10/8 23/6 85/10 169/17 171/25 181/2 <b>89117</b> [1] 2/9 <b>9</b> <b>90</b> [3] 145/18 145/24 160/18 <b>90 percent</b> [1] 74/8 <b>930</b> [3] 124/2 186/20 187/2 <b>9510</b> [1] 2/7 <b>9:55</b> [1] 6/2 <b>:</b> <b>:SS</b> [1] 204/2 <b>A</b> <b>A-12-659764-C</b> [1] 201/18 <b>A-12-667690-C</b> [1] 1/1 <b>A-L-E-S-S-I</b> [1] 83/17 <b>a.m</b> [3] 6/2 9/1 203/15 <b>ability</b> [3] 31/17 82/1 204/11 <b>able</b> [8] 27/1 35/7 37/18 76/14 106/18 123/5 158/12 198/14 <b>about</b> [120] 8/1 8/8 8/17 9/8 10/19 11/6 11/11 13/19 13/21 13/24 15/20 16/13 24/6 25/11 26/23 38/5 38/14 39/6 40/14 41/14 50/7 50/20 51/8 51/8 55/8 57/15 59/14 60/5 61/7 61/19 64/25 68/3 68/6 77/18 81/19 81/23 86/11 88/16 88/18 88/20 90/23 93/17 93/20 101/11 106/21 108/20 110/3 113/1 114/3 117/7 117/20 119/23 121/13 123/16 124/4 125/20 126/19 126/22 127/2 127/6 127/8 127/17 127/23 127/25 128/2 128/9 128/21
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(6) aware... - beware

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(7) beyond - canceled

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(8) cannot - conflicting

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(11) did... - down

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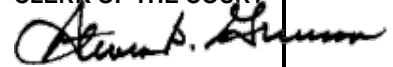
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Steven D. Grier  
CLERK OF THE COURT



1 CASE NO. A-12-667690-C

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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U S BANK NATIONAL ASSOCIATION, )

10

Plaintiff, )

11

vs. )

12

GEORGE EDWARDS, )

13

Defendant. )

14

15

REPORTER'S TRANSCRIPT

16

OF

17

BENCH TRIAL

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED TUESDAY, OCTOBER 3, 2017

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3  
4 MCCARTHY HOLTHUS LLP

5 BY: THOMAS BECKOM, ESQ.

6 BY: PRISCILLA BAKER, ESQ.

7 9510 W SAHARA AVENUE

8 SUITE 200

9 LAS VEGAS, NV 89117

10 (702) 685-0329

11 (702) 866-339-5691 Fax

12 NO EMAIL PROVIDED

13  
14 FOR THE DEFENDANT:

15  
16 LAW OFFICES OF RICHARD VILKIN, P.C.

17 BY: RICHARD J. VILKIN, ESQ.

18 1286 CRIMSON SAGE AVENUE

19 HENDERSON, NV 89012

20 (702) 476-3211

21 (702) 476-3212 Fax

22 RICHARD@VILKINLAW.COM

1 APPEARANCES CONTINUED:

2

3

4

GEISENDORF LAW OFFICE

5

BY: CHARLES L. GEISENDORF, ESQ.

6

2470 ST. ROSE PARKWAY

7

SUITE 309

8

HENDERSON, NV 89074

9

(702) 873-5868

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

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APP001617

1	EXHIBITS			
2	EXHIBIT	DESCRIPTION	MARKED	RECEIVED
3	1	Document		7
4	2	Document		7
5	5	Document		7
6	6	Document		7
7	8	Document		7
8	9	Document		7
9	15	Document		7
10	16	Document		7
11	13	Appraisal		12
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## WITNESS

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\* \* \* \* \*

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 7, 2017

2 9:21 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5

6 THE COURT: All right. Let's go ahead and  
7 note our appearances for the record. Good morning  
8 also.

9 MR. GEISENDORF: Good morning, your Honor.

10:57:26 10 MR. VILKIN: Good morning, your Honor. Your  
11 Honor, Richard Vilkin for defendant and counter  
12 claimant.

13 MR. GEISENDORF: Charles Geisendorf for  
14 defendant and counter claimant.

10:57:39 15 MR. BECKOM: Thomas Beckom on behalf of the US  
16 Bank. My colleague Priscilla Baker will be joining us  
17 here momentarily. She stepped out for a moment.

18 THE COURT: I understand. All right. Do we  
19 have something to address outside the presence? Well  
10:57:49 20 there's no presence to be out of.

21 MR. VILKIN: Your Honor, we just have one  
22 matter. Counsel and I are stipulating to the admission  
23 of the following exhibits. 1, 2, 5, 6, 8, 9, 15, and  
24 16.

10:58:04 25 THE COURT: Did you get that, Madam Clerk?

10:58:07 1 THE COURT CLERK: I did.

2 THE COURT: Okay. So admitted.

3 (Exhibit 1 admitted)

4 (Exhibit 2 admitted)

10:58:09 5 (Exhibit 5 admitted)

6 (Exhibit 6 admitted)

7 (Exhibit 8 admitted)

8 (Exhibit 9 admitted)

9 (Exhibit 15 admitted)

10:58:09 10 (Exhibit 16 admitted)

11 MR. BECKOM: I guess, and I join in the

12 stipulation, so we have a clean record to that.

13 THE COURT: All right. That's fine. So where

14 does that leave us?

10:58:17 15 MR. BECKOM: US Bank would like to call as

16 their first witness today George Holmes.

17 THE COURT: And is this the appraiser?

18 MR. BECKOM: Yes.

19 THE MARSHAL: George, last name?

10:58:31 20 MR. BECKOM: Holmes.

21 THE COURT: So, I guess, for the rest the two

22 remaining witnesses are appraisal witnesses.

23 MR. VILKIN: Correct.

24 THE COURT: Which makes perfect sense to me.

10:58:45 25 MR. VILKIN: So our goal is to get done before

10:58:47 1 lunch, but we'll see.

2 THE COURT: I'm going to tell you this. I  
3 thought yesterday, ultimately, ended up being a very  
4 efficient date.

10:58:53 5 MR. VILKIN: It was.

6 MR. BECKOM: We do try. We think so.

7 GEORGE PETERSEN HOLMES,  
8 having been first duly sworn to testify to the truth,  
9 the whole truth and nothing but the truth, was examined  
10:58:57 10 and testified as follows:

11 THE COURT CLERK: Please be seated. And if  
12 you will state and spell your name for the record,  
13 please.

14 THE WITNESS: George Petersen Holmes.  
10:59:44 15 G-E-O-R-G-E. Petersen, P-E-T-E-R-S-E-N. Holmes,  
16 H-O-L-M-E-S.

17

18 DIRECT EXAMINATION

19 BY MR. BECKOM:

11:00:00 20 Q. Good morning, Mr. Holmes.

21 A. Good morning.

22 Q. So I'm going to start with a couple of quick  
23 questions about your background here today. What do  
24 you do for a living, sir?

11:00:19 25 A. I'm a residential real estate appraiser.

11:00:22 1 Q. Okay. Did you go to school for that?

2 A. I did.

3 Q. Where did you go to school at?

4 A. There's a bunch of different schools. I

11:00:30 5 started my training in 2002 with the Chicopee Group.

6 That was my initial appraiser, basic appraiser

7 requirements, CE requirements. Seventy-five hours of

8 that. Then I got my appraiser trainee license then.

9 And then I worked under somebody for three

11:00:52 10 years learning how to appraise, going with them and

11 doing inspections and writing up reports and talking to

12 clients and things. And then 75 more hours of advanced

13 appraisal theory. And then I got my appraisal license

14 then.

11:01:07 15 Q. Okay. And then who were you licensed through,  
16 sir.

17 A. The Nevada Department of Business and  
18 Industry.

19 Q. And did they license you as a real estate  
11:01:17 20 appraisal, is that correct?

21 A. Yes, that's correct.

22 Q. Okay. Where have you -- where have you worked  
23 at? How many years have you worked as a residential  
24 appraiser?

11:01:26 25 A. Since 2005 I've been licensed, so for the past

11:01:30 1 12 years.

2 Q. Okay. And you've been continuously employed  
3 at various places throughout those last 12 years?

4 A. Yes. Independent fee appraising since then.

11:01:42 5 About on average maybe 250 reports per year depending  
6 on how busy we were that year.

7 Q. Okay. Do you continue with your, I guess,  
8 ongoing education in terms of appraisal practice?

9 A. Yes. We're required to take 30 continuing  
11:02:00 10 education units. Seven units of Uniform Standards of  
11 Professional Appraisal Practice. And then, yeah, seven  
12 hours of that every two years.

13 So I've gone through six cycles since 2005.  
14 So that's like about 180 hours of continuing education.

11:02:27 15 About 50 USPAP applies.

16 Q. Okay. Let's ask you a couple more questions  
17 about like you referred to the USPAP, correct?

18 A. Okay.

19 Q. And that is the, I think you said, the Uniform  
11:02:36 20 Standards of Professional Appraisal Practice?

21 A. Yes.

22 Q. Is that -- like, what is the USPAP exactly?  
23 If you'd like to elaborate on that a little bit more.

24 A. Basically it separates us from -- separates  
11:02:50 25 appraisers from Realtors, the guy next door, or Zillow.

11:02:56 1 So we follow the guidelines and practices in USPAP to  
2 make our reports -- appraisal reports compliant with  
3 USPAP.

4 Q. And is that -- is the USPAP, that's the  
11:03:09 5 general accepted methodology of appraisers?

6 A. Yes, for appraisers.

7 Q. Okay. And to your knowledge do all appraisers  
8 typically follow the USPAP?

9 A. We're required to. You could make a USPAP  
11:03:25 10 compliant report if you're a Realtor or a layman. But  
11 appraisers, licenses appraisers, are required to follow  
12 USPAP.

13 MR. BECKOM: With that I would like to offer  
14 Mr. Holmes as an expert witness in residential real  
11:03:38 15 estate appraising.

16 MR. VILKIN: No objection.

17 THE COURT: So accepted, sir.

18 MR. BECKOM: Okay.

19 BY MR. BECKOM:

11:03:43 20 Q. Mr. Holmes, can you take a look at the exhibit  
21 binder in front of you and take a look at Exhibit 13.  
22 You get there okay, sir?

23 A. Yes.

24 Q. Excellent. Have you seen Exhibit 13 before,  
11:04:30 25 Mr. Holmes?

11:04:41 1 A. Yes. It appears to be my appraisal report.

2 Q. Okay. And was this the appraisal report for

3 4254 Rolling Stone Drive?

4 A. Yes.

11:04:54 5 Q. Okay. And through this appraisal report, were

6 you asked to provide a -- or an opinion of fair market

7 value for the 4254 Rolling Stone Drive?

8 A. Yes, I was.

9 Q. Okay. And did you provide that opinion?

11:05:14 10 A. I did.

11 Q. Okay.

12 MR. BECKOM: With that I would like to move to

13 admit Exhibit 13 for all purposes.

14 MR. VILKIN: No objection.

11:05:25 15 THE COURT: Okay. So admitted.

16 (Exhibit 13 admitted)

17 BY MR. BECKOM:

18 Q. Okay, Mr. Holmes. So you were retained to

19 provide an appraisal of real property that we just --

11:05:39 20 the subject property we just discussed with a

21 retrospective date of January 25, 2012; is that

22 correct?

23 A. That is correct.

24 Q. Can you explain to me the methodology that you

11:05:51 25 used in coming up with this opinion of value?



11:05:59 1 A. We used the sales comparison approach for this  
2 report. It looks like there was six -- looks like I  
3 used six comparables. Yeah, six comparables.

4 Bracketing the square footage looks like. And the  
11:06:21 5 car -- the garage, the bracketing meaning to like  
6 having some with and some without.

7 The square footage, the bathroom. Looks like  
8 the bathroom count was one and two. And the lot size.  
9 And then after all the adjustments, the six

11:06:45 10 comparables. Looks like it was -- there's a range of  
11 value from, like, 48,000 -- sorry. The range of value  
12 is \$43,900 to \$50,900.

13 So we choose in that range what our opinion of  
14 value is, and we reconcile it. And my reconciled  
11:07:16 15 opinion of value was \$48,000.

16 Q. And as of what date?

17 A. As of that date. The retrospective date  
18 January 25, 2012.

19 Q. Okay. I think you said you used the sales  
11:07:27 20 comparison approach for this; is that correct?

21 A. That is correct.

22 Q. Is that a -- sorry. I apologize profusely  
23 once again. Is that a recognized methodology for  
24 appraisers when appraising residential real property,  
11:07:46 25 the sales comparison approach?

11:07:48 1 A. It is.

2 Q. Okay. Can you explain to me a little bit more

3 in depth about that approach. I think you mentioned

4 various comparable real estate?

11:08:00 5 A. Yes. You use close sales to compare what you

6 have as a subject to the comparable sales, and you make

7 adjustments. That's how you use the sales comparison

8 approach.

9 Q. Okay. And then how many -- how many, I guess,

11:08:17 10 typical -- how many typical sales are required or, you

11 know, are generally used in a sales comparison

12 appraisal?

13 A. I think for lending three is the requirement.

14 Q. And then how many did you use, sir?

11:08:31 15 A. In this report I used six.

16 Q. Okay. Any reason why you used six?

17 A. There was six that I found that were relevant.

18 Q. Okay. So you included all relevant comparable

19 properties in your report?

11:08:47 20 A. There could be some more relevant properties

21 that I didn't include, but six data points is usually

22 enough to come up with an opinion of value using the

23 sales comparison approach.

24 Q. Okay. Now, a couple of things that I want to

11:09:01 25 ask you. Let's go over to the third page of your

11:09:08 1 report.

2 A. Okay.

3 Q. The very bottom it says the client signed the  
4 report the effective date. The appraiser has completed  
11:09:20 5 the assignment developing an unimpaired opinion of  
6 market value. Do you see what I'm talking about, sir?

7 A. I do.

8 Q. Can you explain to me and the Court and  
9 everything else here what is your definition of market  
11:09:33 10 value?

11 A. It's the most probable price between an  
12 informed and willing buyer and seller in an open  
13 market.

14 Q. Okay. And that is assuming no forced sales or  
11:10:01 15 anything like that; correct?

16 A. That's correct.

17 Q. Okay. The only other question I had, sir, was  
18 that you used the term extraordinary assumption. In  
19 respect to the regards of the appraiser made an  
11:10:20 20 exterior only inspection which involves the use of an  
21 extraordinary assumption that no adverse -- the  
22 appraiser made an exterior only inspection which  
23 involves the use of an extraordinary assumption that no  
24 adverse condition exists that may affect the  
11:10:39 25 livability, soundness, or structural integrity.

11:10:42 1 Do you see what I'm talking about, sir?

2 A. I do.

3 Q. Is extraordinary assumption, you know, a term  
4 of art that appraisers use in their practice?

11:10:51 5 A. Yes. Extraordinary assumption and  
6 hypothetical conditions, yes.

7 Q. Can you explain to me what the term  
8 extraordinary assumption means?

9 A. It means that I'm making assumptions that the  
11:11:03 10 inside has not been completely torn up or completely  
11 rehabbed.

12 Q. Okay.

13 A. Like there's not gold faucets in there, and  
14 it's not infested, and doesn't have copper wiring. So  
11:11:15 15 the assumption that I'm making is it's in a typical  
16 condition, average condition from the data that we have  
17 and the photos that were from MLS, or wherever we found  
18 them.

19 Q. Okay. So absent some kind of severe  
11:11:31 20 detrimental internal condition with the property, the  
21 extraordinary assumption really doesn't come into play?

22 A. Typically. Yes, that's correct.

23 Q. Okay. And so based on the assumption that you  
24 made that the interior was in a good condition and with  
11:11:48 25 your six comparable points which were in excess of the

11:11:53 1 amount required generally for acceptable appraisal  
2 practices, I think you mentioned this before, but your  
3 conclusion as to the value of this property on January  
4 25, 2012, was what?

11:12:03 5 A. \$48,000 I think.

6 Q. And --

7 A. Yes.

8 Q. -- that was the price between a willing buyer  
9 and a willing seller in an open market, correct?

11:12:12 10 A. Yes. I think I added the informed willing  
11 buyer and willing seller --

12 Q. Okay.

13 A. -- in an open market.

14 MR. BECKOM: Fair enough. I'll reserve time  
11:12:22 15 to, I guess, answer additional questions depending on  
16 what my colleague does on cross-examination.

17 THE COURT: Okay. Sir.

18 MR. VILKIN: Thank you, your Honor.

19

11:12:30 20 CROSS-EXAMINATION

21 BY MR. VILKIN:

22 Q. Good morning, Mr. Holmes.

23 A. Good morning.

24 Q. If I could direct you to Exhibit 13, page 3 of  
11:12:40 25 13 of your report.

11:12:43 1 A. Yes.

2 Q. If you can look at the last paragraph on the  
3 page, the sentence that starts -- that starts, The  
4 client assigned. Do you see that?

11:12:56 5 A. I do.

6 Q. In that sentence, it goes on to state that the  
7 appraiser has completed assignment developing an  
8 unimpaired opinion of market value. Do you see that?

9 A. I do.

11:13:09 10 Q. What did you mean by unimpaired opinion of  
11 market value?

12 A. At the time I wrote this report I was aware  
13 that they were "HOA foreclosures," so I put that in  
14 there saying that this was my unimpaired opinion  
11:13:36 15 respected to the date whether it was before the 25th,  
16 after the 25th, just going to leave that up to the  
17 Court to decide when if there was as impairment or not  
18 an impairment. But this was my unimpaired opinion of  
19 market value.

11:13:52 20 Q. Okay. And I understand that.

21 A. Okay.

22 Q. What I'm trying to find out is what, what is  
23 your definition of the word impaired or unimpaired.  
24 I'm trying to find out what you meant by that?

11:14:10 25 A. An unimpaired opinion would be part of the

11:14:13 1 definition of market value. So if it was impaired,  
2 that's not what my assignment or my intent was to do.

3 Q. Well, can you give us some examples of  
4 something that would impair market value?

11:14:31 5 A. I guess, for example, a condition could impair  
6 the market value, the environmental conditions. If it  
7 was next to a super fund site. External, if there's  
8 some functional obsolescence, that type of thing would  
9 be impaired value.

11:14:48 10 Q. Well, you indicated that you're familiar with  
11 HOA foreclosure sales, correct?

12 A. I wouldn't say I was familiar. I was aware.

13 Q. Well, what are you aware of? What do you know  
14 about them?

11:15:01 15 A. I'm aware that there were some sales that were  
16 sold as HOA foreclosures. And they're going through  
17 the court system right now. That's basically what I'm  
18 aware of.

19 Q. Are you aware of what happens or how an HOA  
11:15:17 20 foreclosure sale is conducted?

21 A. I couldn't say I was familiar with that, no.

22 Q. Do you know whether the fact that a property  
23 was sold at an HOA foreclosure sale would constitute  
24 impairment under your definition?

11:15:37 25 A. It's possible, but that wasn't my assignment.

11:15:44 1 Q. If you could, take a look on page 9 of 13 of  
2 your report in Exhibit 13.

3 A. Yes.

4 Q. Okay. That's where you give a statement of  
11:16:03 5 assumptions and limiting conditions; correct?

6 A. Correct.

7 Q. And one of your assumptions in that first item  
8 is that title is good and marketable; correct?

9 A. That is correct.

11:16:14 10 Q. Do you know whether title sold at an HOA  
11 foreclosure sale pursuant to NRS 116 is considered good  
12 and marketable title?

13 A. I do not.

14 Q. If you could take a look at page 10 of 13 of  
11:16:34 15 your report. Exhibit 13?

16 THE COURT: What was the prior page, sir,  
17 again?

18 MR. VILKIN: Page 9 of 13 of Exhibit 13.  
19 Exhibit 13, page 9.

11:16:52 20 BY MR. VILKIN:

21 Q. So, Mr. Holmes, are we at page 10 of your  
22 report.

23 A. Yes.

24 Q. And in that paragraph you give a definition --  
11:17:01 25 or down at the bottom you give a definition of market



11:17:04 1 value; correct?

2 A. Yes.

3 Q. And one of the elements of your definition of  
4 market value is that the buyer and seller are typically

11:17:12 5 motivated; correct?

6 A. That is correct.

7 Q. What is your understanding, or how do you  
8 use -- what do you mean by typically motivated?

9 A. It means they're not in under undue stress to  
11:17:29 10 buy or sell. So in a typical market, it would be some  
11 exposure time. Like if your neighbor needed to sell a  
12 house that that they inherited from their parents, they  
13 wanted to do it right away. That wouldn't necessarily  
14 be typical. Typical would be something that was  
11:17:48 15 exposed to the market probably on MLS. Maybe on the  
16 internet.

17 Q. Well, if the --

18 A. So go ahead.

19 Q. I'm sorry. I didn't mean to interrupt you.

11:17:59 20 Were you done?

21 A. No.

22 Q. Were you done, or?

23 A. Yes.

24 Q. Okay. If the seller was an HOA selling a  
11:18:05 25 property in an HOA foreclosure sale pursuant to

11:18:08 1 NRS 116, would you consider that typical motivation?  
2 A. I would say that's beyond my scope of work.  
3 That's beyond my assignment. So I didn't really -- I  
4 haven't really thought about that. I haven't  
11:18:27 5 researched that. I haven't gone through the steps to  
6 see.  
7 Q. Okay. And then in Item 5 of your definition  
8 of market value, you indicate that the price represents  
9 the normal consideration for the property sold  
11:18:43 10 unaffected by, and I'm going to skip a few words, but  
11 the last item is sales concessions granted by anyone  
12 associated with the sale. Do you see that language?  
13 A. I do.  
14 Q. What did you mean by sales concessions granted  
11:19:01 15 by anyone associated with the sale?  
16 A. Sometimes a typical market transaction, the  
17 seller will give the buyer some concessions for carpet,  
18 or some other cash considerations, and you'll see it  
19 listed as, you know, concession of \$5,000 or X, Y, and  
11:19:21 20 Z. So ...  
21 Q. Well, if --  
22 A. Go ahead.  
23 Q. I'm sorry. If the property was being sold at  
24 in an HOA foreclosure sale, would that fall into the  
11:19:32 25 definition of a sales concession?

11:19:38 1 A. Once again, that would be beyond my scope of  
2 work and my assignment.

3 MR. VILKIN: I don't have anything further.

4 MR. BECKOM: Just one additional question,  
11:19:46 5 your Honor.

6

7

REDIRECT EXAMINATION

8 BY MR. BECKOM:

9 Q. On page 10 of 13, I think we're still there;  
11:19:55 10 are we still there?

11 A. Yes.

12 Q. Okay. So the definition of market value, I  
13 just want to ask you one question. If I were to say  
14 this -- well, let me ask you this: Is market value  
11:20:11 15 pretty synonymous with a price which a purchaser  
16 willing, but not obligated to buy, would pay an owner  
17 willing, but not obligated to sell?

18 A. I would say that's synonomous, yes.

19 Q. Okay. And that is the definition of value  
11:20:27 20 that you used as part of this appraisal?

21 A. Yes.

22 Q. Okay.

23 MR. BECKOM: I have no further questions, your  
24 Honor.

11:20:34 25

11:20:34 1

## RECROSS-EXAMINATION

2 BY MR. VILKIN:

3 Q. Was that the definition you used, sir?

4 A. The definition market value has been changed

11:20:43 5

since I started appraising. And they modify it every

6 year at USPAP. So they add and subtract some words and

7 I think legalese. So the answer is, yes, that is the

8 definition.

9 Q. Well, is that what you recorded on page 10 of

11:20:56 10

your report at the bottom as the definition of market

11 value?

12 A. It is. That's what's written here. I'm not

13 sure the attorney quoted that exactly, so that's why I

14 didn't want to say 100 percent, yes, to what he had

11:21:11 15

said. That's why I said it was synonymous.

16 Q. Well, is the definition that you just agreed

17 to is that -- does that include the assumption that

18 it's an unimpaired opinion of market value?

19 A. Yes, it does.

11:21:29 20

Q. And does it also include the assumption that

21 title is good and marketable?

22 A. Yes, it does.

23 MR. VILKIN: Okay. Nothing further.

24 MR. BECKOM: Nothing.

11:21:38 25

THE COURT: Okay. Sir, we're going to release

11:21:40 1 you. Thank you.

2 THE WITNESS: All right. Thank you.

3 THE COURT: So are we --

4 MR. BECKOM: I have no further witnesses to  
11:22:31 5 call.

6 THE COURT: So at this point the plaintiff  
7 rests, is that correct, sir?

8 MR. BECKOM: I'm going through the list of the  
9 witnesses. Yes, at this point the plaintiff rests.

11:22:39 10 THE COURT: Okay.

11 MR. VILKIN: Your Honor, the defendant will  
12 call Mike Brunson, our appraisal expert.

13 THE COURT: All right.

14 MR. VILKIN: He should be in the hallway.

11:22:47 15 MICHAEL BRUNSON,  
16 having been first duly sworn to testify to the truth,  
17 the whole truth and nothing but the truth, was examined  
18 and testified as follows:

19 THE COURT CLERK: Please be seated. And if  
11:23:27 20 you will state and spell your name for the record,  
21 please.

22 THE WITNESS: My name is Michael Brunson,  
23 spelled M-I-C-H-A-E-L. B-R-U-N-S-O-N.

24

25 \\\

11:23:44 1

## DIRECT EXAMINATION

2 BY MR. VILKIN:

3 Q. Good morning, Mr. Brunson. Thank you for  
4 coming. Can you tell us what your current employment  
11:23:51 5 is?

6 A. I am a managing partner at Brunson and Jiu.

7 Q. And what kind of entity is that?

8 A. We are predominantly a real estate valuation  
9 and analytics firm.

11:24:04 10 Q. How long have you been employed there?

11 A. The firm has existed for six years.

12 Q. And what are your particular job duties at  
13 that firm?

14 A. As a partner, my duties revolve around real  
11:24:24 15 estate damage cases specifically litigation cases. We  
16 often do divorce and probate as well. When we -- when  
17 it's necessary for I and my team, we'll also consider  
18 doing some traditional residential appraisal  
19 assignments for VA. And we also take commercial  
11:24:43 20 assignments when necessary for the firm.

21 Q. Okay. How long have you worked in the real  
22 estate appraisal field?

23 A. This is my 21st year.

24 Q. Okay. And can you give us a brief description  
11:24:55 25 of your employment prior to your current employment

11:24:58 1 starting whenever you started in real estate appraisal  
2 work?

3 A. Yes, sir. In 1995, I went to work as an  
4 office manager and an intern for a local firm called  
11:25:09 5 Berry and Associates.

6 I completed my required two-year internship.  
7 And in fourth quarter of 2007 obtained my certified  
8 residential credential and opened my first firm Ascent  
9 Appraisal Incorporated.

11:25:27 10 That firm existed until approximately six  
11 years ago when we dissolved that firm, and I took on a  
12 partner, Mr. Craig Jiu. And have been doing real  
13 estate appraisal ever since.

14 Q. Can you just tell us what licenses you have  
11:25:40 15 that relate to real estate appraisal?

16 A. I am credentialed in the state of Nevada as a  
17 certified general appraiser. I am credentialed in the  
18 state of California as a certified general appraiser.  
19 I'm authorized to teach appraisal qualifying and  
11:25:57 20 continuing education.

21 I honestly don't know how many states, quite a  
22 few. And I'm also what's known as a QB certified USPAP  
23 instructor. And AQB stands for Appraiser Qualification  
24 Board. And USPAP stands for the Uniform Standards of  
11:26:15 25 Professional Appraisal Practice.

11:26:16 1 Q. Can you give us just briefly your educational  
2 background that relates to real estate appraisal work?

3 A. Sure. So I have a BA in psychology from UNLV.  
4 We are every day trying to use the rules of economics  
11:26:34 5 to determine probable behavior from past results.

6 In order to obtain a credential as a certified  
7 appraiser, you have 300 hours of qualifying education,  
8 3,000 hours of practical experience. A certain amount  
9 of time that you have to have been performing  
11:26:58 10 appraisals, and you have to submit those, both the  
11 education and the experience log, to the state in order  
12 for them to issue the credential.

13 Q. And can you give us an estimate of how many  
14 real estate appraisals you've completed in the state of  
11:27:13 15 Nevada?

16 A. I didn't prepare for that one, but it would be  
17 thousands.

18 MR. VILKIN: Your Honor, I'll ask that he be  
19 admitted as an expert in real estate appraisal.

11:27:25 20 MR. BECKOM: No objection. But we reserve  
21 rights to object to the substance of his testimony at a  
22 later time.

23 THE COURT: I understand. So admitted.

24 BY MR. VILKIN:

11:27:36 25 Q. Mr. Brunson, were you asked to perform a job



11:27:42 1 with regard to the property at 4254 Rolling Stone  
2 Drive?

3 A. Yes, sir.

4 Q. What were you asked to do?

11:27:49 5 A. I was asked to conduct an appraisal review,  
6 what's known as a standards three appraisal review of  
7 the work conducted by Mr. Holmes.

8 Q. And so you were given a copy of his report, is  
9 that correct?

11:28:04 10 A. Yes, sir. The purpose of an appraisal is to  
11 determine two things. Predominantly -- I'm sorry. An  
12 appraisal review is to determine prominently two  
13 things. One, whether or not the conclusions are  
14 credible. And two, whether or not the work is

11:28:22 15 conducted according to the Uniform Standards of  
16 Professional Appraisal Practice and in compliance with  
17 generally accepted appraisal methodologies.

18 Q. Can you take a look at Exhibit 13 and tell us  
19 is that the report that you reviewed.

11:28:54 20 A. Yes, sir, it is.

21 Q. Okay. And can you tell us what your opinions  
22 are with regard to that report. Just summarize them  
23 initially.

24 A. Sure. My general findings are that Mr. Holmes  
11:29:09 25 purports to provide an unimpaired value of the market

11:29:13 1 value of the subject property. But that he does so in  
2 a manner that is neither compliant with the uniform  
3 standards nor generally accepted methodologies, and,  
4 therefore, the results are misleading.

11:29:24 5 Q. Okay. And what about the issue of his report  
6 being an unimpaired value? Did you have any opinion  
7 with regard to that?

8 A. So the concept of unimpaired value, the short  
9 answer is no. I don't have a challenge with him  
11:29:44 10 providing an unimpaired value. The issue is, is that  
11 under uniform standards, that unimpaired value is a  
12 hypothetical. When professional appraisers conduct an  
13 analysis based on a hypothetical, we have very specific  
14 requirements. Namely, to clearly and conspicuously  
11:30:04 15 identify the hypothetical and then to indicate the fact  
16 that the use of that assumption may have affected the  
17 credibility of the assignment results.

18 Q. Well, if you could tell us what your opinions  
19 are with regard to his report in more detail?

11:30:41 20 A. So in greater detail, just on the first page  
21 of Mr. Holmes's general purpose appraisal report, I  
22 find seven errors. The uniform standards certainly  
23 don't require perfection, but it does have a rule  
24 called Standards Rule 1-1 sub C.

11:31:09 25 That requires an appraiser to conduct an

11:31:13 1 appraisal and report an appraisal in a manner that if  
2 you make a single error that in and of itself might not  
3 be significant. If you conduct a series of errors,  
4 when you take those errors in combination, it draws the  
11:31:29 5 credibility of the report into question.

6 Q. What are the errors that you found?

7 A. So he reports tenant occupied. He reports  
8 that the property is tenant occupied, but then issues a  
9 value of fee simple rights. Those two things don't go  
11:31:44 10 together. It's either tenant occupied lease fee. Or  
11 it's owner occupied vacant and fee simply. Unless  
12 he's, again, issuing another hypothetical.

13 There's challenges with his indicated market  
14 conditions. He indicates that the market is stable  
11:32:03 15 when data clearly indicates that that market was slow.  
16 He indicates that property values are stable in a  
17 market that clearly demonstrates declining values. He  
18 reports supply and demand as imbalance when the market  
19 data indicates there was an over supply in the market  
11:32:21 20 at that time.

21 He reports the predominant occupancy as owner  
22 when the data indicates that this particular sub market  
23 had 66.3 percent tenant occupancy.

24 There's numerous assumptions in Mr. Holmes'  
11:32:36 25 report that are lacking disclosure of the potential

11:32:40 1 effect of the use of those assumptions. This is a  
2 retrospective assignment. Nowhere in the four corners  
3 of his report do I find anything that talks about an  
4 assumption regarding the condition of the report.

11:32:53 5 Clearly, an unknown very easy thing to simply say we're  
6 assuming the condition is X. It doesn't exist in the  
7 report.

8 The offsite improvements for the subject  
9 property are reported as public when in reality they're  
11:33:10 10 private.

11 There's numerous examples of conflicting  
12 information provided in the report. The adjustments  
13 that are utilized in the sales comparison. We  
14 conducted our own analysis utilizing the criteria and  
11:33:25 15 the delimiters indicates in Mr. Holmes' report and our  
16 analysis fails to find anything near the adjustments  
17 that he was utilizing.

18 I can't say definitively that he is incorrect  
19 there lacking his work file, but our results cannot  
11:33:40 20 be -- cannot duplicate his findings.

21 In one of the comps he reports sales one as a  
22 fee simple property and indicates that it was tenant  
23 occupied. Those two things single are contradicting  
24 facts.

11:33:56 25 There are known seller concessions on sale

11:33:59 1 three that Mr. Holmes fails to report let alone  
2 consider in his analysis. Would you like me to  
3 continue?

4 Q. Well, let me ask you this. Did you prepare  
11:34:12 5 your own report analyzing Mr. Holmes' report?

6 A. Yes, sir.

7 Q. And is that contained in Exhibit 14?

8 A. Yes, sir.

9 MR. VILKIN: I would move to admit Exhibit 14,  
11:34:25 10 your Honor.

11 MR. BECKOM: I think that's premature.  
12 There's a lot of findings in Exhibit 14 other than just  
13 a rebuttal report including an independent methodology  
14 of value pursuant to Hallmark standard. I think we  
11:34:36 15 need more testimony as to the methodology that  
16 Mr. Brunson was using, especially as to the market  
17 value determinations that he ultimately comes to.

18 THE COURT: He just wants more foundation.

19 MR. VILKIN: Yeah, I understand.

11:34:48 20 THE COURT: So why don't you do that?

21 BY MR. VILKIN:

22 Q. Mr. Brunson, can you tell us the procedures  
23 you used to compile the opinions in your report?

24 A. Yes. The uniform standards can be used as a  
11:35:05 25 checklist to determine whether or not an appraiser

11:35:10 1 complied with those standards. So what I've done, do  
2 you want me to refer to my report or no?

3 THE COURT: You can.

4 BY MR. VILKIN:

11:35:18 5 Q. You can.

6 A. On page 16, I don't see Bates-stamped on this.  
7 But page 16 of my report you'll find a chart that runs  
8 down the list of the requirements of Standard 2, which  
9 is the reporting requirements for a residential  
10 appraisal.

11 In conducting my review of Mr. Holmes, I  
12 simply went down this list and read his report, did  
13 independent analysis to determine whether or not he  
14 complied with the individual components of Standards  
11:35:50 15 Rule 2? My table is color coated. I'm not sure that  
16 yours is.

17 Q. It's not. Ours is not.

18 A. Okay. The way that I do this is that there  
19 are certain issues in uniform standards that are very  
11:36:08 20 clear-cut and easy to determine without having the work  
21 file. There are other issues lacking the work file  
22 where that becomes a little more difficult.

23 So I will answer, no, they did not comply  
24 with -- Mr. Holmes did not comply with uniform  
11:36:23 25 standards and color code that box red. If I can

11:36:27 1 definitively demonstrate that that particular section  
2 or rule in uniform standards was not complied with.

3 In instances where he did comply, I'll mark,  
4 yes, and indicate it's green.

11:36:41 5 Q. Let me interrupt you if I may. What we're  
6 interested in right now is the methodology that you  
7 used to compile your report. Now, I understand you're  
8 talking about this particular page. Can you tell us  
9 about the rest of the report, just the methodology?

11:36:55 10 A. Well, certainly. So the review, I conducted  
11 the review utilizing the uniform standards to determine  
12 whether or not Mr. Holmes complied, and then whether or  
13 not he utilized generally recognized appraisal  
14 methodologies in doing so.

11:37:09 15 When conducting an appraisal review, Standards  
16 Rule 3-2C indicates that an appraiser's scope of work  
17 can be staged so that if you agree with the findings of  
18 the appraisal under review, that you may simply say so.

19 If you disagree with the findings, the scope  
11:37:33 20 of work may include developments of independent  
21 findings so that the user of the report will understand  
22 the correct methodologies that should have been  
23 employed.

24 My conclusion, ultimately, was that  
11:37:48 25 Mr. Holmes' report lacked credibility and therefore we

11:37:51 1 went ahead under Standards Rule 3-2C and developed an  
2 opinion according to proper methodologies.

3 We ruled the sales comparison approach just  
4 like Mr. Holmes did; however, the appraisal of real  
11:38:06 5 estate is very clear that when you're appraising a  
6 property in determining which properties are and are  
7 not comps, you have to be very sure that the sales comp  
8 you're considering sold with the same rights as the  
9 property that you're valuing.

11:38:26 10 In this context at an HOA foreclosure, you  
11 have a detrimental condition affecting the subject  
12 property that impairs its value. To simple say that  
13 you're going to provide an unimpaired value without  
14 disclosing the hypotheticals or even mentioning the HOA  
11:38:46 15 foreclosure that occurred on the same date, requires  
16 additional analysis. And that's one of the reasons  
17 that we went forward with our own. Our sales  
18 comparison looked at properties that are truly similar  
19 to the subject property in both rights and risk.

11:39:04 20 We arrayed those on a graph to demonstrate  
21 what contemporaneous sales similar in physical  
22 characteristics and in rights were doing as of the  
23 effective date. Those graphs are found -- those tables  
24 and graphs are found on pages 28 and 29.

11:39:27 25 Ultimately, what the data demonstrates is that



11:39:32 1 sales similar in rights and risk as of the effective  
2 date were selling for between 2 percent and 12 percent  
3 of the taxable value. That equates to roughly \$900 to  
4 \$5,500.

11:39:47 5 The subject sale was \$5,331. So utilizing  
6 standard sales comparison techniques it's clear that  
7 the subject price falls within the indicated range of  
8 similar data. And so we, ultimately, conclude that the  
9 price paid at auction is a reasonable representation of  
11:40:08 10 the price for similar properties as of that day.

11 MR. VILKIN: Your Honor, I move again to admit  
12 the report.

13 MR. BECKOM: I would vigorously object. Under  
14 Hallmark -- I'm sorry. So under Hallmark and all their  
11:40:20 15 expert standards this has to be relevant to a  
16 dispositive issue in this case. Repeatedly in Shadow  
17 Wood Homeowners Association versus New York Community  
18 Bank Justice Pickering refers to fair market value over  
19 and over and over again. And that is a term of art  
11:40:35 20 defined by Unruh v Streight, which is the most probably  
21 price between a willing buyer and willing seller.

22 Mr. Brunson has just testified that the  
23 entirety of his sales comparables are based on HOA  
24 forced sales. It is entirely his --

11:40:51 25 THE COURT: But tell me what's wrong with

11:40:53 1 that? Because at the end of the day what we have  
2 here -- I don't know if Justice Pickering addressed  
3 this issue, but we have an HOA forced sale. And the  
4 reason why I think that's important, I mean, I do  
11:41:05 5 understand and I listen very patiently at the prior  
6 expert. And it's my understanding he formed a -- or  
7 his opinion is based upon a residential real estate  
8 appraisal. He uses the USPAP method, and it's based  
9 upon the assumption that we have unimpaired market  
11:41:30 10 value. And so I'm listening to that, right?  
11 And so, in essence, is that what we have here?  
12 Because we don't have a willing buyer and a willing  
13 seller. We have a forced sale. And the reason why I  
14 think that's important to point out because in a  
11:41:44 15 traditional real estate transaction, what type of title  
16 do you obtain as a result of an arm-length transaction?  
17 You have a -- you have a couple of things.  
18 Number one, you have title insurance, right,  
19 which kind of protects it. You have a grant and sale  
11:41:59 20 deed, right, and those types of things. And you have a  
21 marketable title under the circumstances of this -- of  
22 these cases, do you have a grant and sale deed? Do you  
23 have protections of title insurance? Do you have a  
24 marketable title as soon as the sale commences?  
11:42:19 25 Probably not.

11:42:20 1 And just as important too, and this is one of  
2 the things I think is important to point out, and I  
3 don't have the statute right in front of me, but  
4 pursuant to Chapter 116, it discusses the type of title  
11:42:32 5 obtained at an HOA foreclosure sale. And I'm just  
6 paraphrasing here. It says without warranty or right  
7 of redemption, right? Isn't that what it says?

8 And so here we have title that, I guess, at  
9 the very most would be akin to a quitclaim deed, right?  
11:42:49 10 I mean, that's -- and if I'm wrong, please tell me.  
11 But these -- and the reason why I'm bringing this up is  
12 I just want to make sure -- and I don't mind being the  
13 first case. I don't. I really and truly don't. That  
14 goes up and really deals with these issues.

11:43:04 15 But I think it's important as a trial judge to  
16 articulate on the record the things I'm thinking of.  
17 And the reasons why I do that, it always serves me very  
18 well in front of the Supreme Court. It does. So  
19 because to me, that's an important issue.

11:43:22 20 Now, I'll let you address that. And then,  
21 Counsel, you can address it. But this is what I'm  
22 thinking of. I'm just telling you this because I have  
23 to deal with this. And so in light of the fact that --  
24 because I read these reports. I just want to tell you  
11:43:36 25 this because I read the report of the plaintiff's

11:43:40 1 expert. And one of the things that jumped out at me  
2 was this -- a couple of things. Number one, and this  
3 is the assumption.

4 On -- I don't know if I -- on page 13 of the  
11:43:55 5 report at the very bottom, when he talked about the  
6 assignment, this is what was set forth in his report.

7 The client assigned the report effective date  
8 the appraisal -- the appraiser has completed assignment  
9 developing an unimpaired opinion of the market value.

11:44:16 10 So I'm -- so is this an unimpaired opinion? I mean,  
11 really.

12 And then just as important too, I looked at  
13 the definition of market value. And I understand what  
14 happened from cross-examination perspective. But  
11:44:32 15 understand this, I'm a fact finder. And this is in  
16 front of me. And I see definition of market value.  
17 And this is on page 10 of the report.

18 And it says, number one, and understand this,  
19 and these definitions aren't just made up because I  
11:44:52 20 looked at the source of the definition. This is  
21 definition is from regulation published by federal  
22 regulatory agency pursuant to Title 9. I'm sorry,  
23 Title 11 of the Financial Institutions Reform Recovery  
24 and Enforcement, Ferera, 1989 between July of 1990. So  
11:45:12 25 these are federal regulations is how this is defined.

11:45:15 1 And I understand why because you have -- probably on a  
2 lot of these homes you have FHA, you have VA and all  
3 those -- you know, HUD and all these federal agencies  
4 involved.

11:45:25 5 But I look at it this way, and I'm just seeing  
6 here it says buyer. Number one, it talks about buyer  
7 and seller are typically modified. Two, both parties  
8 are well formed and advised in acting whether to  
9 consider their own best interests.

11:45:41 10 So when you're looking at that, that's talking  
11 about arms-length transactions that occur in the market  
12 place. And that would result in an unimpaired value.  
13 And I get that. But that's not what we have here;  
14 right?

11:45:56 15 Three, a reasonable time allowed for exposures  
16 in open market. I guess that talks about how long it's  
17 been on the MLS; right?

18 And then Four, payment. I get that. Money.  
19 From either cash or from a financial institution.

11:46:11 20 But Number Five, it seems to me important that  
21 the price represents the normal consideration for the  
22 property sold unaffected. I'm sorry if I'm going too  
23 fast. Unaffected by special or creative financing or  
24 sales concessions granted by anyone associated with the  
11:46:33 25 sale.

11:46:34 1           You know, so I'm looking at this. And so what  
2 you're asking, and I haven't made my decision yet, but  
3 I'm going to have to make a decision when I make my  
4 decision as to what the appropriate method, means,  
11:46:47 5 modalities, that I'm going to rely upon, I guess, the  
6 best way I can say it when it comes to which approach I  
7 will accept. You know, and like I said, I don't mind  
8 being the first up there. You know.

9           And so tell me why I should not accept this  
11:47:04 10 man's opinion in light of what I just discussed.

11           MR. BECKOM: I appreciate that, your Honor.  
12 And thank you for giving me a time to least, like, you  
13 know, lodge --

14           THE COURT: I always give you time. And I  
11:47:11 15 always tell you what I'm thinking about, right?

16           MR. BECKOM: That's why I love appearing in  
17 front of Department 16.

18           THE COURT: Yes.

19           MR. BECKOM: I mean, Justice Pickering's -- I  
11:47:17 20 mean, like, it is somewhat of a hypothetical analysis  
21 on the legal basis --

22           THE COURT: Yeah.

23           MR. BECKOM: -- that this Court is going to  
24 have to go through here. Justice Pickering, you know,  
11:47:24 25 in Shadow Wood repeatedly she refers back to that, you

11:47:27 1 know, the golden standard. She also refers back to  
2 comment B of the Restatement of Mortgages, which I've  
3 got sitting right here right in front of me. And it  
4 says over and over again, gross inadequacy can not be  
11:47:38 5 precisely defined in terms of a specific percentage of,  
6 and here's the key term here, fair market value. A  
7 court is warranted in invalidating the sale where the  
8 price is less than 20 percent of, again, fair market  
9 value. And that's just not a throw away term in this  
11:47:53 10 jurisdiction. It's specifically defined by Unruh v  
11 Streight going back to the 1980s, which says that, you  
12 know, it's generally defined as the price which a  
13 purchaser willing but not obligated to buy would pay an  
14 owner willing but not obligated to sell.

11:48:06 15 THE COURT: Why is that relevant to this case?

16 MR. BECKOM: It is our contention here today  
17 on behalf of US Bank that that is the Shadow Wood  
18 standard. The Shadow Wood standard requires this Court  
19 to take into consideration not the impaired value that  
11:48:20 20 Mr. Brunson is testifying to by comparing other forced  
21 sales and coming to a \$5,000 value conclusion. It  
22 requires this Court to take a look at, again, the Unruh  
23 v Streight standard which is, you know, the price a  
24 willing -- between a willing buying and a willing  
11:48:36 25 seller. And that's been the law in Nevada since 1980.

11:48:39 1 THE COURT: But here's my question. Isn't  
2 this the first case involving -- I mean, not your first  
3 case literally, but we haven't had any decision as it  
4 relates to what is the appropriate standard a trial  
11:48:52 5 court should utilize when it comes to determining fair  
6 market value at a forced sale pursuant to Chapter 116.  
7 Right? We can talk about fair market value, and it  
8 can -- it can include a lot of different theories;  
9 right? It can.

11:49:12 10 But at the end of the day I can't say this,  
11 you know, that this is not a normal arm's length sales  
12 transaction where a real property has been placed on  
13 the -- in the MLS, and it's up for sale, and you have  
14 an open house. And parties come in. And they knock on  
11:49:31 15 the wood. And they visually inspect the property. And  
16 they conduct an inspection, right? This isn't that  
17 case.

18 MR. BECKOM: It is -- I mean, like, I think  
19 even going to the restatement they talk about it in a  
11:49:48 20 case called BFP versus Resolution Trust Corp for the US  
21 Supreme Court. I'll give you the full citation. It's  
22 BFP versus Resolution Trust Corp. 511 U.S. 531, (1994.)  
23 I know a federal Supreme Court case is not going to be  
24 binding on your interpretation of state law. But that  
11:50:08 25 being said, in that opinion --



11:50:10 1 THE COURT: What do they say? I mean, it  
2 should be potentially instructive, but tell me.

3 MR. BECKOM: The entire nexus of that opinion  
4 has to do with the difference between forced sale  
11:50:19 5 foreclosure value and fair market value. They're two  
6 different standards. And it's our interpretation and,  
7 you know, it's the willing price. But it's a price  
8 between a willing buyer and a willing seller. And in  
9 this case, yes, it is probably a hypothetical. But  
11:50:32 10 it's the standard that -- it is our contention that  
11 that's the standard that was advanced by the Nevada  
12 Supreme Court in Shadow Wood Homeowners Association  
13 versus US Bank.

14 And any kind of opinion as to the impaired  
11:50:45 15 value of the real estate when comparing nothing but  
16 other foreclosures is not probative. It's more  
17 prejudicial. It's not helpful to an ultimate issue in  
18 this case, and it's simply irrelevant.

19 THE COURT: Okay. Now, here's my next  
11:50:58 20 question: When it comes to categorizing the sale in  
21 this case, how do I categorize it? Is it an unimpaired  
22 market value type sale? Or is it a forced sale?

23 MR. BECKOM: I think based on the opinion in  
24 Justice Pickering you have to categorize it as an  
11:51:25 25 unimpaired fair market value sale. That's what --

11:51:28 1 that's -- I think they used it about 5, 10 times in  
2 that opinion. And that it's a defined term of art as  
3 I'm sure this Court is well aware.

4 THE COURT: But my question is this: In order  
11:51:38 5 for that to occur, does it have to meet a certain  
6 factual criteria? Right? Do I have to make a factual  
7 determination, Okay, this is an unimpaired market value  
8 type sale, arm's length transaction on the open market,  
9 and all these factors that the federal regulations  
11:52:01 10 apparently feel that should be considered; right?

11 You know, and so I just want to tell you what  
12 I'm thinking about because this is an important issue.  
13 It really is in all these cases. And I don't mind  
14 saying this, I've kept my mind really open on these  
11:52:19 15 issues regarding how would I, ultimately, value or what  
16 type of determination I would make as it relates to the  
17 standard. I really have. This is the first case I've  
18 really had to do that.

19 You want to add anything, sir?

11:52:31 20 MR. VILKIN: Your Honor, I would only add that  
21 I think what plaintiff's expert did was compare apples  
22 to oranges. And what our expert is doing is comparing  
23 apples to apples. And I think that's the issue the  
24 Court is grappling with me. And to me, you got to  
11:52:45 25 compare apples to apples.

11:52:47 1 THE COURT: Anything else, sir? I just want  
2 to make sure.

3 MR. BECKOM: I think I made it very clear in  
4 our closing statement when I quoted -- I actually  
11:52:53 5 pulled Unruh v Streight up on my iPad and quoted it  
6 directly at our expert asking is there the value you  
7 gave in this opinion. And, ultimately, he said yes  
8 that is synonymous with the market value that was  
9 provided in this report.

11:53:09 10 That is the value we should be using here. We  
11 should not be using other forced sales to determine the  
12 fair market value. It's a fair market, and that is the  
13 value we are determining. Not an impaired market  
14 value.

11:53:23 15 THE COURT: I understand. I do.

16 MR. VILKIN: Your Honor, I think if I just  
17 might add, your Honor, I think the Court focused on the  
18 most important factor is in order for determine the  
19 fair market value under the standard that plaintiff  
11:53:35 20 wants to use, you have to make factual determinations.  
21 And how can you do that if they didn't occur?

22 THE COURT: I think in a hypothetical sense if  
23 this was a jury trial, the jury would be given  
24 instructions how to determine market value, right?  
11:54:02 25 It's typically what they do. And so I'm looking. This

11:54:06 1 is what I'm going to do as far as the objections are  
2 concerned regarding the admissibility of this witness's  
3 testimony, and it's my understanding it was based upon  
4 the Hallmark standards, I'm going to overrule that  
11:54:24 5 objection. And I'm going to focus on the assistance  
6 requirement of Hallmark. It's my opinion that this  
7 expert meets that requirement.

8 I'm focusing on the reliability component of  
9 that. And based upon what I've -- and just as  
11:54:41 10 important too, I'm going to accept his methodology;  
11 right? Isn't that all those wonderful things they talk  
12 about in Hallmark? So I'm going to accept that and  
13 weigh and balance that versus the plaintiff's expert's  
14 opinion. And then, ultimately, I'll decide which one  
11:55:00 15 I'll decide.

16 MR. BECKOM: Right.

17 MR. VILKIN: Thank you, your Honor. Since the  
18 report is admitted, I have no further questions.

19 THE COURT: Okay. Anything else, sir? You  
11:55:09 20 know, what I have to do. I have -- I actually have a  
21 meeting at noon. I meet with Judge Gonzalez at noon.

22 MR. BECKOM: You know, Mr. Brunson, he's been  
23 doing a real great job of looking stoic up there. I  
24 know that would kill me if we all need a break. I have  
11:55:24 25 no objection to that.

11:55:25 1 THE COURT: Yeah. What I'm going to --  
2 MR. BECKOM: We can finish it up after.  
3 THE COURT: How much cross do you think you  
4 have?  
11:55:28 5 MR. BECKOM: I feel bad because you --  
6 THE COURT: I don't want to limit you. Of  
7 course, I don't.  
8 MR. BECKOM: I don't know. She keeps telling  
9 me I speak fast, so it might be 15 minutes; it might be  
11:55:38 10 half hour if I listen to what I'm supposed to do.  
11 THE COURT: Okay.  
12 MR. BECKOM: I have no problem with taking a  
13 lunch break. And coming back after.  
14 THE COURT: Let's take a lunch break now.  
11:55:44 15 Let's come back at 1:15. We'll still be done by 2:00  
16 o'clock.  
17 MR. VILKIN: That's fine. Yeah.  
18 THE COURT: We'll do that. That's probably  
19 what we'll do. That way we're not rushing. And you  
11:55:49 20 can take as much time as --  
21 MR. BECKOM: Again, thank you for your  
22 thoughtful analysis on that issue. We always do  
23 appreciate it.  
24 THE COURT: I'm always going to tell you what  
11:55:56 25 I'm thinking about. I'll never just say rule one way

11:55:59 1 or another. I'm going to tell you.

2 Okay. The clerk is telling me only Exhibit 10

3 was admitted.

4 THE COURT CLERK: Not --

11:56:07 5 THE COURT: Which one?

6 THE COURT CLERK: Was not admitted.

7 MR. VILKIN: Only Exhibit 10 was not admitted?

8 THE COURT: Yes.

9 MR. GEISENDORF: All the others were.

11:56:16 10 MS. BAKER: Well --

11 MR. VILKIN: That's fine. I think that's

12 accurate.

13 MR. BECKOM: No. I think that's --

14 THE COURT: 1:15, gentlemen.

11:56:26 15 IN UNISON: Thank you.

16 -o0o-

17 (Lunch Recess)

18 -o0o-

18 THE COURT: Okay. Let's go ahead and note our

19 appearances for the record.

01:28:37 20 MR. BECKOM: Thomas Beckom.

21 MR. VILKIN: I'm sorry. Go ahead.

22 MR. BECKOM: Thomas Beckom and Priscilla Baker

23 on behalf of US Bank.

24 MR. VILKIN: Richard Vilkin and Charles

01:28:46 25 Geisendorf on behalf of defendant and the counter

01:28:51 1 claimant.

2 THE COURT: Okay. Where did we leave off?  
3 Did we finish with the direct examination?

4 MR. VILKIN: Yes, your Honor.

01:28:57 5 THE COURT: All right. Cross.

6 MR. BECKOM: Okay.

7

8 CROSS-EXAMINATION

9 BY MR. BECKOM:

01:28:59 10 Q. Can you remind myself and the Court what was  
11 your ultimate determination of value for this property,  
12 sir?

13 A. My final conclusion was that the price paid  
14 was a reasonable indication of the impaired value for  
01:29:14 15 the property, \$5100.

16 Q. \$5100?

17 A. Let me double check that. \$5300.

18 Q. Explain to me, sir, how you came to that  
19 determination.

01:29:30 20 A. Yes. As I stated earlier, I utilized a sales  
21 comparison approach according to generally recognized  
22 appraisal methodologies.

23 Q. And what -- and what kind of comparables did  
24 you use, sir?

01:29:45 25 A. I used comps that were truly similar to the

01:29:50 1 subject property in accordance with the Appraisal of  
2 Real Estate 14th Edition.

3 Q. Okay. I also noticed in your report that you  
4 said this property was subject to a Class II  
01:30:00 5 detrimental conditions; is that correct?

6 A. Yes, sir.

7 Q. Where -- and it looks like that you were  
8 referring to the -- there's a text that's  
9 sub-highlighted down there by Randall Bell, Real Estate  
01:30:14 10 Damages: Applied Economics; is that correct?

11 A. Yes, sir.

12 Q. Could you explain to me how that text asks you  
13 to assess Class II detrimental conditions?

14 A. Sure. So Dr. Bell's book addresses the  
01:30:28 15 concept of detrimental conditions and tries to help  
16 provide the fact and the user of appraisal services and  
17 the provider of appraisal services the proper  
18 methodologies for analyzing detrimental conditions.  
19 First to qualify and then to quantify those conditions  
01:30:47 20 and their effect, if any, on the value of real  
21 property.

22 The theory is a little complex, but I'll water  
23 it down for you. Basically, it says if there's a  
24 condition that adversely affects the value or the  
01:31:00 25 marketability of property, that it will go through a



01:31:04 1 life cycle of three stages. And that at any point in  
2 those three stages there will be three types of  
3 damages. The three stages will be the assessment  
4 stage, the repair stage, and the ongoing stage. And  
01:31:15 5 the three types of damages will be costs, use and risk.

6 Dr. Bell provides that matrix that explains  
7 the life cycle of a detrimental condition, and he also  
8 provides a chart that sort of explains the typical life  
9 cycle of a detrimental condition on a property over  
01:31:39 10 time.

11 Being very familiar with that book and the  
12 methodologies described in it, we followed the  
13 recommendations of Dr. Bell in addition to the  
14 generally accepted practices found in among other  
01:31:53 15 treatises the real estate or the Valuation of Real  
16 Estate 14th Edition.

17 Q. Question: Does Dr. Bell require as part of  
18 his detrimental condition analysis, does he suggest  
19 that you perform an unimpaired value analysis as the  
01:32:07 20 first step?

21 A. When necessary, yes.

22 Q. Did you perform that type of analysis in  
23 reviewing this property that brings us here today?

24 A. It was not necessary, so no.

01:32:18 25 Q. Why was it not necessary?

01:32:21 1 A. So the concept of detrimental conditions is  
2 it's sometimes hard to understand. I have an example  
3 that I can show you if you'd like to see it to maybe  
4 make you understand a little bit better what it is  
01:32:37 5 we're measuring.

6 Q. I'm just more interested in the process that  
7 you use to come to your determination that a  
8 condominium here in Las Vegas was worth \$5,003 -- or  
9 \$5100, I think. Well, the question, though, is you  
01:32:49 10 said that the treatise you relied on by Dr. Bell in  
11 some circumstances requires you to do an unimpaired  
12 value analysis; is that correct?

13 A. In some circumstances, yes.

14 Q. Okay. Then, I guess, I was just looking for a  
01:33:02 15 real, you know, quick, easy answer. Why did you not  
16 think it was necessary to do an unimpaired value  
17 analysis despite Dr. Bell's suggesting that that kind  
18 of analysis may need to be done in certain  
19 circumstances?

01:33:17 20 A. Well, as the question implies, there are  
21 circumstances where it will not need to be done. And  
22 in this case, the analogy I like to use is dented cans.  
23 It's not often that you have a detrimental condition  
24 where there's a fully measurable market of properties  
01:33:32 25 with a similar detrimental condition that you can look

01:33:35 1 at and determine how the market responds.

2 In this case we actually have a very viable  
3 market of data that we can look at and determine how  
4 the market responds to properties with an almost  
01:33:49 5 identical detrimental condition. What we really have  
6 is a market for dented cans. So what I'm able to do in  
7 this case is go straight to the question why in my mind  
8 is was the price paid reasonable. As an appraiser  
9 before I can answer any question about value, I have to  
01:34:07 10 ask at least two additional questions. The first would  
11 be when, and the second would be under what specific  
12 circumstances.

13 Q. Okay. So nowhere, like -- so you relied on  
14 Dr. Bell's book for the use of the, you know, phrase  
01:34:21 15 Class II detrimental condition, correct?

16 A. Yes.

17 Q. And at any point in time in Dr. Bell's book  
18 does it discuss using the sales comparable approach in  
19 assessing detrimental conditions?

01:34:35 20 A. Yes.

21 Q. What does it say?

22 A. Well, I can open the book if you'd like. I  
23 have that with me.

24 Q. Absolutely.

01:34:41 25 A. It will take me a few seconds to find it. But

01:34:43 1 I can quote to you from his book out of my report.  
2 Dr. Bell in talking about Class II detrimental  
3 conditions -- and I'll backup just for the benefit of  
4 the Court and the record to explain that what Mr. --  
01:34:56 5 what Dr. Bell does is he divides all potential  
6 detrimental conditions into ten classes. A Class II  
7 detrimental condition deals specifically with issues  
8 related to title. And he specifically addresses things  
9 like REO sales and foreclosures. In the text he says  
01:35:15 10 and I quote, "Other types of value might be more  
11 appropriate for properties when a forced sale or some  
12 other form of distress is influencing the decisions of  
13 buyer or the seller."  
14 If you'll give me a moment I'll open the book  
01:35:28 15 and read you the sections that tells you that you  
16 should use the sales comparisons analysis.  
17 Q. Please.  
18 A. Okay. It's a newer edition than I'm used to  
19 using, and I haven't bookmarked it yet, so forgive me  
01:35:56 20 for a second.  
21 Q. Take your time.  
22 A. So on page 4, Dr. Bell describes the appraisal  
23 process. It's also described in the uniform standards,  
24 and in the appraisal of real estate. And he talks  
01:36:26 25 about the importance of defining the appraisal problem,

01:36:29 1 describing the subject property, and then analyzing the  
2 property and reconciling its value.

3 He goes on to quote from USPAP on page 5 at  
4 the bottom. Do you have a copy of the book or no?

01:36:40 5 Q. I do have a copy.

6 A. Okay. At the bottom he says for each  
7 appraisal and appraisal review assignment and appraiser  
8 must, One, identify the problem to be solved. And,  
9 Two, determine and perform the scope of work necessary  
01:36:52 10 to develop credible assignment results. And then  
11 Three, discuss the scope of the work in the report.

12 He goes on and he talks about the various  
13 definitions of the term value and how it's often market  
14 value that the laymen uses when they talk about value.

01:37:07 15 But he also talks about those circumstance where a  
16 different definition of value may be warranted.

17 Then he goes into research methodology. And  
18 he talks about empirical research. Hermeneutics, such  
19 as public tests.

01:37:27 20 Q. That's h-e-r-m-e-n-e-u-t-i-c-s.

21 A. He then goes on to talk about surveys and then  
22 comparative research and adjustment grids. In this  
23 context, he talks about a real estate appraiser would  
24 be creating an adjustment grid or comparing contrasting  
01:37:57 25 case studies. And I'm looking for where he

01:38:04 1 specifically talks about the sales comparison approach.  
2 The thing to remember about Dr. Bell's book is that  
3 he's applying generally recognized methodologies, and  
4 the appraiser only has three approaches to value to  
01:38:18 5 utilize: Sales comparison, cost approach or income  
6 approach.

7 Q. If you'd like to take the time to find where  
8 he reference the sales comparison approach.

9 A. Sure. So on page 30, he talks about the  
01:39:01 10 application of three approaches to value. In the last  
11 paragraph in the center under application of the three  
12 approaches he says, and I quote "the impact of  
13 detrimental conditions on property values is ultimately  
14 an empirical question that requires the application of  
01:39:20 15 one or more of the three traditional approaches to  
16 value."

17 The next section is a discussion of the cost  
18 approach. And on page 32 he has a whole section  
19 talking about the use of the sales comparison approach  
01:39:33 20 applied to detrimental conditions.

21 Q. Okay. Now, let's take a -- so you -- you  
22 utilized the sales comparison approach to determine the  
23 market for Class II detrimental conditions, as you're  
24 testifying to here today, correct?

01:39:52 25 A. Yes, sir.

01:39:52 1 Q. Okay. Let's take a look at, go to page 27 of  
2 your report, sir.

3 A. Yes, sir.

4 Q. Now, I noted, so is this -- is this the  
01:40:19 5 portion on page 27 and 28, this is the portion where  
6 you discussed these comparable sales, correct? Or the  
7 comparable sales that you used for the market that you  
8 were defining?

9 A. So this whole section of my report is talking  
01:40:33 10 about valuation methodology. It talks about the  
11 importance of considering the rights, any adverse  
12 effect on the rights. It cites the 14th Edition  
13 regarding the choice and selection of comparable  
14 properties that are similar in rights and risk.

01:40:53 15 On page 24, I've got a quote there. It's  
16 citing an article by David Lenhoff entitled "You can't  
17 get the value right if you get the rights wrong."

18 On 25 I explained the detrimental condition,  
19 generally what it is and what they are and how risk  
01:41:11 20 affects value in properties.

21 When we finally get to page -- what page were  
22 you on, 27?

23 Q. 27 and 28.

24 A. I am talking to you specifically about my  
01:41:24 25 selection of comparable properties. What I looked at

01:41:28 1 was foreclosure properties and trustee's deeds in the  
2 MLS tax assessors records.

3 Q. Okay.

4 A. And then I narrowed that down to townhomes  
01:41:38 5 that are similar to the subject in physical  
6 characteristics. And then utilizing, again, the  
7 concept of sales comparison, we compare the subject to  
8 properties that are similar to the subject in rights  
9 and risk and similar as possible in physical  
01:41:55 10 characteristics.

11 Q. Now, I'm confused though. And it's a common  
12 characteristic, as like many people close to me in my  
13 life will tell you. I only see two properties listed  
14 that you used at least right there under comparable  
01:42:08 15 sales. Are there more properties that you used?

16 A. Yes. If you read the paragraph before that  
17 and if you read the sentence after the paragraph after  
18 it, you'll see that two things are going on in this  
19 period of time. This is January of 2012 if I recall  
01:42:28 20 our effective date properly; is that right?

21 Yeah. So January 25, 2012. This is very  
22 early in the life cycle of 116 foreclosures in Southern  
23 Nevada. There aren't a lot of examples of properties  
24 that sold at 116 foreclosure prior to the effective  
01:42:52 25 date of this analysis.



01:42:55 1           There's even less if you look specifically for  
2 townhomes between 1300 square feet of GLA. I'm sorry,  
3 less than 1300 square feet of GLA built between 1974  
4 and 1994. So they're of a similar era of construction.

01:43:15 5           So what we did after we found that only two  
6 sales, one of them being our subject met our initial  
7 criteria. The proper methodology in that instance is  
8 to expand your criteria. And as I explain, because  
9 it's early in the life cycle of 116 foreclosures, we  
01:43:32 10 looked at all 116 foreclosures that had occurred in  
11 Southern Nevada within that specified period of time.

12           Instead of having two sales, we now have a 117  
13 properties that we can look at. I give you on page 28  
14 the points statistics from that sample and then explain  
01:43:52 15 that we have a range from 1.1 percent to 14.7 percent  
16 of the taxable value. The concept here is it would be  
17 extremely timely to go back and appraise every single  
18 one of these 117 comparable properties to determine  
19 what a market value was to use as comparisons. So we  
01:44:14 20 have readily available an independently derived figure.  
21 The taxable value that we can use for solely the  
22 purpose of comparison.

23           Q. And so your initial -- like, your initial  
24 methodology found insufficient comparable sales to moot  
01:44:30 25 the criteria for the sales comparison approach. And so

01:44:33 1 you were forced to expand. Is that my -- is that a  
2 correct understanding?

3 A. That's correct.

4 Q. Okay. How many -- do you know exactly, like,  
01:44:42 5 I mean, like, under USPAP and the professional  
6 appraisal standards, how many comparables should you  
7 ideally use to derive a value?

8 A. There's no ideal number. For residential  
9 lending purposes, there's a minimum requirement of 3.

01:45:01 10 Mr. -- I'm sorry I forget which -- I have a case  
11 tomorrow and we had a case last week. So this was  
12 Mr. Chip -- what's his last name?

13 Q. Holmes.

14 A. Holmes? Mr. Holmes, I believe, used three  
01:45:16 15 sales and two listings; is that correct? He uses six  
16 sales in his analysis. As far as the number that you  
17 need to have, I'd say three is adequate. Six is good.  
18 117 is maybe better.

19 Q. But two would be insufficient for residential  
01:45:38 20 lending purposes?

21 A. Yes.

22 Q. Okay. Now, can you explain to me a little bit  
23 more in depth about what you -- what -- you assessed  
24 this as having a Class II detrimental condition,  
01:45:55 25 correct?

01:45:56 1 A. Yes, sir.

2 Q. Based on Dr. Bell's text, correct?

3 A. Yes, sir.

4 Q. Can you, I guess, give me your definition of  
01:46:03 5 like, you know, your Class II detrimental condition.

6 If you want to refer directly back to Dr. Bell's text,  
7 you can.

8 A. I quote it in my report on page 25. A Class  
9 II transactional condition relates to situations in  
01:46:16 10 which some particular and unique issue impacted a  
11 specific transaction. This classification includes  
12 transactions in which a buyer pays more than necessary  
13 to acquire a property or a seller disposes of a  
14 property at a discount.

01:46:34 15 Q. Okay. And then you've -- you cite page 76 and  
16 77 of Dr. Bell's text, correct?

17 A. Among others, but in this section, yes.

18 Q. Okay. So what exactly did you assess as being  
19 a detrimental condition?

01:46:53 20 A. I explained that on the next page that we have  
21 risk. I mentioned earlier that in the -- well, if you  
22 look at page 25, you'll see the detrimental condition  
23 matrix. Risk is one of the classifications of damages  
24 that is present in all three of the stages of a  
01:47:13 25 detrimental condition.

01:47:15 1 My opinion is that at this point in time there  
2 was so little known about 116s that we're still well  
3 into the assessment stage. Which means that the market  
4 is trying to understand what these properties are and  
01:47:27 5 what these properties aren't.

6 They're trying to go assess the dents in the  
7 can. They're trying to determine whether or not the  
8 can has any value at all given the real circumstances  
9 that affect it. And if it does, what definition of  
01:47:41 10 value they should apply in determining how much, if  
11 anything, to invest to acquire the rights.

12 So risk, as I define it on page 26, has to do  
13 with the unknowns. I give you a different example in  
14 this case of buying a car without turning over the  
01:48:07 15 engine or opening the hood. And I specifically talk  
16 about the dented can example here. What we have here  
17 is beyond the discount necessary to incentivize a  
18 purchase. We have the probability that even after the  
19 sale, even after the purchase at auction, the  
01:48:25 20 lienholder might -- the original lienholder my ignore  
21 any ownership rights that were conveyed at the auction  
22 sale and sale the property out from under you.

23 The concept here is that these unknowns equate  
24 to risk. And the number one thing that diminishes the  
01:48:41 25 value of property is uncertainty.

01:48:44 1 Q. Okay. I think I recall, if you want to turn  
2 to page 24 of your report, sir.

3 A. Sure.

4 THE COURT: What page again?

01:48:51 5 MR. BECKOM: 24. The people close to me also  
6 state that I speak functional gibberish at times. So I  
7 get used to it after a while.

8 BY MR. BECKOM:

9 Q. It looks like on page 24, at least my  
01:49:09 10 assessment of it, and you can correct me if I'm wrong  
11 here, sir, is that you kind of break down specifically  
12 what you thought the detrimental conditions were. Is  
13 that a correct assessment?

14 A. Yeah. I break down the components of the  
01:49:21 15 risk, yes.

16 Q. Okay. Are you familiar -- you said -- you  
17 said you were, I guess, an appraisal institute  
18 instructor?

19 A. I'm AQB certified USPAP instructor.

01:49:32 20 Q. Okay.

21 A. I do not teach for The Appraisal Institute.

22 Q. Okay. And so, but you are familiar with the,  
23 you know, the USPAP guidelines as far as what you're  
24 supposed to do and not do as an appraiser.

01:49:43 25 A. I'm one of 470 people in the world qualified

01:49:47 1 as an expert that's allowed to teach that subject, yes.

2 Q. Are you familiar with the recordkeeping rules,  
3 sir?

4 A. I am.

01:49:53 5 Q. Can you explain that to me?

6 A. Recordkeeping rule says that an appraiser is  
7 required to maintain a work file documenting the  
8 support for their opinions and conclusions, and that it  
9 must be in existence prior to issuance of a report.

01:50:06 10 Q. Okay. I'm assuming you kept -- you know, you  
11 kept a work file for this appraisal here?

12 A. Yes.

13 Q. Okay. Couple of things I want to ask you  
14 about. You talk about the other considerations

01:50:21 15 including limitations on saleability and financing in  
16 paragraph 2. Do you see what I'm talking about?

17 A. Yes.

18 Q. And then as of the effective date of January  
19 25, 2012, correct?

01:50:35 20 A. Yes.

21 Q. Where did you come to that -- where did you  
22 come to -- how -- what supporting documentation did you  
23 use to support your assumption that saleability in  
24 financing was impaired on these properties?

01:50:48 25 A. Well, first of all, the concept of saleability

01:50:51 1 is one of the fundamental bundle of rights. Often  
2 envisioned as a bundle of sticks. You can call it  
3 saleability, transferability disposition, but it's  
4 right of the property owner to dispose of that property  
01:51:05 5 hopefully for a profit.

6 As far as where I came up with this limitation  
7 on saleability, it has to do with the concept that as  
8 of the effective date, there was not one title company  
9 that I'm aware of in all of Nevada that was willing to  
01:51:21 10 issue insurable clear title. Without insurable clear  
11 title, you are unable to obtain financing, you are only  
12 able to a sell to a very narrow group of potential  
13 purchasers. Therefore, that's a clear restriction on  
14 the right of saleability.

01:51:36 15 Q. Do you have any phone logs in your work file  
16 pursuant to the recordkeeping rule where you contacted  
17 title companies and asked if you were insuring  
18 properties from HOA foreclosures in January of 2012?

19 A. Yes, I do.

01:51:48 20 Q. Which ones did you call?

21 A. I spoke to a gentleman named -- his last name  
22 is Williams, first name is Andre. I believe he works  
23 with National Title. He referred me to the gentleman  
24 in his office who at the time would have made a  
01:52:06 25 decision regarding questionable properties as I recall

01:52:09 1 the conversation.

2 Andre is a longtime friend. And the results  
3 of that conversation and the notes in my work file will  
4 demonstrate that the gentleman was very hesitant to go  
01:52:22 5 on formal record. But what he said was he had no  
6 knowledge of any property facing 116 or subsequent to a  
7 116 auction that had been granted insurable clear  
8 title. When I asked him whether he thought it was  
9 probable that his company or any other title company  
01:52:40 10 would issue such a policy, he said he couldn't speak  
11 definitively, but, generally, said it would be  
12 unlikely.

13 Q. So you talked about to one person?

14 A. No. I made other phone calls, but you can  
01:52:53 15 imagine few people were willing to go on record.

16 Q. Understood. And this person -- the one person  
17 that actually did discuss this with you, you based your  
18 report on, was a friend, correct?

19 A. No. It was a referral, an employee of the  
01:53:04 20 company for whom a friend works.

21 Q. Okay. And he told you he did not want to go  
22 on record definitively stating that they would not  
23 insure title to this property?

24 A. Whenever I have do an interview like this, I  
01:53:16 25 always tell him who I am and what I'm doing, and that



01:53:20 1 it might be used as a case study. In this context, I'm  
2 going to have a note somewhere in my work file, a  
3 handwritten note probably, or a note typed in PDF on a  
4 specific property that says I spoke to this person on  
01:53:34 5 this date, asked this general question, and this was my  
6 general response.

7 Q. Okay.

8 A. I will also tell you that I follow up with  
9 Andre, and with other contacts in the title industry,  
01:53:46 10 with other attorneys, with other experts that are doing  
11 work related to title. And to this date nobody has  
12 been able to give me even one example of a property  
13 that was issued insurable clear title when it was sold  
14 at a 116 foreclosure auction.

01:54:03 15 Q. But we can agree none of these people were  
16 willing to go on record definitively at this point?

17 A. I can't prove a negative. I agree that -- I  
18 agree that they won't go on record, but I can't -- I  
19 can't prove that it doesn't exist by the fact that it  
01:54:15 20 doesn't exist, I guess.

21 Q. I understand. Looking at the last paragraph.  
22 You talk about as of the retrospective -- and I'm  
23 talking about the last paragraph of your report on  
24 page 24. As of the retrospective effective date  
01:54:33 25 numerous district court cases or cased -- oh, you

01:54:37 1 should see my pleadings sometimes. They're horrendous.

2 I'm sure your Honor Judge Williams will tell  
3 you that too.

4 But case had ended with decisions both in  
01:54:46 5 favor and opposed to a buyer's position, and that was  
6 in January of 2012; correct?

7 A. Yeah. And clearly, that's an example of the  
8 USPAP not requiring perfection either in diction or  
9 accuracy.

01:54:58 10 In this case, I would say that that's an  
11 error. That's wrong. As of January 2012, there may  
12 have been a case. But the real issue for me is that  
13 prior to December 12 of 2012, there was very little  
14 known about these 116 properties.

01:55:17 15 On December 12, 2012, the Nevada Real Estate  
16 Division issued their advisory opinion that basically  
17 said that a superpriority lien was, in fact, a true  
18 superpriority lien.

19 What we see in the data at that point is that  
01:55:32 20 the discount demanded for these properties reduced  
21 significantly, and prices spiked because people felt  
22 there was less risk.

23 Prior to 12-12 of 2012, the period in which  
24 our effective date falls, there was just so much  
01:55:48 25 unknown that we find discounts greater than 90 percent,

01:55:51 1 sometimes as high as 99 percent.

2 Q. But --

3 A. Just of the taxable value.

4 Q. But this statement regarding court cases you  
01:55:58 5 would not have support for that in your file pursuant  
6 to the recordkeeping rule; correct?

7 A. I would say that that is an error.

8 Q. Okay. But that is pursuant to this report one  
9 of the basis that you used to assess a Class II  
01:56:14 10 detrimental condition. Can we agree on that?

11 A. No. I wouldn't say that it's a specific  
12 condition. Your pleadings and my report sometimes have  
13 things in them that shouldn't be in there.

14 I've done about 700 of these cases. And I  
01:56:28 15 don't reinvent the wheel. So I can tell what mostly  
16 happened was that the last report that we issued was on  
17 a date subsequent to December 12 of 2012 when we did  
18 have some actual cases involving 116 foreclosures. And  
19 I just failed to catch it.

01:56:49 20 When I do my analysis, I'm always looking at  
21 the data; right? The Class II detrimental conditions  
22 clearly affects this property. I can demonstrate it in  
23 117 properties within a contemporaneous period of time.

24 The actual buyers, not HOA buyers, but actual  
01:57:10 25 buyers and bidders demanded a significant discount.

01:57:13 1 And that's the basis for my conclusion of a detrimental  
2 condition, both in the qualitative and the quantitative  
3 sense.

4 Q. So what is your definition of the difference  
01:57:26 5 between qualitative and quantitative?

6 A. So it would be wrong of me to assume that  
7 there is a detrimental condition just because there was  
8 a foreclosure pending.

9 It's generally understood that foreclosure  
01:57:39 10 sales sell for less than normal market value. But as  
11 we saw in the period of 2006, say fourth quarter  
12 through 2000 -- early 2012, the period where this  
13 property occurred, that isn't always the case.

14 Q. Because my understanding -- you can correct me  
01:57:56 15 if I'm wrong. My understanding of qualitative research  
16 data requires an in-person observation; is that an  
17 accurate --

18 A. What I'm talking about is you have to qualify  
19 the detrimental condition.

01:58:06 20 Q. Okay.

21 A. What is the basis for the fact that it does or  
22 does not exist? And if it does exist, then you move on  
23 to the step of quantifying it. How does it actually  
24 affect the property? There's been cases where we can  
01:58:18 25 say that there is a detrimental condition, but when we

01:58:21 1 do the quantifying data analysis we find that the  
2 condition is benign. That was not the case in this  
3 circumstance.

4 Q. Okay. You know, another question that I had  
01:58:31 5 here about your report on page 20.

6 A. Yes, sir.

7 Q. You issued a finding when you were reviewing  
8 Mr. Holmes's report that the appraisal is seven months  
9 subsequent to the HOA foreclosure auction. Do you see  
01:58:51 10 what I'm talking about?

11 A. Second mistake in my report.

12 Q. And then going back to page 13, we can both  
13 agree, but then you also identify both the foreclosure  
14 date and the effective date of the appraisal being the  
01:59:00 15 same date; correct?

16 A. As I mentioned, not perfect. We make some  
17 mistakes. That was in a prior report and should have  
18 been removed, and it wasn't.

19 Q. Sounds like you do a lot of these HOA  
01:59:10 20 foreclosure -- you do a lot of testimony and expert  
21 reports for this kind of HOA foreclosure litigation.  
22 Is that a fair assumption?

23 A. It's the truth, yes.

24 Q. You said you did 700 of them?

01:59:20 25 A. We've written over 700 reports.

01:59:22 1 Q. Okay. Who do you primarily do those reports  
2 for, sir?

3 A. In every case that I've been engaged, I've  
4 been engaged by either the HOA or the investor.

01:59:35 5 Q. Either the HOA or the investor, correct?

6 A. And sometimes co-clients, both the HOA and the  
7 investor in some cases have engaged me, yes.

8 Q. Okay. So you are -- so you are -- for 700  
9 times you have been retained by either an investor or  
01:59:54 10 homeowners association to testify to a Class II  
11 detrimental condition as it relates to value of  
12 property, correct, sir?

13 A. Well, so to clarify, I've issued over 700  
14 reports. I don't know if that equates to 700

02:00:05 15 individual cases. Sometimes we issue an initial  
16 report, then a rebuttal report. Sometimes we issue a  
17 review as we did in this case. So that  
18 700-and-however-many cases might only equate to 600, or  
19 580, I don't know, individual cases.

02:00:26 20 Q. Out of those, like, you know, 700 times you've  
21 issued a report, are you aware of any time that your  
22 report has been excluded by any federal or state court  
23 in Nevada?

24 A. There is one case, yes, where a motion in  
02:00:39 25 limine excluded my report.

02:00:40 1 Q. Okay. Why did they exclude your report?

2 A. In this particular case, my understanding of  
3 the order is that it was a senior judge. That the  
4 senior judge's position was that fair market value was  
02:00:55 5 the only value that can be considered.

6 As an appraiser, I'm unaware of either a  
7 statute or a specific case that actually says that in a  
8 116 foreclosure that you're required to analyze the  
9 property based on fair market value. And, ultimately,  
02:01:14 10 my client in that case was preparing challenge to that  
11 motion, but they won on summary judgment so quickly  
12 that they decided not to pursue it.

13 Q. Understood. But we can both then agree, at  
14 least based on that statement, that you aren't  
02:01:30 15 testifying to fair market value in this report; are  
16 you?

17 A. So the short answer is no. I don't know if  
18 you want the longer answer.

19 Q. It's your testimony. In any event, so you are  
02:01:44 20 not testifying as to the fair market value in this  
21 report.

22 Let me see if I have any other questions.

23 A. What I am testifying is is that fair market  
24 value does not apply to a 116 property just on the  
02:01:55 25 simple basis of the assumptions required in the

02:01:57 1 definition. From a purely economic standpoint, it's  
2 not even apples to apples. It's apples to a  
3 hippopotamus. I don't know.

4 MR. BECKOM: I have no further questions.

02:02:34 5 MR. VILKIN: Thank you.

6

7

REDIRECT EXAMINATION

8 BY MR. VILKIN:

9 Q. Mr. Brunson, how many times have you testified  
02:02:37 10 in court in Nevada as to a real estate appraisal  
11 opinion?

12 A. I believe it's 13 currently. Let me double  
13 check. Fifteen trials --

14 Q. And how many --

02:02:58 15 A. -- if you include deposition. I'm sorry.

16 Q. If you know, how many different judges sat in  
17 those trials?

18 A. I believe it's six.

19 MR. VILKIN: Nothing further.

02:03:16 20 THE COURT: Anything else?

21 MR. BECKOM: Just closing.

22 THE COURT: Okay. Thank you, sir.

23 THE WITNESS: Thank you, your Honor.

24 THE COURT: All right. Does the defense rest  
02:04:03 25 at this time, sir?



02:04:03 1 MR. VILKIN: Yes, your Honor.

2 THE COURT: Okay. Okay. Closings.

3 MR. BECKOM: Your Honor, for two purposes, we  
4 are here to determine whether or not US Bank can have  
02:04:22 5 their deed of trust equitably reinstated against this  
6 property and whether or not they can foreclose.

7 I think the foreclosure part is probably the  
8 easiest part here. As this Court heard at the  
9 beginning of this trial, Mr. Heifner testified that  
02:04:35 10 they both had a note and a deed of trust. Both  
11 exhibits were admitted.

12 We had three different breaches, and that  
13 there was a death of the grantor. Grantor transferred  
14 the property to another entity through some involuntary  
02:04:48 15 means. And also they had not paid. Then it all comes  
16 back to the important part of it: Whether or not US  
17 Bank has the ability to foreclose on this property.

18 I -- based on an equitable security interest  
19 we would ask this Court to grant here today, we renew  
02:05:09 20 or objection to Mr. Brunson's testimony and believe  
21 that Mr. Holmes' testimony is the correct indicator  
22 here. This property has the fair market value of  
23 \$48,000.

24 This Court just heard Mr. Brunson in his own  
02:05:21 25 words approximately ten minutes ago testify that he has

02:05:23 1 not testified as to the fair market value of this unit.  
2 That he did not testify as to the fair market value of  
3 this unit, and that Exhibit 14 --

4 THE COURT: But why -- here's my question, and  
02:05:34 5 this is something the Nevada Supreme Court is going to  
6 have to answer. Why would fair market value be the  
7 standard utilized to determine the propriety of a  
8 Chapter 116 HOA foreclosure sale? And the reason why I  
9 bring that up, because I thought about this, and maybe  
02:05:53 10 my background is a little different than a lot of  
11 judges because I worked for Chicago Title as my first  
12 job before I became a tort lawyer in Chicago. Before I  
13 moved to Las Vegas.

14 And the reason why I bring that up is this:  
02:06:08 15 Traditionally, in scenarios where you look at fair  
16 market value, I think it would be premised upon the  
17 fact that typically in fair market value transactions,  
18 what is being transferred? Typically, you have a  
19 warranty deed; right? You know, arm's-length  
02:06:24 20 transaction; right? And the property has been placed  
21 on the market for a period of time and listed. Then  
22 you have a willing buyer and seller come together, and  
23 you decide for a fair price -- right -- and the market  
24 demands that.

02:06:36 25 And the reason why I think it's important to

02:06:38 1 discuss that and not overlook it is this one simple  
2 fact. And I brought this up, and he actually -- I  
3 listened to the testimony. And when you talked about,  
4 I think it was the Class II detrimental conditions, I  
02:06:53 5 was listening to that. And so one thing we know for  
6 sure that as a result of an HOA foreclosure sale,  
7 there's no granting to the purchaser a warranty deed;  
8 right?

9 MR. BECKOM: I believe that's -- I believe  
02:07:11 10 that is what the statute says.

11 THE COURT: Exactly. In fact, I'll tell you  
12 exactly what the statute says because I thought about  
13 this, and this is an important issue. If you look at  
14 NRS 116.31166, paragraph 3, after the sale -- no, I'm  
02:07:29 15 sorry.

16 After the sale, the person conducting the sale  
17 shall: Make and execute, and after payment is made,  
18 deliver to the purchaser or his or her successors or  
19 assigns a deed without warranty. That's what it says.

02:07:50 20 Then you move on to Section 116.31166,  
21 paragraph 3. It provides as follows. The sale of a  
22 unit pursuant to NRS 116.31162, 116.31163, and  
23 116.31164 vest in the purchaser the title of the unit  
24 owner without equity or right of redemption.

02:08:35 25 And I realize that's the -- we have

02:08:37 1 redemption. I understand that. But I'm looking at  
2 this and I'm saying to myself, Okay, what would be the  
3 equivalent to that type of deed? It's not a warranty  
4 deed. We can all agree. The statute is particular as  
02:08:47 5 to the type of title transfer.

6 At best, I can think of it from this  
7 perspective. It would be maybe akin to a quitclaim  
8 deed at most, right? And I think the law provides  
9 that, and that's simply this. A quitclaim deed  
02:09:05 10 transfers ownership interests of the grantor to the  
11 grantee without any warranties or guarantees that the  
12 title is good.

13 And so I'm looking at it from that  
14 perspective. And just with that as the baseline,  
02:09:21 15 forget about the other impediments, how can we utilize  
16 a fair market value approach to this type of  
17 transaction? And you can answer that question. And  
18 you can respond and it can go back to your closing.  
19 But that is the first thing I thought about.

02:09:39 20 MR. BECKOM: Oh.

21 THE COURT: It seems like everybody just  
22 overlooks that.

23 MR. BECKOM: You kidding me? I love this  
24 adversary process. That's why I show up to work every  
02:09:47 25 day.

02:09:47 1 THE COURT: No. I'm not talking about me.

2 I'm talking about other decision makers.

3 MR. BECKOM: Here's the thing, like, I mean,  
4 like, you know, and, you know, Mr. Brunson is correct.

02:09:55 5 I'm standing here looking at the treatise of this guy.

6 It's entitled to real estate damages. I mean, he's  
7 essentially testifying, like, you know, what he's  
8 testifying to is tantamount to, you know, if I get  
9 angry and go file a lis pendens on somebody's property

02:10:07 10 just because I'm mad, and, you know, they sue me for  
11 slander of title, you know, well, there. That's the  
12 quality of your damages right there.

13 What Shadow Wood requires, what the  
14 restatement of property requires, what Golden v

02:10:20 15 Tomiyasu, and what this type of test which has gone  
16 back, like, you know, over a hundred years, you know,  
17 the entirety of all of our lifetimes, is an analysis of  
18 the hypothetical fair market value.

19 THE COURT: No, but here's my question.

02:10:36 20 MR. BECKOM: That's what it requires.

21 THE COURT: Here's my question on that. And,  
22 I guess, doesn't fair market value depend on the market  
23 upon which the transaction occurs? And the reason why  
24 I bring that up is this: You take a look at a

02:10:52 25 Chapter 107 sale. What type of title is transferred?

02:10:56 1 You look at a government foreclosure sale for maybe  
2 taxes. What type of title is transferred? They're all  
3 different, right? And so I understand what those cases  
4 stand for. But none of those cases really and truly  
02:11:15 5 address what happens under the circumstances of a  
6 Chapter 116 sale. Because it's a different animal. It  
7 just is.

8 MR. BECKOM: I think it comes down to -- I  
9 cited that US Supreme Court opinion which, again, I  
02:11:29 10 know is not binding on this Court, you know, to  
11 interpret the federal law. But, you know, for the --  
12 they really highlight the difference between forced  
13 sale value and fair market value. They're two separate  
14 terms.

02:11:39 15 THE COURT: Okay.

16 MR. BECKOM: They've always been two separate  
17 terms. And he's just testifying to fair market value  
18 in an impaired market, not a fair market. He's  
19 testifying as to the impaired market value.

02:11:48 20 And, you know, my experience, I mean, like, I  
21 love Thursday. It's like, you know, when a new movie  
22 comes out, and I get to go read new Supreme Court  
23 opinions. And, you know, our -- you know, on the  
24 appellate judges in this jurisdiction, you know,  
02:12:00 25 especially the judges -- Justice Pickering, she's a

02:12:02 1 real smart cookie. She knows the weight of her words  
2 and what they mean.

3 And if she's stating, five, six, seven, eight,  
4 ten times the term fair market value, she knows that  
02:12:14 5 the thoughtful trial judges in this district are going  
6 to look at it and they're going to interpret it in  
7 terms of Unruh v Streight because that's what the case  
8 law says.

9 And Mr. Brunson here, very qualified, very  
02:12:25 10 nice man, and he, you know, just hit the nail on the  
11 head himself. He is not testifying to fair market  
12 value.

13 There is -- and it is somewhat of a  
14 hypothetical analysis, but that is the analysis this  
02:12:35 15 Court has been tasked with. And that is the analysis  
16 that we are required to do here.

17 Mr. Vilkin talked about how it's apples to  
18 oranges. Well, unfortunately, you know, Nevada Supreme  
19 Court is throwing an apple harvest festival, and he's  
02:12:49 20 trying to bring a glass of orange juice. It's just --  
21 it's not the appropriate standard under this  
22 circumstance. And it's -- that's what our contention  
23 is.

24 If we're talking about actual real estate  
02:13:01 25 damages, which is what he was relying on, that's a

02:13:03 1 different story. But we're not talking about that.  
2 We're talking about this Court sitting in equity saying  
3 what is the fair market value of this property between  
4 the willing buyer and a willing seller.

02:13:14 5 THE COURT: Are you telling me that I overlook  
6 the facts? And what I mean by that is this: I guess,  
7 it all comes down to how do you define fair market  
8 value. But it appears to me that could be a fairly  
9 large basket. And the reason why I say that is this:  
02:13:30 10 You look at the facts of this sale, right? And it was  
11 an HOA sale.

12 Are you -- am I just to sit back and say,  
13 Well, Judge, you know, forget it. Forget what really  
14 happened here. You look at this as a typical private  
02:13:48 15 transaction involving a willing seller and buyer.  
16 That's what I'm being asked to do. And so the facts  
17 are this, and we know this, and I think he's probably  
18 right on this issue. But and at least this is the  
19 expert's opinion because I really thought about this.  
02:14:05 20 And I'm going to page 24 of his report. And this is  
21 what he's -- what he testified to. And this is in his  
22 report. I mean, he testified about this. He said --  
23 and this is on page 24. And this would be the second  
24 paragraph. And I think you actually questioned him on  
02:14:25 25 this.



02:14:26 1 But as of that date, there was no title  
2 company in Southern Nevada willing to issue title  
3 insurance following an HOA foreclosure sale.

4 The lack of clear -- I'm sorry. The lack of  
02:14:43 5 insurable clear title would have precluded traditional  
6 financing options to a typical buyer. This represents  
7 risk to the right of transfer and precludes typical  
8 financial options for future buyers.

9 The issues were not present in the  
02:15:06 10 traditional, short sale, REO, or non-HOA foreclosure  
11 transactions.

12 And the way I read that is this because it  
13 comes back to the type of title being transferred.

14 And so normally, you have marketable title as  
02:15:28 15 a result of a typical transaction. But we don't have  
16 that here. And then later on down here, and yes, he  
17 might have been wrong on -- and didn't include this,  
18 you know, improperly included this one comment, but at  
19 the end of the day, I think he was right in this regard  
02:15:48 20 because this is what he said.

21 "As of the retrospective effective date,  
22 numerous district court cases" -- he says  
23 case -- "but cases had ended with decisions in  
24 favor of both -- in favor of and opposed to the  
02:16:08 25 buyer's position."

02:16:11 1 I happen to be one of the judges that was  
2 opposed to the buyer's position, right? And so, and I  
3 don't want to go down that road because we talk -- you  
4 know my history on that. But, I'm looking at it from  
02:16:21 5 this perspective: Now, I have SFR in front of me. And  
6 one of the things I try to do is this, if the law is  
7 there and the Supreme Court has given me their specific  
8 marching orders, I'll follow them, you know, whether I  
9 agree or disagree with the decision. That's just how I  
02:16:37 10 do it, you know, because we have to have  
11 predictability.

12 But it's been my experience, and you can tell  
13 me if I'm wrong or not, I don't think the Supreme Court  
14 or the court of appeals have specifically addressed the  
02:16:52 15 issues I'm confronted with right now with what I would  
16 consider particularity. Do you understand what I'm  
17 saying?

18 MR. BECKOM: Sounds pretty accurate to me.

19 THE COURT: There you go. I use that term on  
02:17:07 20 purpose "particularity" because I'm being very fact  
21 specific to what the evidence that has been presented  
22 in this case. Because it's my understanding, I don't  
23 know if very many of the cases to date have been argued  
24 in front of some of the other district court judges  
02:17:23 25 specifically focusing on this type of methodology from

02:17:27 1 a valuation standpoint. And that's one of the reasons  
2 why I wanted to wait before I ruled on a lot of summary  
3 judgments to hear what the experts have to say.

4 Because, I mean, at the very beginning at  
02:17:40 5 first blush, I don't mind saying this, I was saying to  
6 myself it should be fair market value. That was my  
7 first blush, my first instinct. But I said, no, you  
8 got to sit back and you got to wait and to see how this  
9 all develops. Because I can see potentially where that  
02:17:53 10 specific provision under the statute as to the types of  
11 title that was transferred can have an impact. I  
12 wanted to hear what an expert had to say about that.  
13 So my mind was completely open.

14 MR. BECKOM: That's why we like trying things  
02:18:06 15 in front of you, your Honor. You know, I just --

16 THE COURT: So what do I do with that?

17 MR. BECKOM: I do -- I do continue to contend,  
18 you know, I mean, you're talking about jury  
19 instructions there. I mean I think the model jury  
02:18:17 20 instruction in that situation would be just Unruh v  
21 Streight standard, you know, price between a willing  
22 buyer and a willing seller. By its bare nature, this  
23 is a forced sale value. You know, it's a hypothetical  
24 situation that the Nevada Supreme Court has tasked this  
02:18:31 25 Court with engaging into.

02:18:34 1 But, you know, all of the stuff -- and, like,  
2 he only used two sales comparables. He had to actually  
3 expand out his definition. And by his own testimony it  
4 wasn't fair market value. And then every single last  
02:18:44 5 one of those was forecloses. That is the antithesis of  
6 fair market value.

7 He's defined sub market based on forced sale  
8 that's the standard that Christen and Pinkering --  
9 Pickering as well as the other justice on the Nevada  
02:18:58 10 Supreme Court tasked this Court to make. You know,  
11 if -- and I think that's just -- we continue to assert  
12 that the fair market value is the only proper  
13 indication of the value here. It's the issue of law,  
14 not an issue of fact. And I think --

02:19:15 15 THE COURT: Here's my next question, though:  
16 Moving on, does it really matter?

17 MR. BECKOM: As far as the unfairness?

18 THE COURT: Well, that's where I'm going.  
19 Because, hypothetically, this could be the scenario: I  
02:19:28 20 can accept the fair market evaluation based upon a  
21 traditional commercial transaction. And then I can  
22 make a determination because that's not the end of the  
23 analysis -- right -- under Nevada law. I have to make  
24 a decision as to fraud, oppression, and unfairness;  
02:19:45 25 right?

02:19:47 1 MR. BECKOM: I think you've got that here. Of  
2 course, I'm going to say that because I'm the bank  
3 lawyer. But, no, I think, 100 percent you've got that  
4 here. I mean, this Court heard testimony --

02:19:56 5 THE COURT: There was no fraud, right?

6 MR. BECKOM: We heard different testimony that  
7 Mr. Kerbow was doing -- I mean, like, we actually saw a  
8 court docket where Mr. Kerbow represents Resources  
9 Group just the same as these gentlemen right here.

02:20:12 10 You're months after that sale. And, like, Mr. Haddad  
11 couldn't even clear the record when he obtained  
12 Mr. Kerbow. I would contend that it is inappropriate  
13 for --

14 THE COURT: Is that fraud?

02:20:24 15 MR. BECKOM: I'll let the Court judge the law  
16 and fact --

17 THE COURT: No, no, no.

18 MR. BECKOM: Oh, you're going to make me name  
19 call.

02:20:30 20 THE COURT: No. I'm just asking the question.  
21 Is that fraud? That's all. Because, I mean -- because  
22 we can't overlook the fact I could buy your market  
23 analysis approach, and say, Okay, that's the basis --  
24 is going to be the basis for my decision. Because this  
02:20:46 25 is not a tender case. And I think we can all agree to

02:20:49 1 that. But even if I do buy that, that's not the end of  
2 my analysis, right?

3 MR. BECKOM: You know, I grew up in Virginia  
4 and Texas. And my parents always raised me to not name  
02:21:04 5 call. I will say this.

6 THE COURT: That's --

7 MR. BECKOM: If it looks like a duck and a  
8 quacks like a duck, it's probably a duck. And, I mean,  
9 like, you know, you can confer whatever you would like  
02:21:14 10 to from that.

11 This is, I mean, this is -- this is the same  
12 attorneys Mr. Haddad testified, or his lawyers  
13 conducting the sale and selling him the property. And  
14 I think we discussed this that, like, unfairness  
02:21:26 15 standard is not a set standard, your Honor.

16 You know, going back to that fair market value  
17 analysis, let's just say for a minute, you know, that  
18 Mr. Holmes' valuation of the property is the one that's  
19 there. That is 11 percent of his testified value. And  
02:21:41 20 even Justice Pickering in Shadow Wood stated that  
21 anything less than 20 percent, she called it,  
22 obviously, inadequate. But if you look at the  
23 expansive case law concerning that issue, the level of  
24 unfairness as this Court sitting in equity, and kind of  
02:21:55 25 harkens back to, you know, you've got -- it's like a

02:21:58 1 bifurcated court system they used to have back in the  
2 day. And you've got the court in law and court of  
3 equity. And they used to be two separate courts. And  
4 now we can just come to you an all purpose, one-stop  
02:22:09 5 shop.

6 And, you know, at this point in time when  
7 you're looking at it from a fairness perspective, the  
8 fairness goes down as the price goes down. And the  
9 sale of 11 percent of value where you've got people  
02:22:16 10 testifying up here that their attorney, the people who  
11 conducted the sale were also their lawyers.

12 We had other testimony here. I mean, I still  
13 contend that a lack -- a complete failure, and it was  
14 undisputed between everyone that a complete failure to  
02:22:29 15 serve US Bank with a notice of default when they had a  
16 policy to pay these liens, I believe, that that  
17 actually renders the sale void. And that's not even  
18 covered under Shadow Wood. That is a failure to cover  
19 the statute.

02:22:42 20 THE COURT: Here's my question for you in that  
21 regard. Then I have question on the other --

22 MR. BECKOM: Of course.

23 THE COURT: What standard I should use. I  
24 think our Nevada Supreme Court has -- our Nevada  
02:22:55 25 Supreme Court has been pretty clear on this one issue.

02:23:00 1 And it's regarding the opt-in notice requirement;  
2 right? And they said that was constitutional. I  
3 guess, they decided -- was it Bourne Valley? They went  
4 opposite, right? I think it was Bourne Valley.

02:23:14 5 MR. VILKIN: Saticoy Bay was the state court  
6 case.

7 THE COURT: Saticoy Bay. Yeah. I kind of  
8 messed that up. You know, there's so many cases out  
9 there. But anyway, factually in this case there was  
02:23:25 10 never a request by US Bank -- a specific request by US  
11 Bank to the HOA requesting notice if there's a  
12 delinquency as far as the HOA assessments are  
13 concerned, was there? I don't think that's --

14 MR. BECKOM: I would -- I was -- two points I  
02:23:44 15 would make in that regard, if the Court would like me  
16 to do so.

17 Saticoy Bay versus Wells Fargo Home Mortgage,  
18 they bounced that case under the state action  
19 requirement. Which, honestly, I'll give Nevada Supreme  
02:23:59 20 Court credit for this. They could have easily dealt  
21 with it on state law grounds. But they actually looked  
22 at the Ninth Circuit Federal Court of Appeals and said,  
23 No, you're wrong under federal law.

24 They never ever reached the point whether that  
02:24:10 25 is an actual opt-in noticing statute. And, I mean, I