

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CLA PROPERTIES LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

CLA PROPERTIES LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

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APPELLANT'S APPENDIX

VOLUME 29

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13:24:55 1 Q. Did the company have any assets other than real
13:24:59 2 estate and cash as of July 7, 2017?
13:25:03 3 A. It had real estate and some cash.
13:25:07 4 Q. And take a look at your offer.
13:25:41 5 A. Which exhibit?
13:25:43 6 ARBITRATOR WALL: 37.
13:25:46 7 THE WITNESS: Okay.
13:25:48 8 BY MR. LEWIN:
13:25:55 9 Q. Yesterday there was some question that was raised
13:25:57 10 by Mr. Gerrard as to whether or not your offer was to
13:26:00 11 buy just CLA's membership interest valued at 5 million
13:26:07 12 dollars. The 5 million dollars was your best estimate
13:26:11 13 of the value of the company. Right?
13:26:13 14 MR. GERRARD: I'm sorry. You're mixing two
13:26:15 15 different things. You just said --
13:26:16 16 MR. LEWIN: I'll rephrase it.
13:26:16 17 BY MR. LEWIN:
13:26:17 18 Q. Your 5 million dollar offer was the -- was your
13:26:22 19 best estimate of the current fair market value of the
13:26:25 20 company?
13:26:27 21 MR. SHAPIRO: Objection. There was no 5 million
13:26:31 22 dollar offer.
13:26:31 23 MR. LEWIN: 5 million dollar (inaudible).
13:26:33 24 MR. SHAPIRO: So what's the question?
13:26:33 25 ///

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13:26:33

1 BY MR. LEWIN:

13:26:33

2 Q. Your offer to set the fair market value of the

13:26:39

3 company at 5 million dollars was your best estimate of

13:26:43

4 the current fair market value. Right?

13:26:45

5 A. At that time.

13:26:45

6 Q. And in making your best estimate, those are sort

13:26:52

7 of -- best estimate is better than a regular estimate.

13:26:55

8 Right? It's your best estimate. Right?

13:26:58

9 MR. SHAPIRO: Objection. Argumentative.

13:27:01

10 ARBITRATOR WALL: I don't know what that means.

13:27:03

11 BY MR. LEWIN:

13:27:03

12 Q. When you say "best estimate," how is that

13:27:06

13 different than just a regular estimate?

13:27:08

14 MR. SHAPIRO: Objection.

13:27:09

15 ARBITRATOR WALL: I'll allow it.

13:27:11

16 A. Yeah. I mean, what I did is I just looked at the

13:27:16

17 financials and made a decision -- quick decision on what

13:27:22

18 would be a fair market value without any appraisals or

13:27:26

19 any other documents and I made an offer.

13:27:28

20 BY MR. LEWIN:

13:27:29

21 Q. You had all the time in the world to make

13:27:33

22 whatever appraisals you wanted before you made an offer.

13:27:35

23 There's no pressure to make an offer. Right?

13:27:37

24 MR. SHAPIRO: I'm going to object, Your Honor. I

13:27:39

25 thought the FMV was set in the last arbitration. So

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13:27:44 1 where's this going and how's it relevant?

13:27:44 2 MR. LEWIN: This has to do with what we talked

13:27:46 3 about yesterday about what consisted of the formula.

13:27:48 4 The issue was --

13:27:49 5 ARBITRATOR WALL: I know. I'll allow it to a

13:27:52 6 point.

13:27:56 7 So you may answer if you remember the question.

13:28:00 8 THE WITNESS: No, I don't. I'm sorry.

13:28:02 9 BY MR. LEWIN:

13:28:02 10 Q. So you look -- as an experienced real estate

13:28:04 11 person, you evaluated for yourself what the fair market

13:28:08 12 value of the various properties were, and you looked at

13:28:10 13 the financials and you looked at the income stream.

13:28:13 14 Right?

13:28:13 15 A. Yes.

13:28:13 16 Q. And you considered what -- the estimates that you

13:28:17 17 received from brokers as well. Right? The BOB I think

13:28:23 18 you said it was?

13:28:26 19 A. Yes, but --

13:28:28 20 Q. Yes or no? I know BOB is just an estimate.

13:28:36 21 ARBITRATOR WALL: There's no question.

13:28:37 22 BY MR. LEWIN:

13:28:37 23 Q. So you made the offer and the offer says what it

13:28:46 24 says. If Mr. -- is there -- after you made this offer,

13:28:57 25 did you have a meeting with Mr. Golshani where he had

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13:29:02 1 asked you to talk about what each of you would receive
13:29:05 2 if he sold to you or you sold to him?
13:29:10 3 A. We had a meeting.
13:29:11 4 Q. To discuss that subject. Right?
13:29:13 5 A. Yes.
13:29:13 6 Q. And Mr. Golshani had asked if he bought you out,
13:29:18 7 how much money he should be looking at. Right?
13:29:22 8 A. We had a discussion on that.
13:29:24 9 Q. And you provided him with the information that
13:29:31 10 you thought you would receive if he bought you out.
13:29:34 11 Right?
13:29:34 12 A. I provided him --
13:29:36 13 Q. Yes or no, sir?
13:29:37 14 A. No.
13:29:38 15 Q. Let me read from your deposition. Pardon me.
13:29:47 16 This is from the arbitration.
13:30:14 17 MR. LEWIN: I only have certified copies of the
13:30:17 18 arbitration. I don't want to copy this whole thing.
13:30:22 19 Can I just give a copy to Mr. Shapiro so he can verify
13:30:28 20 what I'm saying is true?
13:30:28 21 ARBITRATOR WALL: Do you have a copy?
13:30:31 22 MR. SHAPIRO: Of the arbitration transcript?
13:30:33 23 MR. LEWIN: They're in the exhibits.
13:30:36 24 MR. SHAPIRO: Which exhibit is it?
13:30:47 25 MR. LEWIN: I think you identified those in your

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13:30:47 1 exhibits.

13:30:47 2 ARBITRATOR WALL: Do you know which exhibit it

13:30:47 3 was?

13:30:48 4 MR. LEWIN: Mine is 194 and 195.

13:30:48 5 BY MR. LEWIN:

13:30:51 6 **Q. Can you look at 194 and 195, sir?**

13:30:55 7 MR. GERRARD: Rod, before you ask the question,

13:30:58 8 the rules require you to provide us with the complete

13:31:00 9 statement so that we can read the contents before you

13:31:03 10 ask the question. That's NRS50.13.51.

13:31:09 11 MR. LEWIN: I'm not sure.

13:31:11 12 MR. GERRARD: Well, the statute and rules of

13:31:12 13 evidence require that if you're going to examine a

13:31:14 14 witness concerning a prior statement made by the

13:31:16 15 witness, the statement doesn't have to be shown to the

13:31:19 16 witness, but it must on request be shown and disclosed

13:31:23 17 to opposing counsel.

13:31:24 18 So we have the opportunity to see it before you

13:31:28 19 ask questions. Not when you ask questions. Before you

13:31:31 20 ask questions, so that if we have any objections, we can

13:31:35 21 raise those. That's what the rule requires.

13:31:36 22 That's my objection, Your Honor.

13:31:36 23 MR. LEWIN: The rules under the arbitration rules

13:31:39 24 under JAMS are not quite so strict. They don't follow

13:31:44 25 the strict rules of evidence.

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13:31:46 1 Number two, I provided you with the arbitration
13:31:50 2 transcripts.
13:31:51 3 Number 3, I was giving you the chance to review
13:31:53 4 the transcript and look at the portion I'd like to read
13:31:57 5 in.
13:31:57 6 MR. GERRARD: Sure.
13:31:58 7 In response, Judge, that's not the way that the
13:32:00 8 rule works. He has to provide it to us and show us what
13:32:03 9 it is he's going to use before he uses it so that we
13:32:06 10 have it.
13:32:06 11 MR. LEWIN: How is that impeachment?
13:32:09 12 MR. GERRARD: You don't have to show it to the
13:32:11 13 witness. You have to show it to counsel.
13:32:13 14 MR. LEWIN: I was going to.
13:32:13 15 ARBITRATOR WALL: What part are you going to
13:32:15 16 refer to?
13:32:17 17 MR. LEWIN: May 9, 239, Line 11.
13:32:24 18 ARBITRATOR WALL: Page 239 --
13:32:27 19 MR. LEWIN: Line 11 to Line 23.
13:32:31 20 ARBITRATOR WALL: Line 11 to line 23.
13:32:35 21 It's not in any of your documents.
13:32:41 22 MR. LEWIN: We designated the transcript --
13:32:43 23 MR. GERRARD: Mr. Bidsal, you don't get to look
13:32:46 24 at it before he asks you questions.
13:32:47 25 THE WITNESS: Oh. Okay.

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13:32:55	1	ARBITRATOR WALL: So is it in mine?	Page 792
13:32:58	2	MR. LEWIN: It is. And you also have the	
13:33:00	3	certified copies in front of you.	
13:33:06	4	MR. GERRARD: It's supposed to be 195, Judge.	
13:33:06	5	MR. LEWIN: I thought you guys had designated	
13:33:10	6	transcripts.	
13:33:10	7	ARBITRATOR WALL: 239. Is that right?	
13:33:13	8	MR. LEWIN: 239.	
13:33:18	9	ARBITRATOR WALL: 11 to 23? Okay.	
13:33:28	10	MR. SHAPIRO: So what is the purpose of the	
13:33:30	11	testimony?	
13:33:33	12	ARBITRATOR WALL: Is this intended to be	
13:33:35	13	inconsistent with what he just said?	
13:33:38	14	MR. LEWIN: Yes, it is. He said that he did not	
13:33:39	15	give him the information.	
13:33:40	16	MR. SHAPIRO: This doesn't say he did.	
13:33:40	17	MR. LEWIN: Yes, it does.	
13:33:43	18	MR. SHAPIRO: Where?	
13:33:43	19	ARBITRATOR WALL: It says "We discussed it."	
13:33:48	20	MR. LEWIN: Line 23.	
13:33:48	21	MR. GERRARD: Judge, it doesn't say anything	
13:33:57	22	about information divulged.	
13:33:57	23	MR. LEWIN: 17 through 23.	
13:34:00	24	MR. SHAPIRO: Right. It says he discussed it.	
13:34:04	25	ARBITRATOR WALL: Well, at the end it says, "Yes,	

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13:34:06 1 I sent it by Email."

13:34:08 2 MR. GERRARD: Sent what?

13:34:10 3 ARBITRATOR WALL: It says, "Did you do it in

13:34:11 4 writing?

13:34:12 5 "Yes, I sent it by Email."

13:34:19 6 MR. SHAPIRO: Right. But what did you send by

13:34:21 7 Email?

13:34:21 8 MR. LEWIN: I think my purpose of -- he said he

13:34:24 9 didn't provide him with the information, and my purpose

13:34:27 10 in reading this is to show that he said he did.

13:34:29 11 MR. SHAPIRO: Well, what information though?

13:34:31 12 ARBITRATOR WALL: Okay. So I'm going to allow

13:34:33 13 it. I'm going to allow it. You've had a chance to

13:34:35 14 review it.

13:34:36 15 MR. GERRARD: Yep. Fine.

13:34:38 16 MR. LEWIN: I guess we need to read that whole

13:34:41 17 thing into the record.

13:34:43 18 BY MR. LEWIN:

13:34:43 19 Q. Again, Page 239, Line 11:

13:34:45 20 "QUESTION" --

13:34:49 21 A. Can I look at it now?

13:34:51 22 ARBITRATOR WALL: Yes.

13:34:51 23 BY MR. LEWIN:

13:34:46 24 Q. "And after you made the offer, isn't it true" --

13:34:46 25 ARBITRATOR WALL: Hold on a minute. Let me get

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13:34:52 1 there.

13:34:52 2 MR. SHAPIRO: 239.

13:34:54 3 THE WITNESS: What line?

13:34:56 4 ARBITRATOR WALL: 11.

13:34:58 5 All right. Go ahead.

13:35:00 6 BY MR. LEWIN:

13:35:01 7 Q. Quote, "QUESTION: And after you made the offer,

13:35:02 8 isn't it true that Mr. Golshani asked you if he accepted

13:35:06 9 the offer, how much money that you or if he bought you

13:35:10 10 out, how much money each of you would get?

13:35:13 11 "ANSWER: If he bought me out?

13:35:15 12 "QUESTION: Didn't Mr. Golshani ask you to set

13:35:17 13 forth what you thought each person would net if you

13:35:20 14 bought him out or he bought you out?

13:35:22 15 "ANSWER: We discussed it, yes, sir.

13:35:24 16 "QUESTION: And you never provided him with that

13:35:29 17 information, did you?

13:35:30 18 "ANSWER: Yes, I did."

13:35:36 19 Did you give Mr. Golshani an amount that you felt

13:35:39 20 that you would -- would be your purchase price?

13:35:42 21 A. No, I provided him with the documentation to

13:35:46 22 calculate it.

13:35:47 23 Q. Isn't it true that during this meeting,

13:35:49 24 Mr. Golshani told you what he thought he would owe you

13:35:54 25 under the formula at the 5 million dollar valuation?

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13:35:59 1 A. Let me understand the question. What he thought
13:36:03 2 he owes me?

13:36:04 3 Q. The question is: Isn't it true that at this
13:36:06 4 meeting that took place at your office -- right?

13:36:08 5 A. Yes.

13:36:09 6 Q. And Henry was in that meeting as well. Right?

13:36:12 7 A. No.

13:36:12 8 Q. Did Henry come into the meeting at all?

13:36:15 9 A. No.

13:36:16 10 Q. Isn't it true that Mr. Golshani told you during
13:36:23 11 that meeting what he -- how he had calculated the
13:36:28 12 purchase price if he bought you out?

13:36:31 13 A. I don't think so.

13:36:33 14 Q. Didn't he -- do you deny it or you just don't
13:36:35 15 remember one way or another?

13:36:37 16 A. I don't think he did.

13:36:38 17 Q. But you provided him with the information?

13:36:41 18 A. I provided --

13:36:42 19 Q. Excuse me. It says he asked you -- he asked you
13:36:44 20 what each person would net. You said, "We discussed
13:36:50 21 that." When I asked you if you provided him that
13:36:52 22 information, you said, "Yes, I did."

13:36:54 23 MR. SHAPIRO: Objection. Your Honor, he's trying
13:36:58 24 to refer to language that wasn't read into the record.

13:37:02 25 MR. LEWIN: I just read that.

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13:37:02 1 ARBITRATOR WALL: He did.

13:37:04 2 MR. GERRARD: He didn't say that that was the

13:37:04 3 type of information that was said.

13:37:04 4 MR. SHAPIRO: He implied that it was something

13:37:07 5 different. He says we talked about the net.

13:37:11 6 MR. LEWIN: And that's exactly what I'm asking.

13:37:13 7 MR. SHAPIRO: But you're implying that he

13:37:15 8 previously testified a certain way and that's not true.

13:37:18 9 MR. LEWIN: I don't know why this is so hard.

13:37:20 10 The question was: "Didn't Golshani tell you, quote,

13:37:23 11 'What you thought each person would net if you bought

13:37:27 12 him out or he bought you out?'"

13:37:27 13 The answer was: "We discussed it."

13:37:30 14 And then you said -- I said, "Did you provide him

13:37:32 15 with the information -- you didn't provide him with that

13:37:32 16 information?"

13:37:33 17 And he said, "Yes, I did."

13:37:35 18 ARBITRATOR WALL: Well, but that information --

13:37:36 19 because he says, we -- sorry. "We discussed that, yes,

13:37:36 20 sir.

13:37:46 21 "And you never provided him with that

13:37:49 22 information?"

13:37:50 23 MR. LEWIN: The information meaning what each

13:37:53 24 party would net.

13:37:55 25 MR. GERRARD: But it doesn't say that.

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13:37:56 1 MR. LEWIN: It does say that.

13:37:56 2 ARBITRATOR WALL: I mean, it's an inference you

13:37:58 3 could make from the prior question, but I'm not so sure

13:38:01 4 that that's clear.

13:38:03 5 THE WITNESS: Your Honor, can I answer?

13:38:05 6 ARBITRATOR WALL: You'll have an opportunity to

13:38:07 7 I'm quite certain.

13:38:11 8 BY MR. LEWIN:

13:38:11 9 Q. Please turn to Exhibit 111.

13:38:45 10 A. Okay.

13:38:46 11 Q. By the way, how long was this meeting with you

13:38:49 12 and Mr. Golshani?

13:38:52 13 A. Half an hour, one hour. Something like that.

13:38:55 14 Q. And how soon after you had made your offer did

13:39:01 15 this meeting take place?

13:39:03 16 A. I don't recall.

13:39:12 17 Q. Look at Exhibit 111. Do you recognize this

13:39:15 18 document?

13:39:16 19 A. Yes.

13:39:16 20 Q. This is a document that you gave Mr. Golshani at

13:39:19 21 that meeting. Right?

13:39:21 22 A. One of the documents, yes.

13:39:23 23 Q. And this is a document that was prepared by Henry

13:39:29 24 or you?

13:39:30 25 A. It was prepared by my office. I don't know if it

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13:39:39 1 was Henry or somebody else.

13:39:41 2 Q. And do you know what these numbers represent?

13:39:44 3 A. Just some calculations of the building sort --

13:39:53 4 different building sort and cost basis associated with

13:39:56 5 them and profits and -- and so forth.

13:39:58 6 Q. The numbers that are in handwriting, 1 through 6

13:40:01 7 with circles around them, who put that on this document?

13:40:05 8 A. I don't know. It's not mine.

13:40:07 9 Q. At this meeting did you give Mr. Golshani an

13:40:16 10 amount that you felt would be your purchase price if he

13:40:20 11 bought you out?

13:40:21 12 A. I'm sorry. Again?

13:40:25 13 Q. At this meeting did you tell Mr. Golshani if he

13:40:29 14 bought you out, how much that you calculated the

13:40:32 15 purchase price would be?

13:40:33 16 A. No, because --

13:40:34 17 Q. You've answered.

13:40:36 18 A. The answer is no.

13:40:37 19 Q. At this meeting did you tell Mr. Golshani what

13:40:40 20 you thought was the purchase price if you bought him

13:40:42 21 out?

13:40:42 22 A. I provided the --

13:40:44 23 Q. Yes or no?

13:40:44 24 A. I don't recall if I calculated that, but I did

13:40:50 25 provide this document.

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13:40:51 1 Q. At this meeting did Mr. Golshani -- did he tell
13:40:54 2 you how much money that he felt the purchase price would
13:40:58 3 be if you bought him out?

13:41:00 4 A. One more time.

13:41:01 5 Q. At this meeting did Mr. Golshani tell you how
13:41:05 6 much he felt the purchase price would be if you bought
13:41:08 7 him out?

13:41:09 8 A. He did not say that, no.

13:41:11 9 Q. At this meeting did Mr. Golshani tell you what
13:41:14 10 his calculation would be if he bought you out, the
13:41:17 11 purchase price?

13:41:18 12 A. He did not.

13:41:19 13 Q. Do you remember what was said during this
13:41:24 14 meeting?

13:41:24 15 A. To some extent, yes. We were calculating what is
13:41:30 16 sold by then and what is remaining, and he wanted to see
13:41:33 17 some calculations, which we provided.

13:41:37 18 Q. Do you remember anything else?

13:41:40 19 A. Yeah. My dissatisfaction with having expenses
13:41:56 20 on -- of the company on me and not getting reimbursed.

13:41:59 21 Q. Are you talking about the property management
13:42:01 22 expenses?

13:42:02 23 A. Yes.

13:42:03 24 Q. Didn't you get -- weren't you getting paid an
13:42:06 25 additional 20 percent over your capital contribution for

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13:42:11 1 that?

13:42:11 2 A. I'm not referring to my management fee. I'm

13:42:15 3 talking expenses that we paid and we didn't get

13:42:17 4 reimbursed.

13:42:18 5 ARBITRATOR WALL: Can I ask a question?

13:42:20 6 MR. LEWIN: Of course.

13:42:21 7 ARBITRATOR WALL: Was this meeting -- let me just

13:42:24 8 give you timeframes. Your July 7th offer, the

13:42:30 9 August 3rd counteroffer. So where does this meeting

13:42:36 10 fall? Is it after your offer?

13:42:39 11 THE WITNESS: Yes.

13:42:42 12 ARBITRATOR WALL: Is it before the counter?

13:42:42 13 THE WITNESS: I think so.

13:42:44 14 ARBITRATOR WALL: Okay. All right.

13:42:52 15 BY MR. LEWIN:

13:42:53 16 Q. Do you remember anything else that was said

13:42:55 17 during that meeting?

13:42:56 18 A. I think there might be a lot of other

13:43:01 19 conversations, but I just don't remember point to point.

13:43:03 20 Q. Did you discuss the 1.5 plus offer for Greenway

13:43:09 21 at this meeting?

13:43:11 22 A. I don't recall when the offer came. So if you

13:43:22 23 have that information, you can refresh my memory.

13:43:24 24 Q. Did Mr. Golshani ask you how you calculated the

13:43:28 25 5 million dollars?

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13:43:29 1 A. I don't recall if he did. I don't remember.

13:43:44 2 Q. Well, you did talk a little bit about the formula

13:43:47 3 at this meeting, didn't you?

13:43:49 4 A. I honestly don't remember.

13:43:49 5 Q. Now, the --

13:44:00 6 A. We might have, but I just...

13:44:02 7 Q. Your estimate of 5 million dollars as a fair

13:44:05 8 market value for the company was not the final amount

13:44:08 9 for the remaining members' share. Isn't that correct?

13:44:13 10 A. As a price for the membership?

13:44:17 11 Q. Right.

13:44:18 12 A. No.

13:44:18 13 Q. No. That's the company value?

13:44:21 14 A. Real estate of the company. Company real estate

13:44:25 15 value, yes.

13:44:25 16 Q. Your offer doesn't say company real estate value,

13:44:29 17 does it?

13:44:30 18 A. No.

13:44:30 19 Q. And you've always referred to it as the company

13:44:37 20 value. Isn't that correct?

13:44:38 21 A. Yes.

13:44:39 22 Q. Even in the arbitration do you recall that you

13:44:44 23 said that that was the company value, the first

13:44:46 24 arbitration?

13:44:47 25 A. I don't recall that detail, but what I meant was

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13:44:51 1 the real estate.

13:44:52 2 Q. I didn't ask you what you meant. I asked you if

13:44:55 3 you said that was the company value. Right?

13:44:56 4 A. I don't recall. I might have.

13:45:00 5 MR. LEWIN: I'd like to read from Page 390.

13:45:08 6 ARBITRATOR WALL: All right. So they get to --

13:45:12 7 MR. LEWIN: No, I know. I'm not going to read

13:45:13 8 until they -- it's approved. 390, Line 1 through 5.

13:45:20 9 THE WITNESS: Which binder?

13:45:22 10 ARBITRATOR WALL: Hold on. Don't even look it up

13:45:23 11 yet.

13:45:23 12 MR. LEWIN: Before we go there -- before we go

13:45:28 13 there, let me ask one more question. It may save some

13:45:28 14 time.

13:45:28 15 BY MR. LEWIN:

13:45:29 16 Q. Your understanding of how the formula worked was

13:45:33 17 that you returned the capital -- the remaining capital

13:45:36 18 and the balances left over you divided up 50/50. Right?

13:45:42 19 A. You return the remaining capital. That's okay.

13:45:46 20 And whatever the fair market value is, you deduct the

13:45:51 21 cost basis, divide by two, and then you add the

13:45:55 22 remaining capital.

13:45:57 23 Q. So the remaining capital, you mean that's the

13:45:58 24 unreturned capital?

13:46:00 25 MR. GERRARD: Are you asking what his definition

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13:46:04 1 is --

13:46:04 2 MR. LEWIN: I'm asking what was his

13:46:07 3 understanding --

13:46:07 4 MR. GERRARD: -- or how he's applying it?

13:46:07 5 BY MR. LEWIN:

13:46:08 6 Q. If the remaining capital is the unreturned

13:46:12 7 capital?

13:46:13 8 A. The remaining cash -- cash contribution, yes.

13:46:15 9 Q. The amount of your initial cash contribution

13:46:18 10 minus whatever capital had been returned. Right?

13:46:21 11 A. Yeah.

13:46:22 12 Q. Okay. So let me go back to reading so we can get

13:46:25 13 this -- finalize this. 390, Line 1 through 5.

13:46:25 14 ARBITRATOR WALL: 390 or 391?

13:46:25 15 MR. LEWIN: 390, 1 through 5.

13:46:37 16 ARBITRATOR WALL: Oh. You said 391.

13:46:37 17 MR. SHAPIRO: And the purpose of reading this is

13:46:40 18 what? Inconsistent?

13:46:43 19 MR. LEWIN: Well, because I think his answer is

13:46:45 20 inconsistent because he said company value of the real

13:46:48 21 estate. That's how he testified to it before.

13:46:48 22 MR. SHAPIRO: Well, that's not what this says

13:46:51 23 either.

13:46:53 24 MR. LEWIN: I know. Exactly.

13:46:54 25 MR. SHAPIRO: Well, okay.

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13:46:54 1 ARBITRATOR WALL: All right. You can read it in. Page 804
13:46:56 2 BY MR. LEWIN:
13:46:57 3 Q. "QUESTION: Now, we talked a little bit about
13:46:59 4 your offer to purchase the 5 million, and that's not the
13:47:02 5 final amount of the remaining members' share, is it?
13:47:06 6 "ANSWER: No, that's the company value."
13:47:25 7 MR. GERRARD: Judge, I have to raise the same
13:47:28 8 objection we raised at the beginning of this
13:47:31 9 arbitration, which is since FMV is not at issue in this
13:47:34 10 arbitration, I have -- I still do not understand how
13:47:37 11 this has any relevance. It makes no difference because
13:47:41 12 we're only talking -- FMV is not the part of the formula
13:47:46 13 Your Honor has to decide.
13:47:46 14 ARBITRATOR WALL: Correct.
13:47:47 15 MR. GERRARD: And this has nothing to do with
13:47:51 16 cost of purchase. So I don't understand why we're
13:47:53 17 spending all this time on a nonissue.
13:47:56 18 ARBITRATOR WALL: I don't either, but we're going
13:47:59 19 to finish Gerety today.
13:48:01 20 MR. LEWIN: He's here.
13:48:02 21 ARBITRATOR WALL: I know. But, I mean, the point
13:48:04 22 is that a lot of this may not be relevant to the
13:48:07 23 decisions I have to make.
13:48:08 24 MR. LEWIN: The relevance of this stuff has to do
13:48:11 25 with the claim that he's being -- he's suffering a loss

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13:48:14 1 if he -- because depending on what cost you use for the
13:48:20 2 purchase of Greenway. Do you use the actual price of it
13:48:25 3 or do you use the carried-over basis?

13:48:27 4 ARBITRATOR WALL: But this stuff really doesn't
13:48:29 5 have anything to do with that.

13:48:30 6 MR. LEWIN: No, what it has to do is with how he
13:48:33 7 valued the company, and Greenway was being valued
13:48:36 8 probably at more than a million-5.

13:48:39 9 ARBITRATOR WALL: I'm seeing marginal relevance
13:48:42 10 there, so...

13:48:42 11 MR. LEWIN: I'm done with it.

13:48:42 12 ARBITRATOR WALL: Okay. Sorry.

13:48:44 13 MR. LEWIN: That's the purpose of that.

13:48:52 14 BY MR. LEWIN:

13:48:52 15 **Q. Looking back at Exhibit 111, did you actually --**
13:48:55 16 **did you look at these numbers before you provided it to**
13:48:58 17 **Mr. Golshani?**

13:48:59 18 MR. GERRARD: Your Honor, I thought we said we
13:49:01 19 were done with this.

13:49:02 20 MR. LEWIN: Well, this sheet is a little bit
13:49:04 21 different for my questions.

13:49:06 22 ARBITRATOR WALL: Okay.

13:49:06 23 A. Yeah, I looked at it. I didn't verify them.

13:49:08 24 BY MR. LEWIN:

13:49:09 25 **Q. But you wouldn't have given it to Mr. Golshani**

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13:49:12 1 unless you thought they were accurate. Right?

13:49:14 2 A. I got it from --

13:49:16 3 Q. Yes or no?

13:49:17 4 A. I would suppose that they're accurate, yeah.

13:49:19 5 MR. LEWIN: I move to admit Exhibit 111 into

13:49:22 6 evidence.

13:49:23 7 MR. SHAPIRO: No objection.

13:49:25 8 ARBITRATOR WALL: 111 is admitted.

13:49:35 9 (Exhibit 111 was admitted into evidence.)

13:49:35 10 BY MR. LEWIN:

13:49:35 11 Q. Now, let's go to Exhibit 38.

13:49:55 12 A. Okay.

13:49:56 13 Q. This is Mr. Golshani's response to your offer.

13:49:59 14 Right?

13:49:59 15 A. Yes.

13:50:01 16 Q. And when you received this, you understood that

13:50:05 17 he was electing to purchase your 50 percent membership

13:50:09 18 into the company based on your 5 million dollar

13:50:13 19 valuation of the company. Right?

13:50:15 20 A. As a counteroffer, yes.

13:50:17 21 Q. It says on here -- it says -- it says, "I trust

13:50:21 22 there has not been any distribution of cash on hand that

13:50:24 23 I've not approved of either before or after July 7,

13:50:29 24 2017, nor should there be any such distribution or any

13:50:32 25 agreement entered into, including sales agreements,

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13:50:36 1 without CLA's written consent." Did you understand that
13:50:40 2 to mean that you were being told not to make any
13:50:44 3 distribution of the cash on hand?

13:50:48 4 A. No.

13:50:49 5 Q. Okay. When it says, "nor should there be any
13:50:55 6 such distributions," how did you interpret those words?

13:51:00 7 A. One manager cannot tell the other manager not to
13:51:04 8 distribute. There's nothing happening yet. There's not
13:51:07 9 even an accepted offer. We are still both negotiating.

13:51:10 10 Q. You thought you were negotiating and Mr. -- CLA
13:51:16 11 is saying we've got a deal. Right?

13:51:18 12 MR. SHAPIRO: Objection. Calls for speculation.

13:51:20 13 ARBITRATOR WALL: If that question is is that
13:51:24 14 what Mr. Bidsal thought, then I'll allow it.

13:51:29 15 MR. LEWIN: That's right.

13:51:30 16 ARBITRATOR WALL: All right.

13:51:30 17 A. Yeah. We were just going back and forth. So one
13:51:33 18 member cannot dictate to the other member not to
13:51:35 19 distribute for no reason.

13:51:37 20 BY MR. LEWIN:

13:51:37 21 Q. That wasn't my question. You made an offer and
13:51:42 22 CLA -- we've already done this in the arbitration, so
13:51:47 23 I'm not meaning to go back on it. CLA is telling you in
13:51:51 24 this letter that it is electing to buy your membership
13:51:55 25 interest based on your valuation. It's not offering to

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13:51:59 1 negotiate. Isn't that the way you read this letter.

13:52:02 2 Yes or no?

13:52:04 3 A. I don't read it that way, no.

13:52:07 4 Q. When it tells you not to make any distributions,

13:52:10 5 did you -- you understood what he was saying. You

13:52:13 6 understood what CLA was saying. You just didn't agree

13:52:17 7 with it. Right? Yes or no?

13:52:19 8 A. I didn't agree.

13:52:21 9 Q. Okay. And when CLA says don't enter into any

13:52:27 10 agreements without CLA's consent, you understood that

13:52:32 11 CLA was telling you keep the status quo. Don't enter

13:52:36 12 into any new agreements. Right?

13:52:36 13 A. In regard to sales, we did not.

13:52:38 14 Q. It says any agreements to be entered into

13:52:41 15 including sale agreements. Do you see that?

13:52:44 16 A. Yes.

13:52:44 17 Q. Okay. So you understood that CLA's position was

13:52:47 18 that as a buyer, you were not to enter into any new

13:52:50 19 agreements without its consent. Right?

13:52:53 20 A. No. I don't read it that way. I'm still

13:52:58 21 getting contracts for the --

13:52:59 22 MR. SHAPIRO: There's no question.

13:53:04 23 BY MR. LEWIN:

13:53:05 24 Q. Mr. Golshani wrote you to enter into an escrow.

13:53:14 25 Right?

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13:53:21 1 A. (No verbal response.)

13:53:24 2 **Q. Mr. Golshani wrote you to enter into an escrow?**

13:53:29 3 A. If you have an Email, if you point to it.

13:53:33 4 **Q. Sure. Take a look at Exhibit 118.**

13:53:36 5 ARBITRATOR WALL: My 118 is empty.

13:53:39 6 MR. LEWIN: Your 118 is empty? Can I give you

13:53:48 7 mine? I don't need it.

13:53:49 8 MR. SHAPIRO: Just so we're on the same page,

13:53:52 9 what's the Bates number on that?

13:53:54 10 MR. LEWIN: 0102.

13:53:59 11 MR. SHAPIRO: Just the one page. Right?

13:54:02 12 MR. LEWIN: Yeah.

13:54:02 13 THE WITNESS: 118.

13:54:02 14 MR. SHAPIRO: Yeah, 118.

13:54:13 15 THE WITNESS: It is empty, but...

13:54:17 16 MR. LEWIN: It's empty in yours also?

13:54:17 17 THE WITNESS: Yes.

13:54:17 18 ARBITRATOR WALL: Do you need this one? Do you

13:54:19 19 need a copy?

13:54:19 20 MR. SHAPIRO: I will give him mine and I will

13:54:22 21 share Doug's.

13:54:24 22 BY MR. LEWIN:

13:54:25 23 **Q. So Mr. Golshani wrote to you on August 15, 2017**

13:54:34 24 **and said, "Shawn, it was good speaking with you on**

13:54:37 25 **Sunday." Was that the meeting we're talking about or**

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13:54:45 1 was that subsequent? Was that some other meeting? I'll
13:54:49 2 rephrase it. Let me withdraw it.

13:54:52 3 On August 15th in this Email Mr. Golshani is
13:54:56 4 telling you that he's planning on closing escrow to
13:55:00 5 purchase your membership interest in both entities
13:55:02 6 pursuant to my elections to buy at the price you
13:55:04 7 offered.

13:55:04 8 It was also an offer to buy Mission Square that's
13:55:17 9 also in litigation. Right?

13:55:17 10 (Court reporter clarification.)

13:55:17 11 BY MR. LEWIN:

13:55:17 12 Q. There's also another buyout in a company called
13:55:18 13 Mission Square that's currently in litigation.

13:55:18 14 MR. SHAPIRO: Objection. Relevance.

13:55:19 15 ARBITRATOR WALL: Just giving him context for the
13:55:22 16 both entities part of this exhibit. Right?

13:55:25 17 MR. LEWIN: Yes, Your Honor.

13:55:27 18 BY MR. LEWIN:

13:55:27 19 Q. When it says, "I suggest we use a local escrow
13:55:30 20 company," you understood that Mr. Golshani was offering
13:55:34 21 to open escrow. Right?

13:55:35 22 A. A joint escrow, yes.

13:55:38 23 ARBITRATOR WALL: A what?

13:55:41 24 THE WITNESS: A joint escrow.

13:55:43 25 ARBITRATOR WALL: You mean for both transactions?

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13:55:46	1	THE WITNESS: No. Joint escrow for both parties.	Page 811
13:55:49	2	ARBITRATOR WALL: Okay.	
13:55:49	3	BY MR. LEWIN:	
13:55:49	4	Q. And then you respond and you said, "Ben, we	
13:55:51	5	cannot open any escrow since we do not agree on the	
13:55:54	6	matter. I'm open to meet you and further discuss a	
13:55:57	7	resolution."	
13:55:57	8	When you say you do not agree on the matter, what	
13:56:00	9	you were saying is that you had demanded that you had	
13:56:04	10	the right to appraise -- set the price by an appraisal.	
13:56:08	11	Right?	
13:56:09	12	A. Yes.	
13:56:10	13	Q. Okay. And Mr. Golshani's position was no, you	
13:56:12	14	didn't. Right?	
13:56:13	15	A. I suppose so, yes.	
13:56:14	16	Q. So you refused to open an escrow for Mr. Golshani	
13:56:18	17	to consummate the transaction. Right?	
13:56:21	18	A. I wasn't supposed to open any escrow.	
13:56:24	19	Q. The question is: You refused to open an escrow	
13:56:30	20	with Mr. Golshani. Right?	
13:56:31	21	A. A joint escrow, but he grabbed for the money in	
13:56:32	22	escrow.	
13:56:32	23	Q. Please just answer my question. You refused to	
13:56:35	24	open an escrow. Right?	
13:56:36	25	A. A joint escrow, yes.	

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13:56:38 1 Q. And when you said "we do not agree on the
13:56:42 2 matter," that means you were not willing to proceed with
13:56:45 3 the sale of your membership interest based on the
13:56:49 4 5 million dollar offer that you had made. Right?

13:56:52 5 A. No.

13:56:52 6 Q. Did you ever tell Mr. Golshani that you were
13:56:57 7 willing to open up an escrow to transfer your interest
13:57:04 8 in Green Valley without any appraisal, without any other
13:57:08 9 conditions other than figuring out -- other than
13:57:09 10 agreeing to the purchase price?

13:57:14 11 A. It never -- that never has came up yet.

13:57:16 12 Q. That's because -- that's because the matter was
13:57:20 13 litigated, you lost, and now it's under appeal. Right?

13:57:26 14 A. But at any time CLA --

13:57:29 15 Q. Just answer my question.

13:57:31 16 MR. GERRARD: You're asking him if that's the
13:57:32 17 reason the escrow hasn't been opened?

13:57:36 18 A. The answer is no. That is not the reason.

13:57:38 19 BY MR. LEWIN:

13:57:38 20 Q. Have you communicated to Mr. Golshani that you're
13:57:41 21 willing to proceed on the -- to sell the interest in --
13:57:46 22 your membership interest in Green Valley based on the
13:57:52 23 5 million dollar valuation that you put in your offer?
13:57:55 24 Yes or no?

13:57:56 25 A. We had so many conversations --

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13:57:59 1 Q. Just yes or no.

13:57:59 2 A. No.

13:58:00 3 Q. You think you forgot telling Mr. Golshani, by the

13:58:03 4 way, forget about everything. I want to proceed with

13:58:07 5 the offer?

13:58:07 6 MR. SHAPIRO: Objection. Argumentative.

13:58:10 7 ARBITRATOR WALL: I'll let him answer.

13:58:12 8 A. One more time.

13:58:12 9 BY MR. LEWIN:

13:58:12 10 Q. Do you think you forgot that you -- that you --

13:58:15 11 at one point you told Mr. Golshani to proceed with the

13:58:18 12 5 million dollar valuation without no other

13:58:23 13 conditions other than --

13:58:23 14 A. Are saying that I forgot or not or --

13:58:26 15 Q. That you forgot. Do you think you forgot that,

13:58:28 16 that you might have said that to him? Yes or no?

13:58:32 17 A. No.

13:58:33 18 Q. The fact of the matter is you never made that

13:58:37 19 proposal. Right?

13:58:39 20 MR. GERRARD: Never made what proposal?

13:58:41 21 BY MR. LEWIN:

13:58:41 22 Q. The proposal to proceed with -- the proposal to

13:58:42 23 proceed with the sale under the terms of his offer and

13:58:48 24 CLA's counterproposal?

13:58:50 25 ARBITRATOR WALL: That's sort of compound. He

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13:58:53 1 did offer under his offer.

13:58:58 2 MR. LEWIN: Okay.

13:58:59 3 BY MR. LEWIN:

13:59:01 4 Q. You never -- you never offered to proceed for CLA

13:59:09 5 to buy your interest based on the 5 million dollar

13:59:13 6 valuation as set forth in Exhibit 38?

13:59:17 7 A. I never stopped him or --

13:59:18 8 Q. That's not my question. Answer my question.

13:59:19 9 A. I never offered him, no.

13:59:22 10 Q. As a matter of fact, in Exhibit 122 -- can you

13:59:29 11 take a look at 122?

13:59:29 12 MR. GERRARD: Please go into the exhibit book

13:59:29 13 other than --

13:59:33 14 MR. LEWIN: Actually, before we go there, Jim,

13:59:45 15 I'd like to offer Exhibits 117 and 118 into evidence.

13:59:51 16 MR. SHAPIRO: 117 hasn't even been talked about.

13:59:54 17 MR. LEWIN: I know.

13:59:55 18 MR. SHAPIRO: So no.

13:59:57 19 ARBITRATOR WALL: 118?

13:59:59 20 MR. SHAPIRO: 118 is the one we just looked at.

13:59:59 21 MR. LEWIN: Offer that into evidence.

13:59:59 22 ARBITRATOR WALL: Right.

14:00:03 23 MR. GERRARD: I have no objection to 118.

14:00:06 24 ARBITRATOR WALL: 118 will be admitted.

14:00:08 25 (Exhibit 118 was admitted into evidence.)

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14:00:08 1 BY MR. LEWIN:

14:00:09 2 Q. Take a look at Exhibit 122. That is your answer

14:00:14 3 and affirmative response in the arbitration. I just

14:00:22 4 want you to tell me -- I just want -- I'm just going to

14:00:24 5 have you look at that and tell me it was always your

14:00:28 6 claim -- you know what? I'm going to withdraw that.

14:00:33 7 ARBITRATOR WALL: All right.

14:00:33 8 MR. LEWIN: Your Honor, I've got Mr. Gerety here.

14:00:37 9 I can't finish this. I have a bunch of exhibits to go

14:00:40 10 through. Not that much more testimony, except to

14:00:45 11 authenticate exhibits and things.

14:00:46 12 ARBITRATOR WALL: Okay. Well, maybe we can get a

14:00:48 13 stipulation to some of those exhibits.

14:00:49 14 MR. LEWIN: (Inaudible) a stipulation. It seems

14:00:49 15 to me that there are some things I'd have to go through.

14:00:54 16 I think I'd offer -- suggest we take Gerety out of

14:00:57 17 order.

14:00:57 18 ARBITRATOR WALL: And what? Finish Mr. Bidsal in

14:00:59 19 a month?

14:01:00 20 MR. LEWIN: We'll finish him --

14:01:02 21 MR. GERRARD: That's very prejudicial to us. You

14:01:05 22 know that.

14:01:05 23 ARBITRATOR WALL: I don't think that's fair. I'd

14:01:07 24 rather finish Mr. Bidsal.

14:01:12 25 MR. LEWIN: Well, so what I'd like to see, if we

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14:01:18 1 can, I have a --

14:01:18 2 ARBITRATOR WALL: If there's exhibits we can get

14:01:21 3 a stipulation to, I would encourage that.

14:01:24 4 MR. GERRARD: We just don't understand the

14:01:26 5 relevance, and that's the problem. We just -- we don't

14:01:28 6 understand why they're here.

14:01:31 7 MR. LEWIN: These have to do -- these

14:01:33 8 Exhibits 117, 118 which is in now, 123, 124.

14:01:44 9 MR. GERRARD: So these are E-mails between you

14:01:47 10 and Jim Shapiro?

14:01:48 11 MR. LEWIN: That's right.

14:01:50 12 MR. GERRARD: Which neither of you have the

14:01:52 13 ability to testify to authenticate.

14:01:54 14 MR. LEWIN: Well, I think that's an open question

14:01:56 15 in terms of having to do with this specific issue.

14:01:58 16 ARBITRATOR WALL: One of the reasons I asked if

14:02:01 17 Mr. Garfinkle was coming was based on the earlier

14:02:05 18 representation that you might want to testify as a

14:02:08 19 witness. Now, I already kind of nixed that in the

14:02:12 20 motion practice, as I recall.

14:02:14 21 MR. LEWIN: But you said that you'd keep it open

14:02:17 22 depending on --

14:02:17 23 ARBITRATOR WALL: Correct.

14:02:17 24 MR. LEWIN: The only thing -- the only reason

14:02:19 25 why --

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14:02:20 1 ARBITRATOR WALL: So there's got to be an Page 817
14:02:22 2 attorney here to handle that witness.
14:02:25 3 MR. LEWIN: I'm not -- the only issue -- the only
14:02:26 4 issue that I would be deposing to say I sent this letter
14:02:29 5 or received this letter. That's it. There's no other
14:02:33 6 testimony about that.
14:02:33 7 ARBITRATOR WALL: All right. So -- so --
14:02:34 8 MR. LEWIN: That's the only person -- that's the
14:02:35 9 only reason why that I was listed. These have to do
14:02:47 10 with tender issues.
14:02:55 11 MR. GERRARD: That's fine.
14:02:58 12 MR. SHAPIRO: Wait. What's fine?
14:03:01 13 MR. GERRARD: It's fine that we'll say that
14:03:02 14 they're authentic.
14:03:04 15 MR. SHAPIRO: I'm not sure what all he's asking
14:03:06 16 to get in. That's my problem.
14:03:08 17 ARBITRATOR WALL: So let's kind of walk through.
14:03:12 18 You said 117. Right?
14:03:15 19 MR. LEWIN: 117.
14:03:15 20 MR. SHAPIRO: Okay. Hold on. So again, some of
14:03:16 21 the problem that I have is that this is an Email that
14:03:18 22 talks about a different lawsuit.
14:03:21 23 MR. LEWIN: But what it talks about is that CLA
14:03:26 24 made a demand that no distributions be made. Jim
14:03:31 25 responded -- Jim responded that the two members -- there

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14:03:38 1 were two member distributions and there's no reason that

14:03:39 2 they're going to continue to make distributions.

14:03:42 3 MR. GERRARD: You have that in evidence.

14:03:44 4 Mr. Bidsal already testified to that.

14:03:44 5 MR. LEWIN: Right.

14:03:46 6 MR. GERRARD: So what's the purpose?

14:03:48 7 MR. LEWIN: The purpose is that this is -- this

14:03:50 8 is now -- this is now continuing. There's a number of

14:03:54 9 different issues.

14:03:56 10 MR. GERRARD: We can stipulate that there have --

14:03:57 11 we've continued to make distributions until the judge

14:04:01 12 told us to stop.

14:04:02 13 ARBITRATOR WALL: On motion.

14:04:04 14 MR. GERRARD: Right.

14:04:04 15 ARBITRATOR WALL: And that was part of the --

14:04:05 16 MR. GERRARD: So if we can dispense with all

14:04:06 17 that --

14:04:06 18 MR. LEWIN: So you'll stipulate that CLA demanded

14:04:09 19 that Mr. Bidsal not make any distributions?

14:04:15 20 MR. GERRARD: We'll stipulate that you disagreed

14:04:16 21 about whether there should be distributions. That's

14:04:17 22 what we're going to stipulate to. If you don't like

14:04:20 23 that, then go ahead.

14:04:21 24 ARBITRATOR WALL: One at a time, please.

14:04:23 25 MR. LEWIN: The issue is CLA demanded no

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14:04:27 1 distributions be made. Mr. Bidsal continued to make

14:04:32 2 distributions over CLA's objection, and that those

14:04:36 3 distributions continued until you were told to stop.

14:04:40 4 MR. GERRARD: No. We're not stipulating to that.

14:04:43 5 We're not --

14:04:43 6 MR. SHAPIRO: That's not what this Email says.

14:04:47 7 MR. GERRARD: We're not stipulating to the way

14:04:47 8 you framed the issue. What we'll stipulate to is that

14:04:47 9 the parties stated their disagreement on whether

14:04:54 10 distributions should continue, and distributions

14:04:54 11 continued because of that disagreement until the judge

14:04:55 12 ruled on that motion. That's what we'll stipulate to.

14:04:56 13 MR. LEWIN: The distributions remain over CLA's

14:05:04 14 objections.

14:05:05 15 MR. GERRARD: No, I didn't say that.

14:05:05 16 ARBITRATOR WALL: There's a disagreement. What's

14:05:05 17 the difference to me, because I'm the only one that has

14:05:05 18 to consider this?

14:05:05 19 MR. GERRARD: That's right.

14:05:05 20 ARBITRATOR WALL: So we have a stipulation that

14:05:07 21 there was a disagreement regarding whether distribution

14:05:11 22 should continue after August of 2017. But distributions

14:05:15 23 did continue until stopped by order of the arbitrator.

14:05:20 24 MR. LEWIN: Okay.

14:05:21 25 ARBITRATOR WALL: Got that. What's next?

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14:05:22	1	MR. LEWIN: Well, that takes care -- that	Page 820
14:05:23	2	actually takes care of --	
14:05:27	3	ARBITRATOR WALL: You don't need 117. 122 is the	
14:05:30	4	pleading in the first arbitration proceeding.	
14:05:34	5	MR. LEWIN: Yes. I withdraw that.	
14:05:36	6	ARBITRATOR WALL: All right. What else do you	
14:05:38	7	need Mr. Bidsal to authenticate is the main question?	
14:05:48	8	MR. LEWIN: No. 125, you did receive this.	
14:06:03	9	MR. SHAPIRO: And I don't know one way or	
14:06:03	10	another, so can we just do that one?	
14:06:03	11	MR. LEWIN: I'll just ask.	
14:06:03	12	BY MR. LEWIN:	
14:06:03	13	Q. Did you receive Exhibit 125, Mr. Bidsal?	
14:06:04	14	ARBITRATOR WALL: That looks like a different --	
14:06:07	15	what Bate number is on your 125?	
14:06:10	16	THE WITNESS: 000112.	
14:06:20	17	MR. SHAPIRO: See, and mine is 202, so I'm not	
14:06:20	18	sure. What's your's, Rod?	
14:06:22	19	MR. LEWIN: 0112.	
14:06:22	20	ARBITRATOR WALL: What number?	
14:06:22	21	MR. LEWIN: 0112.	
14:06:22	22	ARBITRATOR WALL: Mine is 0112.	
14:06:26	23	MR. SHAPIRO: And it's just the one page?	
14:06:29	24	MR. LEWIN: Yes.	
14:06:31	25	ARBITRATOR WALL: Okay.	

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14:06:31 1 BY MR. LEWIN:

14:06:31 2 Q. Did you receive this, sir?

14:07:03 3 A. I wouldn't know just by looking at it.

14:07:07 4 Q. Take a look at Exhibit 126.

14:07:14 5 A. Okay.

14:07:19 6 Q. Does that refresh your recollection?

14:07:21 7 A. That's for a different LLC. That's for Country

14:07:27 8 Club.

14:07:27 9 Q. But it talks about -- it talks about the over

14:07:46 10 distribution here. Are you responding on this letter of

14:07:50 11 December 28th to Mr. Golshani's December 26th letter to

14:07:57 12 you?

14:07:58 13 MR. GERRARD: Judge, I'm sorry. We've already

14:08:03 14 stipulated to this issue, so I don't know why we're

14:08:06 15 going through this. And this letter does not relate to

14:08:08 16 this case or this LLC.

14:08:10 17 MR. LEWIN: This has not to do with

14:08:13 18 distributions. It has to do with over distributions.

14:08:13 19 MR. GERRARD: Doesn't matter. Doesn't have

14:08:15 20 anything to do with this company.

14:08:18 21 ARBITRATOR WALL: 125 does. 126 doesn't.

14:08:21 22 MR. LEWIN: My question was is 126 -- is he

14:08:26 23 responding to 125?

14:08:28 24 ARBITRATOR WALL: You can answer that.

14:08:29 25 A. I wouldn't know just by looking at it.

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14:08:33 1 ARBITRATOR WALL: All right. Page 822

14:08:33 2 BY MR. LEWIN:

14:08:33 3 **Q. Take a look at Exhibit 137, please.**

14:08:38 4 ARBITRATOR WALL: 137?

14:08:39 5 MR. LEWIN: Yeah.

14:08:42 6 ARBITRATOR WALL: That's going to maybe be in a

14:08:45 7 different book.

14:08:46 8 MR. SHAPIRO: This goes to the issue of what I

14:08:49 9 thought we bifurcated.

14:08:55 10 ARBITRATOR WALL: 137? My 137 is a one-page

14:09:06 11 Email from June of 2019.

14:09:09 12 MR. SHAPIRO: Is that what you're referencing,

14:09:09 13 Rod?

14:09:09 14 MR. LEWIN: Yes.

14:09:13 15 ARBITRATOR WALL: Bates 247.

14:09:15 16 MR. LEWIN: It's a June 30, 2019 Email asking for

14:09:19 17 the tax returns -- the 2018 tax returns.

14:09:23 18 ARBITRATOR WALL: Okay. Can we stipulate to the

14:09:24 19 authenticity of this or did you want to ask questions

14:09:28 20 about it?

14:09:28 21 MR. LEWIN: No, I don't want to.

14:09:33 22 THE WITNESS: I'm sorry. 130 --

14:09:37 23 MR. SHAPIRO: 137.

14:09:41 24 ARBITRATOR WALL: Mr. Gerrard or Mr. Shapiro?

14:09:44 25 MR. SHAPIRO: I don't know if we can stipulate

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14:09:44 1 because I don't know if --

14:09:48 2 MR. GERRARD: We don't know if he received it.

14:09:48 3 BY MR. LEWIN:

14:09:48 4 Q. Did you receive this Email, sir?

14:09:50 5 A. I probably did.

14:09:57 6 MR. LEWIN: Move to admit it into evidence.

14:09:59 7 ARBITRATOR WALL: All right. 137. Any

14:10:01 8 objection?

14:10:01 9 MR. GERRARD: No.

14:10:02 10 (Exhibit 137 was admitted into evidence.)

14:10:02 11 BY MR. LEWIN:

14:10:03 12 Q. Isn't it true, Mr. Bidsal, that from time to time

14:10:05 13 over the years Mr. Golshani has complained about not

14:10:09 14 receiving the tax returns for Green Valley in a timely

14:10:13 15 manner?

14:10:13 16 A. He sent E-mails.

14:10:15 17 Q. Yes or no?

14:10:16 18 A. He sent E-mails, yes.

14:10:18 19 Q. And as a matter of fact, he never received --

14:10:21 20 isn't it true he told you that he's not receiving tax

14:10:24 21 returns from Jim Main. He's only getting them from you?

14:10:28 22 A. No. He didn't say that.

14:10:29 23 Q. Take a look at Exhibit 138 --

14:10:31 24 A. Okay.

14:10:32 25 Q. -- which is an Email dated -- it's addressed to

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14:10:41 1 Jim Main dated August 20th. Did Mr. Golshani discuss
14:10:44 2 this Email with you?
14:10:45 3 A. No.
14:10:49 4 Q. Take a look at Exhibit 139, which is an Email
14:10:58 5 chain between you and Mr. Golshani on August 20th.
14:11:06 6 Mr. Golshani is saying, "Shawn, please forward me the
14:11:10 7 tax returns that our CPA Emailed you regarding Green
14:11:16 8 Valley." This is on August 20, 2019.
14:11:16 9 You say, "I do not have an electronic. I've
14:11:20 10 already mailed them to you. If you want, I can scan
14:11:24 11 them and send them to you."
14:11:25 12 And he says -- he asks you, "All CPAs prepare tax
14:11:31 13 returns electronically. Is there any reason why
14:11:34 14 Mr. Main did not do so?"
14:11:35 15 Did you ever respond to that?
14:11:37 16 A. To the last Email?
14:11:39 17 Q. Yeah.
14:11:40 18 A. I would not know.
14:11:41 19 MR. LEWIN: I move to offer Exhibit 139 into
14:11:45 20 evidence.
14:11:46 21 MR. SHAPIRO: No objection.
14:11:48 22 ARBITRATOR WALL: 139 will be admitted.
14:11:51 23 (Exhibit 139 was admitted into evidence.)
14:11:51 24 BY MR. LEWIN:
14:11:51 25 Q. Take a look at Exhibit 142. Again, did Mr. -- do

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14:12:05 1 you know -- did Mr. Golshani discuss this Email with you
14:12:08 2 that he sent to Mr. Main?
14:12:11 3 A. No.
14:12:22 4 MR. LEWIN: So I'd like to jump ahead and take a
14:13:10 5 look at 164. Will you stipulate that comes into
14:13:14 6 evidence, 164, 165, and 166?
14:13:18 7 MR. GERRARD: Aren't these responses that were
14:13:20 8 sent in this case?
14:13:24 9 MR. LEWIN: Yeah.
14:13:25 10 MR. GERRARD: I mean, obviously we don't have any
14:13:27 11 problem with those.
14:13:28 12 ARBITRATOR WALL: All right. So 165, 166 -- no,
14:13:31 13 164, 165, 166.
14:13:31 14 MR. LEWIN: Right.
14:13:33 15 ARBITRATOR WALL: All right. All right.
14:13:35 16 MR. LEWIN: 184.
14:13:38 17 ARBITRATOR WALL: Hold on. Hold on. Hold on.
14:13:55 18 164, '5, and '6. 184?
14:13:59 19 MR. LEWIN: Yes.
14:14:00 20 ARBITRATOR WALL: Which is?
14:14:01 21 MR. LEWIN: The order and judgment.
14:14:04 22 MR. SHAPIRO: Do you have the order staying that
14:14:06 23 judgment in this case?
14:14:07 24 MR. LEWIN: It's coming.
14:14:08 25 MR. SHAPIRO: So as long as the order staying,

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14:14:12 1 then I'll stipulate to the order granting.

14:14:12 2 MR. LEWIN: 184 is in?

14:14:13 3 ARBITRATOR WALL: 184 is in.

14:14:17 4 MR. SHAPIRO: And what's the order staying?

14:14:19 5 MR. LEWIN: I'm coming to it.

14:14:19 6 MR. SHAPIRO: Okay.

14:14:22 7 MR. LEWIN: I've got all the agreements in here.

14:14:22 8 ARBITRATOR WALL: I mean, I'm aware. I've seen

14:14:25 9 the order staying, so it's not as though anyone is in

14:14:32 10 harm's way as a result.

14:14:33 11 MR. LEWIN: 187.

14:14:33 12 MR. GERRARD: Just trying to make a complete

14:14:36 13 record.

14:14:36 14 ARBITRATOR WALL: I understand.

14:14:37 15 What?

14:14:37 16 MR. LEWIN: 187.

14:14:38 17 MR. SHAPIRO: That's which arbitration brief?

14:14:41 18 This arbitration brief?

14:14:41 19 MR. LEWIN: No, the initial.

14:14:45 20 ARBITRATOR WALL: Mine's only the first two

14:14:47 21 pages.

14:14:47 22 MR. LEWIN: It's only the first two pages.

14:14:50 23 MR. GERRARD: Yeah. So we would object to that.

14:14:52 24 MR. LEWIN: The purpose of this is only to show

14:14:53 25 what the -- what the -- what the contentions were in

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14:14:55 1 the -- what Mr. Bidsal's contentions were.

14:14:55 2 MR. GERRARD: How can you do that with just the

14:14:57 3 first two pages?

14:14:58 4 ARBITRATOR WALL: Yeah, I'm not going to admit

14:15:00 5 that. 187 is not admitted.

14:15:06 6 MR. LEWIN: Mr. Bidsal's motion to vacate. 188.

14:15:14 7 MR. GERRARD: I don't see the reason why we have

14:15:18 8 objected to that, Jim. Do you?

14:15:20 9 MR. SHAPIRO: As long as it's the complete

14:15:22 10 document.

14:15:23 11 MR. GERRARD: Is it the complete document?

14:15:23 12 ARBITRATOR WALL: Yep.

14:15:28 13 MR. LEWIN: This has to do with the tender issue.

14:15:34 14 ARBITRATOR WALL: 188.

14:15:34 15 MR. LEWIN: And also appeal, 189.

14:15:34 16 ARBITRATOR WALL: Wait, wait, wait, wait. So

14:15:36 17 188, no objection. Right?

14:15:38 18 MR. SHAPIRO: Correct.

14:15:38 19 MR. LEWIN: Case appeal statement.

14:15:45 20 ARBITRATOR WALL: So 189 through 193.

14:15:51 21 MR. GERRARD: 189 to 193 we stipulate to those.

14:15:57 22 That's fine.

14:16:14 23 ARBITRATOR WALL: All right.

14:16:14 24 (Exhibits 164, 165, 166, 184, 188, 189, 190, 191,

14:16:29 25 192, and 193 were admitted into evidence.)

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		Page 828
14:16:29	1	MR. LEWIN: 136.
14:16:39	2	ARBITRATOR WALL: 136. The final award from
14:16:43	3	Judge Haberfeld?
14:16:53	4	MR. GERRARD: We stipulate.
14:16:58	5	ARBITRATOR WALL: Okay.
14:16:58	6	(Exhibit 136 was admitted into evidence.)
14:17:12	7	ARBITRATOR WALL: What else do you think you
14:17:14	8	might need Mr. Golshani to authenticate? I'm sorry.
14:17:20	9	Mr. Bidsal.
14:17:22	10	MR. LEWIN: Did I put in 153?
14:17:26	11	ARBITRATOR WALL: No.
14:17:27	12	MR. LEWIN: 153.
14:17:35	13	ARBITRATOR WALL: Want to ask him anything about
14:17:37	14	this?
14:17:37	15	MR. SHAPIRO: Yeah. We can't stipulate. I mean,
14:17:40	16	he can authenticate them or not. I don't know.
14:17:46	17	BY MR. LEWIN:
14:17:47	18	Q. 153, sir. It's an Email from Lida,
14:17:52	19	Mr. Golshani's assistant, to you, Danielle Pina, and
14:17:58	20	Henry asking for the 2017 tax return dated June 14,
14:18:05	21	2020.
14:18:05	22	ARBITRATOR WALL: No.
14:18:06	23	MR. LEWIN: Pardon me. It's dated September 12,
14:18:08	24	2018.
14:18:12	25	ARBITRATOR WALL: Right.

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14:18:13 1 BY MR. LEWIN:

14:18:13 2 Q. Did you receive this document?

14:18:14 3 A. I'm looking at it.

14:18:38 4 Q. Do you have any reason to believe that you didn't

14:18:41 5 receive it?

14:18:42 6 A. If you'll give me a minute to look at it, please.

14:18:46 7 ARBITRATOR WALL: You're on Exhibit 154?

14:18:49 8 MR. LEWIN: 153.

14:18:51 9 ARBITRATOR WALL: It's one page. Right?

14:18:55 10 THE WITNESS: Yes.

14:19:10 11 A. Yeah, we receive.

14:19:13 12 ARBITRATOR WALL: Any objection to 153?

14:19:17 13 MR. SHAPIRO: No.

14:19:19 14 ARBITRATOR WALL: All right.

14:19:28 15 (Exhibit 153 was admitted into evidence.)

14:19:28 16 BY MR. LEWIN:

14:19:20 17 Q. Then take a look at 154. It's an Email from Lida

14:19:31 18 to Henry. Did your company receive this? Henry was

14:19:37 19 your internal accountant. Right?

14:19:40 20 A. He was, yeah. But give me a minute to look at

14:19:44 21 it, please. This is actually addressed to Henry, so I

14:20:01 22 cannot authenticate this document.

14:20:03 23 Q. Okay.

14:20:03 24 MR. LEWIN: And then I just have one more -- just

14:20:05 25 one little final area of questioning. I feel I don't

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14:20:11 1 have much time to finish with him, but I'll do it.

14:20:15 2 ARBITRATOR WALL: You're not going to have that

14:20:17 3 in the record.

14:20:18 4 MR. LEWIN: I just --

14:20:15 5 ARBITRATOR WALL: You're not going to have that

14:20:17 6 in the record.

14:20:19 7 MR. LEWIN: I'm going to explain that. I think

14:20:21 8 that -- I think I can satisfy what I need to do with

14:20:23 9 that.

14:20:25 10 ARBITRATOR WALL: All right.

14:20:25 11 MR. LEWIN: I can satisfy what I need to do.

14:20:27 12 ARBITRATOR WALL: All right.

14:20:27 13 BY MR. LEWIN:

14:20:27 14 **Q. Let's go back to Exhibit 5. Turn to Schedule B.**

14:20:48 15 **By the way, what is your educational background?**

14:20:51 16 A. I have a bachelor of science in computer science

14:20:55 17 and mathematics.

14:20:56 18 **Q. You've read this Exhibit B carefully before you**

14:21:00 19 **signed the operating agreement?**

14:21:02 20 A. I don't know what you mean by "carefully." I

14:21:04 21 looked at it.

14:21:05 22 **Q. Did you read it?**

14:21:10 23 A. Yes.

14:21:10 24 **Q. Word for word?**

14:21:12 25 A. I read it. I don't know word by word.

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14:21:18 1 Q. You see under "preferred allocations" it says Page 831
14:21:25 2 "capital transactions"?
14:21:30 3 MR. GERRARD: That word appears in more than one
14:21:33 4 place, so where are you talking about?
14:21:37 5 MR. LEWIN: At the top under the first paragraph.
14:21:37 6 BY MR. LEWIN:
14:21:37 7 Q. It says, "Cash distributions from capital
14:21:40 8 transactions shall be distributed per the following
14:21:44 9 method between the members of the LLC."
14:21:48 10 A. Yes, I see that.
14:21:49 11 Q. Capital transactions is plural. Right?
14:21:51 12 A. Yes.
14:21:52 13 Q. And with your college education you understand
14:21:54 14 the difference between plural and singular. Right?
14:21:57 15 A. Yes.
14:21:57 16 Q. And then it says -- then it goes on. It says,
14:22:06 17 "Sale of company asset." When you read this, did you
14:22:09 18 believe that there was a word missing?
14:22:11 19 A. No.
14:22:11 20 Q. All right. And the -- you thought that that was
14:22:20 21 good grammar?
14:22:23 22 MR. SHAPIRO: Objection.
14:22:24 23 MR. LEWIN: I'll withdraw it.
14:22:34 24 ARBITRATOR WALL: Thank you.
14:22:34 25 ///

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14:22:34

1 BY MR. LEWIN:

14:22:34

2 Q. Then it goes on to say -- did you only believe

14:22:58

3 that this referred to one asset?

14:23:01

4 A. At that time, yes.

14:23:02

5 Q. Okay. So tell me -- so if you have one asset,

14:23:09

6 how could you sell a substantial portion of the one

14:23:13

7 asset? The way you understood it.

14:23:20

8 A. Yeah, you would sell all of it.

14:23:21

9 Q. Well, but then it says here at the bottom line,

14:23:23

10 it says -- you heard Mr. Wilcox testify about this

14:23:27

11 paragraph where he said he felt that "such as" meant an

14:23:30

12 example as a sale of all or a substantial portion of the

14:23:34

13 company assets. That's plural again. Right?

14:23:38

14 A. Where are you referring to now?

14:23:40

15 Q. The last line.

14:23:41

16 MR. SHAPIRO: Are you asking him what the

14:23:43

17 document reads?

14:23:45

18 MR. LEWIN: Well, no, I'm just pointing to him

14:23:46

19 about this. I was asking him.

14:23:48

20 BY MR. LEWIN:

14:23:48

21 Q. I said if you believe this only applied to one

14:23:51

22 asset, how did you sell a substantial portion of the one

14:23:55

23 asset?

14:23:57

24 A. Well, at that time --

14:23:59

25 Q. Answer my question directly.

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14:24:01	1	MR. SHAPIRO: Rob, it's either let him answer it	Page 833
14:24:03	2	or we're done.	
14:24:04	3	MR. LEWIN: I apologize. You're right.	
14:24:04	4	BY MR. LEWIN:	
14:24:04	5	Q. Did you believe you could sell a substantial	
14:24:08	6	portion of the one asset?	
14:24:09	7	A. We would sell all the assets.	
14:24:12	8	Q. When you saw that it said "substantial portion,"	
14:24:16	9	that meant all the assets?	
14:24:18	10	A. At that time, yes.	
14:24:39	11	MR. LEWIN: I'll pass.	
14:24:41	12	ARBITRATOR WALL: Redirect?	
14:24:42	13	MR. SHAPIRO: Thank you.	
14:24:42	14	FURTHER EXAMINATION	
14:24:42	15	BY MR. SHAPIRO:	
14:24:44	16	Q. Let's just touch on a few things real quick. Can	
14:24:49	17	you turn to Exhibit 137? Excuse me. I want 139.	
14:24:49	18	A. Okay.	
14:25:13	19	Q. Now, this is an Email that you previously looked	
14:25:15	20	at just a few minutes ago. Correct?	
14:25:17	21	A. Yes.	
14:25:18	22	Q. And the original Email was from Ben on	
14:25:22	23	August 20th, 2019 at 3:04 p.m. Correct?	
14:25:25	24	A. Yes.	
14:25:25	25	Q. And what was he asking for?	

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14:25:27 1 A. "Please forward to me the tax returns that the
14:25:31 2 CPA Emailed you for Country Club and Green Valley. I
14:25:36 3 need the returns electronically."

14:25:39 4 Q. Okay. And what was your response?

14:25:40 5 A. "I don't have them electronically. I already
14:25:43 6 Emailed them to you. If you want, I can scan them and
14:25:48 7 send them to you."

14:25:49 8 Q. So here Ben had made a request for a document
14:25:53 9 that you had already provided him in paper form.
14:25:56 10 Correct?

14:25:56 11 A. Yes.

14:25:56 12 Q. Was this the only time that Ben asked for
14:25:59 13 documents that you had already provided him?

14:26:02 14 A. Many times.

14:26:03 15 Q. So he asked you many times for documents that you
14:26:06 16 had already provided?

14:26:07 17 A. Yes.

14:26:07 18 Q. And this is just one example of that?

14:26:09 19 A. Yes.

14:26:09 20 Q. Going back to your testimony regarding the fact
14:26:26 21 that some of the Green -- some or all, I'm not sure --
14:26:29 22 of the Green Valley properties had been listed prior to
14:26:35 23 the time that you made your July 2017 offer, I believe
14:26:40 24 your testimony was that they had been on the market a
14:26:44 25 long time. How long had those properties been on the

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14:26:47 1 market?

14:26:51 2 A. I would say for a few years off and on.

14:26:56 3 Q. Okay. Is that at the 6 million dollar listing

14:27:02 4 price?

14:27:02 5 A. It was higher. I think it was a higher number.

14:27:13 6 We reduced it and it still didn't sell, so...

14:27:16 7 Q. Do you recall how long it was on at the 6 million

14:27:20 8 dollar price? Do you recall?

14:27:21 9 A. For many months. I don't recall exactly.

14:27:23 10 Q. Okay. Now, after you made your July 7th, 2017

14:27:26 11 offer, did you ever provide Mr. Golshani with the amount

14:27:30 12 you would be willing to pay to purchase his interest?

14:27:34 13 In other words, not just the FMV definition, but "Here's

14:27:37 14 how much I will pay you"?

14:27:39 15 A. You mean a fixed price?

14:27:42 16 Q. Yeah.

14:27:43 17 A. No.

14:27:44 18 Q. And did you ever tell Ben Golshani what you

14:27:52 19 thought he would have to pay you based upon the

14:27:57 20 5 million dollar FMV?

14:28:01 21 A. How much he pays me?

14:28:03 22 Q. Yeah. Did you ever say, "If you buy me out, this

14:28:06 23 is how much I think you're going to have to pay"?

14:28:08 24 A. I don't remember.

14:28:12 25 Q. And did Ben ever tell you what he thought you

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14:28:16 1 would have to pay if you bought him out? A specific
14:28:20 2 number?
14:28:20 3 A. One more time.
14:28:22 4 Q. Did Ben ever give you a specific number that Ben
14:28:26 5 felt you would have to pay him to buy him out?
14:28:30 6 A. No.
14:28:30 7 Q. And did Ben ever give you a specific number that
14:28:36 8 Ben felt he would have to pay to buy you out?
14:28:41 9 A. No.
14:28:42 10 Q. Did Ben ever try to complete the purchase of your
14:28:52 11 membership interest by tendering money to you or by
14:28:57 12 giving you any specific amount of money?
14:28:59 13 A. No.
14:29:00 14 Q. Have you ever done anything to prevent Ben from
14:29:18 15 paying you?
14:29:19 16 ARBITRATOR WALL: Well, okay. I mean, there's a
14:29:27 17 stay in effect at your request.
14:29:31 18 MR. GERRARD: Not of this. There's no stay of
14:29:34 19 his performing. It's a stay of the effectiveness of the
14:29:37 20 order from the earlier arbitration. Nothing's ever
14:29:42 21 stopped him from paying money to perform. Nothing.
14:29:45 22 Nothing in writing.
14:29:46 23 MR. SHAPIRO: That's the point we're trying to
14:29:48 24 make.
14:29:52 25 ARBITRATOR WALL: Okay. I mean, I'll allow the

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14:29:56 1 question.

14:29:56 2 BY MR. SHAPIRO:

14:29:56 3 Q. Have you ever done anything to prevent Ben from

14:29:59 4 paying any money to you for your membership interest?

14:30:04 5 A. No.

14:30:06 6 Q. Turn to Exhibit 9. That's not the one I wanted.

14:30:12 7 MR. SHAPIRO: Let's see. What was the 2011 GL?

14:30:21 8 What's that one? Is it 95?

14:30:22 9 ARBITRATOR WALL: It's 95.

14:30:25 10 MR. SHAPIRO: That's the one I wanted. 95.

14:30:46 11 Missed the 5 on that. 95. Exhibit 95.

14:30:49 12 BY MR. SHAPIRO:

14:30:55 13 Q. Now, this is the 2011 general ledger prepared by

14:31:00 14 American Nevada Realty. Correct? Is that correct?

14:31:07 15 A. Yes.

14:31:08 16 Q. You testified earlier that there was \$57,000 in

14:31:14 17 rent that you received from the prior owner. Was that

14:31:17 18 outside of the escrow?

14:31:18 19 A. Yes.

14:31:24 20 Q. Okay. Now, that shows up -- I'm drawing your

14:31:30 21 attention to Account No. 1 for 10,000, and

14:31:35 22 approximately -- I don't know -- 10 or --

14:31:38 23 MR. GERRARD: Give the date.

14:31:42 24 BY MR. SHAPIRO:

14:31:42 25 Q. Let's see. What is the date? July 18, 2011

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14:31:45 1 there's an entry of deposit rent from prior owner. Do
14:31:49 2 you see that?

14:31:49 3 A. Yes.

14:31:50 4 Q. Okay. Is there -- how was that -- is there any
14:31:51 5 other entry on Exhibit 11 where that was addressed as
14:31:54 6 well?

14:31:55 7 A. Yes. Second time on GL Account, 18,000 from
14:32:02 8 mortgage. American Nevada shows the same amount treated
14:32:08 9 as a principal reduction.

14:32:11 10 Q. As you sit here today, do you believe that's
14:32:14 11 correct?

14:32:14 12 A. No.

14:32:14 13 Q. Is there anything else incorrect that you can see
14:32:17 14 here as you look at it today?

14:32:19 15 A. Same GL account, Line No. 3, 34,171. That was
14:32:28 16 not the principal reduction. That was an additional
14:32:34 17 money received in the course of the operation of Green
14:32:40 18 Valley Commerce by American Nevada.

14:32:44 19 MR. SHAPIRO: All right. We'll pass the witness.

14:32:46 20 ARBITRATOR WALL: Anything else?

14:32:47 21 MR. LEWIN: Yeah. Just a couple.

14:32:49 22 FURTHER EXAMINATION

14:32:49 23 BY MR. LEWIN:

14:32:49 24 Q. By the way, this general ledger sheet, is this
14:32:51 25 part of your computer records in your office or was this

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14:32:54 1 a general ledger that was handed to you separately?

14:32:58 2 MR. SHAPIRO: This physical document was produced

14:33:01 3 by Clifton Larson Allen.

14:33:05 4 BY MR. LEWIN:

14:33:06 5 Q. Is this part of your electronic general ledger or

14:33:09 6 is this --

14:33:09 7 A. No, it's not. It's not.

14:33:11 8 Q. In other words, your general ledgers for Green

14:33:15 9 Valley are maintained by yourself, and this is you got

14:33:18 10 some additional -- you think you got some additional

14:33:20 11 documents from --

14:33:21 12 A. Yes.

14:33:22 13 Q. Are you testifying under oath that you're sure

14:33:26 14 you got these -- this general ledger from American

14:33:28 15 Nevada?

14:33:29 16 A. That's what I'm thinking, yeah.

14:33:31 17 Q. Oh, you're thinking. Do you know or are you just

14:33:32 18 speculating?

14:33:33 19 A. This is not a part -- this was not a part of our

14:33:37 20 document unless they loaded it into your GL. In other

14:33:43 21 words, we received it and then they just loaded it to

14:33:46 22 have a consistent QuickBooks. But aside from that, I

14:33:50 23 don't think so.

14:33:50 24 Q. Okay. Do you know whether or not this was loaded

14:33:52 25 into your -- into your electronic system?

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14:33:54 1 A. After ten years, I don't know.

14:34:03 2 Q. These two entries here for principal reduction,

14:34:08 3 how are those handled on the tax returns, if you know?

14:34:12 4 Do you know? I'll withdraw the question. We'll find

14:34:19 5 that out from somebody else.

14:34:18 6 MR. LEWIN: Okay. I have nothing else.

14:34:23 7 ARBITRATOR WALL: All right. Great. Let's take

14:34:25 8 ten minutes and then have Mr. Gerety ready.

14:34:30 9 ***

10 (RECESS TAKEN FROM 1:34 TO 1:49)

11 ***

12 Whereupon,

13 DANIEL GERETY, CPA,

14 having first been called as a witness, was duly sworn

15 and testified as follows:

14:49:01 16 ARBITRATOR WALL: Is it Daniel, common spelling?

14:49:05 17 THE WITNESS: Gerety, G-E-R-E-T-Y.

14:49:05 18 ARBITRATOR WALL: All right.

14:49:12 19 THE WITNESS: Common spelling for Daniel, yes.

14:49:16 20 ARBITRATOR WALL: Mr. Lewin?

14:49:20 21 MR. LEWIN: Thank you very much, Your Honor.

14:49:22 22 ARBITRATOR WALL: Did you get your lunch?

14:49:26 23 THE WITNESS: I did.

14:49:26 24 ARBITRATOR WALL: All right. There you go.

14:49:27 25 THE WITNESS: I had the chicken tacos.

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14:49:30 1 EXAMINATION

14:49:30 2 BY MR. LEWIN:

14:49:30 3 Q. Mr. Gerety, what is your current occupation?

14:49:33 4 A. I am the founder and president of Gerety &

14:49:38 5 Associates CPAs.

14:49:40 6 Q. And how long have you been doing that?

14:49:43 7 A. My firm itself I started in 2004, and prior to

14:49:50 8 that from 1982 through 2004 I was an employee or

14:49:59 9 actually a tax partner with RSM McGladrey. So I was

14:50:06 10 with them almost 23 years prior to starting my own firm.

14:50:12 11 Q. Do you have an emphasis in the tax field?

14:50:15 12 A. Yes. I do specialize in tax. Started off in

14:50:20 13 audit but switched to tax, like, back in '85. Been

14:50:23 14 specializing with that also along with gift and estate

14:50:29 15 planning, structuring deals and transactions for

14:50:29 16 clients.

14:50:34 17 Q. When you say structuring transactions, does any

14:50:34 18 of those transactions have to do with the sale and

14:50:37 19 purchase of businesses?

14:50:38 20 A. Yes. All the time.

14:50:40 21 Q. How much -- how about real estate development?

14:50:44 22 Have you had any experience in real estate development?

14:50:47 23 A. Yes. In all areas from just subdividing land,

14:50:54 24 putting in the roads, to home building to commercial

14:50:57 25 builders to the subcontractors involved. A substantial

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14:51:02 1 real estate background.

14:51:03 2 Q. Can you tell us, without revealing the names, how

14:51:08 3 many clients you have in the real estate business such

14:51:11 4 as owning and operating shopping centers?

14:51:15 5 A. Today or over my career?

14:51:17 6 Q. Over your career.

14:51:19 7 A. Oh, geez. Easily over 40. If you include farm

14:51:31 8 land and developing, there's another 200 on top of that.

14:51:37 9 Q. How many transactions have you been involved with

14:51:40 10 that dealt with the purchase or sale of a business or an

14:51:44 11 interest in a business?

14:51:45 12 A. This is a guess because I haven't kept count, but

14:51:57 13 at least 30 or more.

14:51:59 14 Q. And would you outline your educational background

14:52:03 15 for us?

14:52:03 16 A. Yes. I have my undergraduate degree from

14:52:08 17 St. Ambrose College in Davenport, Iowa with a major in

14:52:14 18 business and a major in accounting. Received my CPA.

14:52:21 19 Passed that in '81. Graduated from college in 1980 with

14:52:27 20 my undergraduate degree, and since then it's all been

14:52:32 21 lots of continuing education. I get 60 to 80 hours a

14:52:37 22 year in continuing education almost entirely in tax and

14:52:44 23 estate planning. I go to a lot of -- a lot of legal

14:52:50 24 training too when it comes to the estate and gift areas.

14:52:56 25 Tax and estate tax.

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14:52:56 1 Q. Try to keep your voice up because the court
14:52:59 2 reporter is sitting over there so she has to be able to
14:53:03 3 hear you.

14:53:03 4 A. Okay.

14:53:03 5 Q. When did you get your CPA license?

14:53:07 6 ARBITRATOR WALL: '81.

14:53:09 7 A. I passed the exam in '81. I think I got my first
14:53:13 8 license in Illinois in '82 because I passed the exam in
14:53:18 9 November of '81.

14:53:20 10 BY MR. LEWIN:

14:53:20 11 Q. Have you ever given expert testimony before?

14:53:22 12 A. Yes.

14:53:23 13 Q. And on how many occasions?

14:53:26 14 A. I haven't really kept count on that, but I've
14:53:32 15 testified in court probably four times, and involved as
14:53:41 16 an expert probably 20 times I would think. It's on my
14:53:48 17 CV. I just haven't looked.

14:53:53 18 MR. LEWIN: Your Honor, I'd like to offer his CV
14:53:56 19 into evidence.

14:53:58 20 ARBITRATOR WALL: What number?

14:53:59 21 MR. LEWIN: I think that will be 202.

14:54:01 22 MR. SHAPIRO: Are you saying next in line?

14:54:01 23 MR. LEWIN: Next in line. I don't think -- it's
14:54:04 24 not in the book.

14:54:07 25 THE WITNESS: I've been designated as a special

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14:54:10 1 master for the court probably three or four times.

14:54:16 2 ARBITRATOR WALL: Any objection to 202?

14:54:18 3 MR. GERRARD: Yes. We have an objection to it.

14:54:20 4 We've objected to all hearsay documents coming from

14:54:24 5 expert reports, which a CV is. He can testify to his

14:54:28 6 qualifications.

14:54:31 7 ARBITRATOR WALL: I don't know that I really need

14:54:33 8 his CV.

14:54:34 9 MR. GERRARD: And we're fine with his

14:54:36 10 qualifications.

14:54:37 11 ARBITRATOR WALL: You're not challenging him, his

14:54:44 12 qualifications to testify?

14:54:44 13 MR. GERRARD: No. I think he's qualified.

14:54:45 14 ARBITRATOR WALL: All right.

14:54:45 15 BY MR. LEWIN:

14:54:45 16 **Q. Do you sit on any boards or the chapter of any**

14:54:52 17 **CPA societies?**

14:54:54 18 A. Chapters of what?

14:54:54 19 **Q. Do you sit on the board of any CPA societies?**

14:54:54 20 A. Yes. I sit on the boards. I sit on a lot of

14:54:58 21 boards, actually. In that particular, I sit on the

14:55:01 22 Southern Nevada CPA Society board. I have sat on the

14:55:06 23 tax committee for the Nevada CPA Society. I also sat on

14:55:11 24 the board for STEP, which is the Society of Trust and

14:55:17 25 Estate Professionals. In the past I've sat on the board

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14:55:21 1 for the Southern Nevada Planning Council. Past
14:55:25 2 president of that.
14:55:27 3 MR. LEWIN: So he's accepted as an expert, Your
14:55:31 4 Honor?
14:55:31 5 ARBITRATOR WALL: They're not challenging his
14:55:33 6 qualifications.
14:55:35 7 MR. LEWIN: Okay.
14:55:35 8 BY MR. LEWIN:
14:55:35 9 **Q. What was your assignment in this case?**
14:55:37 10 A. I was engaged to really review the operating
14:55:44 11 agreement, look at the prior returns, determine how
14:55:49 12 allocations had been made over the years that the entity
14:55:55 13 was in existence, and then also to determine what the
14:56:00 14 sales price would be under the -- based on the operating
14:56:05 15 agreement and calculate, you know, the fair market
14:56:11 16 value, COP, capital that go into that calculation.
14:56:16 17 **Q. So you looked into whether or not cash had been**
14:56:21 18 **distributed properly?**
14:56:22 19 A. I did.
14:56:22 20 **Q. And you were asked to determine whether -- were**
14:56:29 21 **you asked to determine anything with respect to the**
14:56:34 22 **operating agreement in terms of the special allocation**
14:56:37 23 **and distribution (inaudible)?**
14:56:39 24 A. Yes, I was.
14:56:40 25 **Q. So have you formed any opinions in this matter?**

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14:56:42

1 A. I have.

14:56:42

2 Q. Can you tell His Honor what those are?

14:56:45

3 A. Well, my opinion has been that the company has

14:56:51

4 not followed the operating agreement in determining the

14:56:57

5 allocation of income and profits and in determining the

14:57:01

6 amount of distributions that should be paid each year in

14:57:08

7 particular.

14:57:13

8 Q. Were you also asked to look at whether income was

14:57:19

9 posted as ordinary income as opposed to capital

14:57:22

10 transactions?

14:57:23

11 A. That was part of determining whether the income

14:57:26

12 had been allocated properly, so yes.

14:57:29

13 Q. And you looked into whether -- did you make any

14:57:33

14 opinions as to whether or not the proceeds from the

14:57:36

15 sales -- of the three sales of property were properly

14:57:39

16 distributed and recorded?

14:57:40

17 A. I did issue an opinion on that.

14:57:42

18 Q. And did you -- were you asked to render an

14:57:46

19 opinion on whether or not when the waterfall special

14:57:50

20 allocation was triggered?

14:57:52

21 A. Yes.

14:57:52

22 Q. Okay. So what documents did you look at in order

14:58:02

23 to form your opinion?

14:58:03

24 A. Initially I looked at the operating agreement to

14:58:06

25 determine what its terms were, and then I went through

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14:58:12 1 all the tax returns because there was a good summary of
14:58:16 2 the -- what took place because it was all reported on
14:58:20 3 the tax returns, what the distributions were, what types
14:58:24 4 of income was reported.

14:58:27 5 And then I looked at the GLs for some of the
14:58:30 6 years, especially 2011 when the deed of lieu or
14:58:41 7 foreclosure took place to see what transactions came
14:58:46 8 into cash. And then laid out a spreadsheet saying --
14:58:48 9 you know, that identified in one column here's what was
14:58:51 10 reported on the tax returns for income allocations and
14:58:55 11 distributions, and then set another column as the way I
14:58:59 12 thought it should be based on my interpretation of the
14:59:03 13 operating agreement and then compared the two.

14:59:07 14 **Q. Let's turn to the operating agreement. That's**
14:59:11 15 **Exhibit 5.**

14:59:13 16 A. Okay.

14:59:25 17 **Q. Did you read this entire operating agreement?**

14:59:27 18 A. I did.

14:59:28 19 **Q. In particular, were there any portions of this**
14:59:31 20 **agreement that you focused on?**

14:59:33 21 A. Yes. I mean, there was a number of sections that
14:59:40 22 I looked at carefully.

14:59:45 23 **Q. What sections are those?**

14:59:47 24 A. I can go through. I looked at -- the first part
15:00:07 25 is -- looked at Section 3 of the operating agreement,

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15:00:14 1 the right of first refusal for sales of interest to

15:00:18 2 members. I also looked at --

15:00:28 3 **Q. Are you talking about Section 3 but it's numbered**

15:00:33 4 **Section 4 at the bottom?**

15:00:33 5 A. Yes, right. Yeah, article -- the sections are

15:00:40 6 messed up. The title of that starts at Section III and

15:00:45 7 then it goes everything underneath it is Section IV.

15:00:49 8 **Q. What other sections did you look at?**

15:00:55 9 A. I looked at -- again, it starts with Section III,

15:01:05 10 IV, and V, but it's under the heading of distribution of

15:01:10 11 profits.

15:01:11 12 MR. GERRARD: Can you give us a page number?

15:01:13 13 It's easier.

15:01:17 14 THE WITNESS: Yes. Bates stamp is Bidsal 12,

15:01:22 15 Page 12 of the operating agreement.

15:01:24 16 A. So I looked at --

15:01:26 17 BY MR. LEWIN:

15:01:27 18 **Q. What about that section were you interested in?**

15:01:30 19 A. So on -- first is to determine how profits -- you

15:01:34 20 know, and so forth. So profits says, "Shall be

15:01:38 21 distributed to the members from time to time permitted

15:01:41 22 under law." And then it provides that "by the manager,

15:01:48 23 provided, however, that all distributions shall be in

15:01:51 24 accordance with Exhibit B attached hereto."

15:01:55 25 I looked at the record date Section IV which says

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15:01:59 1 that the record date for determining members who are
15:02:02 2 entitled to receive payment of any distribution of
15:02:06 3 profits shall be the day on which the manager adopts the
15:02:11 4 resolution for payment of a distribution of profits.

15:02:15 5 **Q. Before you go on, did you ever see any resolution**
15:02:17 6 **by the manager --**

15:02:18 7 A. No.

15:02:19 8 **Q. -- in this case?**

15:02:21 9 **Okay. Keep going.**

15:02:23 10 A. And then there's some more a few sentences after
15:02:24 11 that. But then also it says participation -- Section V,
15:02:30 12 "Each member's participation in the distribution shall
15:02:33 13 be in accordance with Exhibit B, subject to the tax
15:02:38 14 provisions of Exhibit A."

15:02:39 15 **Q. Okay. So what did you understand "subject to the**
15:02:42 16 **tax provisions of Exhibit A" meant?**

15:02:44 17 A. Well, that, for instance, if there was a -- if
15:02:52 18 there were losses that reduced members' capital accounts
15:02:59 19 below zero, Exhibit A is going to say, well, those have
15:03:04 20 to be restored as quick as possible. There's a
15:03:06 21 restoration clause in there which is all following Code
15:03:09 22 Section 704 or to make sure the operating agreement had
15:03:13 23 substantial economic effect.

15:03:16 24 But it was where the provisions of really
15:03:17 25 Section 1.704-1 could override the normal allocation

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15:03:22 1 potentially if that ever came into play, so that's where
15:03:29 2 it would override the allocations under the operating
15:03:33 3 agreement. And that's where -- but generally that
15:03:36 4 wouldn't -- didn't happen during the operation of this.

15:03:42 5 **Q. So anything else in this section that you felt --**

15:03:49 6 A. In looking at Exhibit B, it's also saying that
15:03:52 7 you have to, you know, look at the tax provisions of
15:03:56 8 Exhibit A. And so I think it's part of the
15:04:00 9 interpretation of Exhibit B.

15:04:02 10 **Q. Let's take a look at Exhibit A. What is the**
15:04:17 11 **purpose of Exhibit A?**

15:04:19 12 A. Exhibit A is actually very important. It has all
15:04:24 13 the tax provisions in there, and especially with a
15:04:29 14 limited liability company where there is no capital
15:04:34 15 restoration requirements, again, you're looking at Code
15:04:40 16 Section 704.

15:04:42 17 To kind of make it simple, the IRS can totally
15:04:46 18 disregard the operating allocations, the operating
15:04:49 19 agreements and allocations to partners if they do not
15:04:53 20 have substantial economic effect. And that's a two-part
15:04:57 21 test. First, it has the economic effect. Second, it
15:05:01 22 needs to be substantial.

15:05:05 23 This is providing all these tax provisions in
15:05:08 24 here to make sure that it complies with the Internal
15:05:13 25 Revenue Code. And the general rule that partnerships

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15:05:16 1 complied with 704 was they said if a member's capital
15:05:21 2 account ever went below zero, you would have to restore
15:05:25 3 that capital, which meant you never had limited
15:05:29 4 liability because if the company went bankrupt and there
15:05:33 5 was debt in excess of the value of the assets, all of
15:05:35 6 the members would have negative capital accounts and the
15:05:39 7 creditors could force you to restore those negative
15:05:43 8 capital accounts.

15:05:44 9 So when limited liabilities came into law, when
15:05:47 10 those became a new thing in -- what was that -- the '90s
15:05:50 11 I think, actually a lot of attorneys were still putting
15:05:55 12 in capital restoration clauses in their agreements, and
15:06:00 13 finally everybody started to learn that, you know,
15:06:01 14 you've got to change that. And the IRS issued
15:06:04 15 regulations that said, well, if you're not going to have
15:06:09 16 capital restoration, then you need to make sure that on
15:06:16 17 liquidation, one of the exceptions is that distributions
15:06:21 18 are allocated in accordance with the capital accounts so
15:06:25 19 that you never -- somebody doesn't get more and you end
15:06:29 20 up with somebody with a negative capital account after
15:06:33 21 your distributions.

15:06:35 22 And otherwise, the allocations of income don't
15:06:38 23 have an effect. They need to have an effect on the
15:06:41 24 capital accounts, and they need to have an effect on the
15:06:46 25 rights that the members have on what they receive from

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15:06:50 1 the entity.

15:06:51 2 And there's other -- there's minimum gain rules

15:06:53 3 in here and -- but this tells you how to treat the

15:06:58 4 capital accounts to keep it in compliance with the regs

15:07:03 5 and to track what's owed to each partner. And that's

15:07:07 6 really what the capital accounts are doing is keeping

15:07:11 7 track of if the company liquidated. Say it sold

15:07:15 8 everything for book value. You would get what your

15:07:18 9 capital account is if there was no gain or loss on the

15:07:22 10 sale.

15:07:22 11 Q. So you listened in on the cross-examination of

15:07:27 12 Mr. Wilcox yesterday. Right?

15:07:29 13 A. Right.

15:07:30 14 Q. And he talked about the difference between

15:07:32 15 allocations and distributions. Did you agree with what

15:07:36 16 he said?

15:07:36 17 A. No. It's poss- -- well, no, I did not in a

15:07:44 18 number of parts. Some of the stuff I did agree with.

15:07:47 19 Other parts I didn't. It's possible you can have

15:07:54 20 distributions be different than the profit allocations.

15:07:59 21 It is possible.

15:08:01 22 ARBITRATOR WALL: You're talking generally?

15:08:04 23 THE WITNESS: Generally. Yes. I'm speaking

15:08:07 24 generally.

15:08:07 25 A. But in the end you've got to come back to

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15:08:12 1 everybody's going to get their share of their capital.
15:08:15 2 And his interpretation of the allocations would cause
15:08:23 3 one member's capital account to go below zero because he
15:08:28 4 would be getting distributions of principal payments on
15:08:31 5 the note would be distributed 50/50.

15:08:36 6 So for instance, if, say, they never acquired the
15:08:43 7 building, if it was just that installment note. If they
15:08:46 8 distributed everything 50/50, Mr. Bidsal would end up
15:08:51 9 with a negative capital account because he would get
15:08:55 10 50 percent of the principal payments on the note. When
15:08:57 11 the note was paid off, CLA would end up with a positive
15:09:03 12 capital account and Bidsal would end up with a negative
15:09:08 13 capital account.

15:09:09 14 If you just took the capital -- say they kept
15:09:10 15 that note for 20 years and they made monthly payments.
15:09:15 16 There's no substantial economic effect to the
15:09:18 17 allocations because you end up with somebody with a
15:09:22 18 negative capital account that never gets restored.

15:09:28 19 BY MR. LEWIN:

15:09:28 20 **Q. That's the purpose of Exhibit B?**

15:09:31 21 A. It is. That is why Exhibit B is there.

15:09:33 22 **Q. It is permissible to have -- to allocate income**
15:09:38 23 **and losses 50/50 and allocate some distributions 70/30**
15:09:49 24 **pursuant to the waterfall. Is that correct?**

15:09:52 25 A. That is correct. You can have preferred

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15:09:54 1 allocations. You can have -- you can have capital gains
15:09:58 2 get allocated this way. You can have ordinary it gets
15:10:01 3 allocated this way. As long as it has some substantial
15:10:04 4 economic effect.

15:10:05 5 You can't say that ordinary income gets allocated
15:10:09 6 to this guy only and capital gains gets to this guy if
15:10:13 7 in the end they end up with the same amount. You can't
15:10:17 8 try to use different tax brackets of the partners
15:10:21 9 because that would mean that that really doesn't have a
15:10:24 10 substantial economic effect. But it does have a
15:10:28 11 substantial economic effect if you say ordinary income
15:10:36 12 is distributed 50/50 and capital transactions are 70/30
15:10:41 13 if up -- you know, as long as in the end the partners
15:10:43 14 come out with a zero balance when everything is
15:10:46 15 liquidated.

15:10:47 16 **Q. So is there a definition in Exhibit A of what**
15:10:50 17 **constitutes a capital transaction?**

15:10:52 18 A. In Exhibit A?

15:10:54 19 **Q. Talking about Exhibit A.**

15:10:59 20 A. Not -- it describes capital accounts. It
15:11:03 21 doesn't -- there's no specific definition of capital
15:11:10 22 transaction per se. It does say that -- let me see
15:11:24 23 here. It does say each member's distributive share of
15:11:33 24 income, gain/loss deduction credit of that company as
15:11:37 25 shown on the federal tax return is finally determined

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15:11:44 1 under the Internal Revenue Code and courts, etc., etc.,
15:11:51 2 shall be allocated. But it never actually says capital
15:11:56 3 transaction. It never really defines it.

15:11:59 4 Q. Let's turn to -- we've gone through this Exhibit
15:12:06 5 A in some detail.

15:12:08 6 A. Okay.

15:12:09 7 Q. Exhibit A, the part that starts with the section
15:12:19 8 labeled 1.1, capital accounts, but it shows 4.1 down to
15:12:25 9 4.1.4, that just -- that just describes how the capital
15:12:32 10 accounts are going to be maintained. Right?

15:12:35 11 A. Correct.

15:12:35 12 Q. Then you go to Section V, and this has to do with
15:12:40 13 allocations of profits and losses and the accounting
15:12:48 14 methods. What is the intent of this section?

15:12:50 15 A. This is the big one. It's telling you, first,
15:12:53 16 that the income gain/loss deductions shall be allocated
15:12:58 17 among the members of the portions of their percentage
15:13:00 18 interest as set forth in Exhibit B, subject to the
15:13:01 19 preferred allocation schedule in Exhibit B except for
15:13:12 20 items of loss or deduction allocated to other members
15:13:17 21 pursuant to this Section 2.1, which I don't think came
15:13:22 22 into play, if I remember right.

15:13:24 23 ARBITRATOR WALL: I don't see a 2.1.

15:13:30 24 THE WITNESS: Well, they mean 5.1. Sorry.

15:13:35 25 ARBITRATOR WALL: They do?

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15:13:35 1 THE WITNESS: Everywhere they use 2., that's my
15:13:39 2 belief, yes, subject to the provisions of 2.1.2 through
15:13:48 3 2.1. --
15:13:48 4 ARBITRATOR WALL: 11.
15:13:50 5 THE WITNESS: Right. I believe they're referring
15:13:51 6 to Section 5.1.2. It's the only way that it's going to
15:13:55 7 make sense. And it does. It reads. It flows right.
15:13:59 8 So when you see in -- because they changed the --
15:14:05 9 they cut and paste and didn't change the section numbers
15:14:08 10 in drafting this.
15:14:10 11 BY MR. LEWIN:
15:14:10 12 **Q. Is it fair to say that when you were reviewing**
15:14:12 13 **this, document you saw a lot of typographical errors?**
15:14:17 14 MR. GERRARD: Objection. Leading.
15:14:20 15 ARBITRATOR WALL: What? Go ahead.
15:14:21 16 MR. GERRARD: I'll withdraw the objection.
15:14:25 17 ARBITRATOR WALL: All right.
15:14:25 18 A. Yeah, if you look at my copy of this operating
15:14:28 19 agreement, I wrote in off to the side in red this should
15:14:31 20 be Section 5.1. This should be -- and then it makes
15:14:34 21 sense if you put in the right section numbers. Because
15:14:42 22 to make it follow 704, the regs under 704, it needs
15:14:48 23 these. Subject to these 5.12, 5.13 minimum gain
15:14:54 24 chargeback, qualified income offset. All of those are
15:14:55 25 in there to require that the allocations have

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15:15:02 1 substantial economic effect.

15:15:03 2 Q. There's a section here that's called

15:15:06 3 "appreciation recapture" on Page 24?

15:15:09 4 A. Yes.

15:15:10 5 Q. Now, the way Mr. Wilcox explained it was that if

15:15:19 6 there was depreciation, that depreciation, it should be

15:15:22 7 allocated to the -- let me ask you: How does

15:15:28 8 depreciation -- let's say there's a depreciation of

15:15:30 9 100,000 in a year. How is that depreciation allocable?

15:15:33 10 A. The depreciation reduces the ordinary income.

15:15:37 11 And so it's the depreciation reduces the ordinary income

15:15:43 12 from operations. That gets allocated 50/50. The

15:15:48 13 depreciation gets allocated 50/50. On the sale of a

15:15:54 14 capital asset, then you're looking at Schedule B for

15:15:58 15 that waterfall allocation. And to make it fair, that's

15:16:01 16 what this paragraph is for, is if the capital gain got

15:16:06 17 allocated 70/30, there's a mismatch because depreciation

15:16:12 18 originally was taken 50/50, and now when we're picking

15:16:15 19 up the gain, part of that gain is from the depreciation

15:16:20 20 that was taken in previous years because it reduced the

15:16:24 21 basis.

15:16:25 22 And so this provision right here is saying that

15:16:27 23 on the gain where depreciation was taken in prior years,

15:16:31 24 we need that portion of the gain has to be allocated

15:16:35 25 based on how that depreciation was originally allocated

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15:16:39 1 in those prior years, so the deduction they took for
15:16:43 2 depreciation 50/50, any gain because of that should be
15:16:48 3 allocated 50/50.

15:16:49 4 Q. So in other words, it gets reallocated to -- the
15:16:51 5 depreciation on the sale when it's recaptured gets
15:16:56 6 reallocated the way it was originally taken. Is that
15:17:00 7 the essence of what you said?

15:17:02 8 A. That's correct.

15:17:02 9 Q. And you've got some opinions about depreciation
15:17:06 10 in this case we're going to get to. Is that correct?

15:17:09 11 A. Well, it's -- I mean, it's just --

15:17:13 12 Q. We don't have to get to them now. I want to go
15:17:17 13 through this. When it says "5.1: Each member's
15:17:26 14 distributive share of income, gain, deduction or credit
15:17:31 15 or items thereof of the company as shown in the annual
15:17:33 16 federal income tax return prepared by the company's
15:17:37 17 accountants," does that have somewhere anything to do
15:17:43 18 with the distributions that are made that have to match
15:17:46 19 up with the income tax return or what?

15:17:50 20 A. Well, actually, under this agreement the
15:17:54 21 distributions should follow -- are kind of following the
15:17:59 22 income allocations because it specifically states that
15:18:05 23 the ordinary income, which is allocated 50/50 to the
15:18:09 24 partners, should be distributed 50/50. Then the capital
15:18:14 25 gains, if it's a capital transaction, then that goes

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15:18:20 1 under Exhibit B and should flow to that where it'll get
15:18:25 2 allocated. The proceeds from any capital transaction
15:18:29 3 gets 70/30 because the individuals put that in as 70/30,
15:18:34 4 and the gains would follow.

15:18:36 5 That is my interpretation of the separating
15:18:41 6 agreement is if there are gains from capital
15:18:44 7 transactions that follow the distributions and so they
15:18:47 8 match until -- and they'll still always match but, it's
15:18:55 9 70/30 until the capital accounts get reduced to zero,
15:18:59 10 and then any capital transactions after that are split
15:19:03 11 50/50.

15:19:04 12 **Q. Okay. So let's now turn to Exhibit B, which is**
15:19:09 13 **the subject of a lot of controversy in this case. It's**
15:19:20 14 **on Page 28. Is there a definition of capital**
15:19:26 15 **transactions in this Exhibit B?**

15:19:29 16 A. No.

15:19:29 17 **Q. If there's no definition of a capital transaction**
15:19:34 18 **but that's something that's important on the operating**
15:19:39 19 **agreement, what do the members do? What controls?**

15:19:43 20 A. Well, I look at just what the general definition
15:19:46 21 of a capital transaction is and under common English
15:19:52 22 definitions. And so I see a capital transaction as
15:19:59 23 distribution in excess of profits. It's a capital
15:20:03 24 transaction. It's a return of capital. It's the same
15:20:07 25 as if it was a corporation, an LLC. It's no different.

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15:20:12 1 Like, on a corporation, if you had a dividend
15:20:14 2 that was in excess of earnings of profits, that's a
15:20:18 3 return capital, and it's reported as such on the 1099
15:20:23 4 DIV. And the same applies here. And, you know, they're
15:20:32 5 bickering corporate kind of law in the agreement with
15:20:33 6 saying that distributions are only due to the members
15:20:36 7 when they were declared. Just like a dividend. If you
15:20:40 8 sell stock, if you were an owner of that stock at the
15:20:43 9 time the dividend was declared but not payable until
15:20:46 10 later, you can collect it. But if you sold the stock
15:20:51 11 after the date of record of the -- you don't get the
15:20:53 12 dividend that's due to the shareholders.

15:20:56 13 **Q. Is a sale of a piece of real property a capital**
15:21:01 14 **transaction?**

15:21:02 15 A. Yes.

15:21:03 16 **Q. Is a -- if there's -- Mr. Wilcox said that you**
15:21:08 17 **were trying to impose the IRS definition of what a**
15:21:13 18 **capital transaction is. Is that true?**

15:21:17 19 A. Not impose it. I mean, it's a capital
15:21:21 20 transaction under the IRS code, but it's also a capital
15:21:26 21 transaction just under general accounting rules.

15:21:29 22 **Q. So let's go through this. On the first page on**
15:21:33 23 **the first paragraph it says, "Cash distributions from**
15:21:37 24 **capital transactions shall be distributed per the**
15:21:41 25 **following method between the members of the LLC." How**

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15:21:46 1 did you interpret that?

15:21:47 2 A. Just like it reads. I think it's clear. Cash

15:21:50 3 distributions from capital transactions shall be

15:21:54 4 distributed to the members per the following method, and

15:21:58 5 you've got this waterfall method.

15:22:01 6 Q. The next sentence says, "Upon any refinancing and

15:22:08 7 upon the sale of company asset, cash is distributed

15:22:11 8 according to the stepdown allocation." Do you have any

15:22:15 9 opinion about that sentence?

15:22:18 10 A. Yeah. I mean, to put in -- I read it as in

15:22:26 11 addition, if there's a refinancing event, that's not

15:22:30 12 necessarily a capital event. That's a borrowing event

15:22:34 13 or sale of a company or the sale of company asset, which

15:22:42 14 I'm not sure -- that's kind of strange wording, but cash

15:22:46 15 is distributed.

15:22:47 16 So -- and the sale of a company asset isn't

15:22:53 17 necessarily a capital transaction. You could sell

15:22:57 18 inventory. That's an ordinary -- that's -- inventory in

15:23:01 19 stock, that's not considered capital. That would be --

15:23:05 20 create ordinary income.

15:23:07 21 Q. This company is in the real estate business.

15:23:09 22 A. I understand that, but if you're just reading how

15:23:12 23 you interpret this, actually, they started developing

15:23:24 24 real estate. Actually developed it. That would be

15:23:28 25 inventory because real estate developers and real estate

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15:23:31 1 is not capital. It's inventory.

15:23:35 2 Q. When you read "upon the sale of company asset,"
15:23:36 3 did you think a word was missing?

15:23:41 4 A. Yeah, I did. I mean, I thought there should be
15:23:54 5 like an "a" in front of "company asset."

15:23:54 6 Q. I notice that --

15:23:56 7 A. I also kind of -- as I read it I put in in
15:23:58 8 addition, you know, "cash distributions from capital
15:24:02 9 transactions shall be distributed per the following
15:24:05 10 method between the members of the LLC." And because
15:24:08 11 this is a complete sentence, how I interpret that is in
15:24:14 12 addition to.

15:24:17 13 Q. Now, looking at the second -- and then you have
15:24:20 14 the -- you have the stepdown allocation which is
15:24:24 15 sometimes called a waterfall. Right?

15:24:26 16 A. Correct.

15:24:26 17 Q. In your experience is this -- when there's
15:24:29 18 disproportionate capital contributions, is this type of
15:24:34 19 waterfall common or uncommon?

15:24:36 20 A. It's very common and I see it a lot in my
15:24:39 21 clients. And actually, I've got one real estate
15:24:42 22 developer that every time there's different capital. He
15:24:48 23 sends these to me. Actually -- I actually helped the
15:24:52 24 attorneys write these sections. So I've actually helped
15:24:56 25 draft some of these waterfall provisions.

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15:24:58
15:25:01
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15:26:07
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1 **Q. The purpose of this is to get the capital**
2 **transactions to get the capital contributions back to**
3 **the -- back to the members?**

4 A. Yeah. There's usually a preferred distribution
5 to the person who put in more capital because he's got
6 the biggest risk. He needs to get back down to even to
7 where capital accounts at some point in time become
8 50/50 if it's a 50/50 partnership.

9 **Q. The claim has been made that the words "the sale**
10 **of company asset" indicates that the stepdown allocation**
11 **only occurs when there's a liquidation. Essentially a**
12 **liquidation of the company.**

13 A. And so, I mean, in that case there would be --
14 you know, take the example of if they kept the note and
15 just collect the payments until the note was paid off,
16 there would be nothing left on liquidation. So how do
17 you equal out the capital accounts? Or take if they
18 held the property for 30 years and continued to take
19 depreciation every year. At the end of -- say, at the
20 end of the life of the asset, you've got one partner
21 with a negative capital account. If you assume that
22 this never gets triggered -- if you assume this never
23 gets triggered, you're always going to end up in the
24 end, if they continue this, with somebody with negative
25 capital because he's getting distributions in excess of

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15:26:40 1 the profits allocated to him. And that's what was
15:26:42 2 happening, and that's why his capital account was going
15:26:44 3 below 30 percent is Mr. Bidsal was receiving
15:26:47 4 distributions in excess of the profits that were
15:26:50 5 allocated to him.

15:26:51 6 Q. When we look at the second-to-last paragraph
15:26:54 7 where it says, "Cash distribution of profits from
15:26:57 8 operations shall be allocated and distributed 50 percent
15:27:00 9 to Shawn Bidsal and 50 percent to CLA Properties," and
15:27:14 10 then dropping down one more it says -- it describes what
15:27:18 11 cash distribution of profits is supposed to mean. It
15:27:22 12 says, "It's the express intent of the parties that cash
15:26:56 13 distribution of profits refers to distribution generated
15:27:27 14 from operations resulting in ordinary income in contrast
15:27:30 15 to cash distributions arising from capital transactions
15:27:32 16 or nonrecurring events such as a sale of all or a
15:27:36 17 substantial portion of the company's assets or cash out
15:27:40 18 financing."

15:27:43 19 So first of all, you heard Mr. Wilcox describe
15:27:46 20 what ordinary income was. Do you agree with that?

15:27:50 21 MR. GERRARD: Your Honor, I have to object to the
15:27:52 22 question. Counsel read a whole bunch of the agreement
15:27:56 23 and then stated what it meant in his opinion. So
15:28:00 24 basically he was testifying. And then he asked a
15:28:03 25 different question. So he's leading and he's misstating

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15:28:06 1 the document and he's testifying.

15:28:08 2 ARBITRATOR WALL: Well, I'm going to kind of
15:28:09 3 ignore the part you read if your question to the witness
15:28:14 4 isn't related to what you read.

15:28:16 5 MR. LEWIN: It is. I was just trying to focus
15:28:18 6 his attention on this. I'm going to be asking him
15:28:20 7 questions about it.

15:28:20 8 ARBITRATOR WALL: Okay. But you didn't just
15:28:20 9 focus his attention. You read the whole paragraph. But
15:28:23 10 all right. Next question.

15:28:24 11 MR. LEWIN: Okay.

15:28:24 12 BY MR. LEWIN:

15:28:24 13 **Q. But the question is: Did you hear how Mr. Wilcox**
15:28:27 14 **described ordinary income?**

15:28:32 15 A. He was describing the ordinary income something
15:28:38 16 that was in excess of ordinary income. He contradicted
15:28:41 17 himself. He said depreciation reduced ordinary income.
15:28:45 18 And then he said that ordinary income that gets split
15:28:49 19 50/50 doesn't include depreciation. It's the cash flow
15:28:53 20 from operations.

15:28:54 21 So he was -- he was saying that because all the
15:28:55 22 cash flow from operations should be distributed 50/50,
15:29:01 23 is what he testified to, if I understood him correctly,
15:29:04 24 and it says in this operating agreement it is the
15:29:08 25 express intent to the parties that cash distributions of

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15:29:13 1 profits refuted -- first distributions generated from
15:29:14 2 operations resulting in ordinary income.

15:29:18 3 And so in resulting in ordinary income -- and he
15:29:20 4 testified that depreciation reduces ordinary income but
15:29:25 5 then ignored the depreciation deduction and said it
15:29:29 6 should be just cash distribution from operations whether
15:29:35 7 or not it results in ordinary income.

15:29:37 8 **Q. Ordinary income is different than cash flow?**

15:29:42 9 A. Yes.

15:29:43 10 **Q. Because ordinary income is reduced by**
15:29:46 11 **depreciation and maybe some other things. Is that**
15:29:49 12 **correct?**

15:29:49 13 A. That is correct.

15:29:50 14 **Q. Okay. And according to -- in ordinary income**
15:30:03 15 **when you read the balance of this paragraph, how did you**
15:30:07 16 **interpret provisions that says, "...arising from capital**
15:30:11 17 **transaction or nonrecurring events such as sale of all**
15:30:15 18 **or a substantial portion of the company's assets or cash**
15:30:22 19 **on financing"?**

15:30:23 20 A. Well, it's -- it's -- I read it as -- I mean,
15:30:25 21 especially when it starts with "the express intent," I'm
15:30:30 22 saying that is saying this is how you interpret all of
15:30:34 23 this up above. And then it says -- you know, so this is
15:30:39 24 what profits are that are allocated 50/50.

15:30:44 25 It is distributions generated from operations, so

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15:30:51 1 basically cash flow generated from operations resulting
15:30:55 2 in ordinary income in contrast to cash distributions or
15:31:00 3 you could just say cash that arises from capital
15:31:03 4 transactions. And then there's an "or," so
15:31:12 5 non-reoccurring events. Because there could be
15:31:16 6 non-reoccurring events that generate cash that are not
15:31:17 7 necessarily a capital transaction.

15:31:20 8 And then they -- well, I guess they're defining
15:31:22 9 non-reoccurring event such as a sale of all or
15:31:26 10 substantial. But again, "such a sale of" is an example,
15:31:31 11 not all inclusive.

15:31:33 12 And he was reading that that that's the only way
15:31:36 13 you have a capital transaction, and which I totally
15:31:40 14 disagree with, and that's not how it reads. It
15:31:44 15 specifically says "or" and says "such as," which means
15:31:51 16 there could be many other examples. It doesn't -- it
15:31:54 17 could be a single asset. We're just saying that's just
15:31:57 18 one example.

15:31:58 19 **Q. The word "or" how do you interpret the word "or"?**

15:32:03 20 A. I interpret the word "or" as it could be this or
15:32:08 21 something completely different.

15:32:10 22 **Q. And again, so you heard -- at one point Mr.**

15:32:25 23 **Wilcox said that -- he basically said that this**

15:32:29 24 **waterfall is not triggered unless there's a capital**

15:32:33 25 **transaction, and capital transaction is not triggered by**

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15:32:38 1 a sale of one or two or three properties.

15:32:42 2 A. I did hear him say that.

15:32:44 3 Q. Do you have an opinion as to if Mr. Bidsal was

15:32:48 4 supposed to get 50 percent of the profits from the

15:32:54 5 cash flow, 50 percent of the profits from everything,

15:32:58 6 not only operations, why would you have this definition

15:33:02 7 that says he's only getting it from operations resulting

15:33:07 8 in ordinary income?

15:33:09 9 A. The operating agreement doesn't work if you

15:33:12 10 interpret it the way that Chris does it. He even

15:33:16 11 testified that it didn't work. He was testifying that

15:33:19 12 "Well, we're going to do these things even though

15:33:22 13 they're not right to make it somewhat fair." You know,

15:33:26 14 like a partial distribution of the proceeds from a sale

15:33:30 15 of a building.

15:33:32 16 Q. Okay. Do you think that -- other than the part

15:33:37 17 that says "sale of company asset," do you think that the

15:33:47 18 interpretation that the waterfall is not triggered

15:33:52 19 unless there's a sale -- basically a sale of all of the

15:33:55 20 assets is reasonable?

15:33:58 21 A. No, that's not.

15:34:03 22 Q. Now, you read the business of the -- of this LLC

15:34:09 23 was to buy and manage real estate. That was the

15:34:13 24 business as it was so stated. Right?

15:34:15 25 A. Yeah. I believe so. I don't remember exactly

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15:34:19 1 what the exact wording was.

15:34:21 2 Q. The agreement says it's effective as of June 15,
15:34:27 3 2011, but the agreement actually wasn't signed until
15:34:30 4 December 2011. Does having the effective date as of
15:34:36 5 June 15th have any bearing on how -- the application of
15:34:40 6 this Exhibit B?

15:34:42 7 A. I do not believe so.

15:34:44 8 Q. Okay. So let's get down to your specifics. You
15:34:51 9 have created a number of schedules. Is that correct?

15:34:53 10 A. Yes. That is correct.

15:34:55 11 Q. And by the way, we'd like to go through your
15:35:00 12 opinions or you can explain them to His Honor so the
15:35:05 13 rest of us understand what your opinions are and how you
15:35:07 14 calculated them. So let's take -- let's take -- what
15:35:13 15 kind of schedules did you prepare in connection with
15:35:16 16 this?

15:35:16 17 A. I had an exhibit that was part of my report,
15:35:25 18 actually. I added some just to help you reconcile it to
15:35:31 19 the tax returns.

15:35:33 20 Q. Can we take a look at Exhibit 200?

15:35:37 21 MR. LEWIN: Do you have 200, Your Honor?

15:37:06 22 ARBITRATOR WALL: And where is that here?

15:37:06 23 BY MR. LEWIN:

15:37:06 24 Q. What is Exhibit 200?

15:37:10 25 A. So Exhibit 200 is really the first thing I did in

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15:37:17 1 analyzing -- it's updated, but I went through the tax
15:37:23 2 returns, looked at the income reported, and then made --
15:37:30 3 in the first columns -- you don't have -- I'm looking at
15:37:35 4 the first three columns. It says "Per tax return." At
15:37:40 5 the top is the numbers really right off the tax returns
15:37:45 6 that were filed with the IRS.

15:37:47 7 And then the next three columns over where it
15:37:51 8 says underneath should be "Per operating agreement" is
15:37:57 9 how I believe everything should have been allocated
15:38:01 10 based on my interpretation of the operating agreement.
15:38:04 11 And then I show what the differences are in
15:38:10 12 distributions that were made.

15:38:16 13 The last few columns is just if you wanted to
15:38:21 14 reconcile all these numbers to the tax return, it tells
15:38:26 15 you where on the tax return they go. It's more of a
15:38:30 16 cross reference. So, you know, capital contributions,
15:38:34 17 you know, that's -- everybody agrees with that. There's
15:38:35 18 no -- I don't think there's any discrepancy as to what
15:38:39 19 was originally contributed to the members.

15:38:44 20 The rental income -- and that's what was reported
15:38:45 21 as ordinary income on the tax return, which is cash flow
15:38:51 22 from operations reduced by depreciation.

15:38:54 23 And then there was interest reported on the tax
15:38:56 24 return, and I broke that up and there's some controversy
15:39:02 25 with that.

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15:39:11 1 So the interest, that was the rent payments that
15:39:16 2 were assigned -- the rent that was collected by the
15:39:24 3 previous owner assigned -- that were assigned for
15:39:28 4 payments on the note, and according to the deed in lieu
15:39:32 5 of foreclosure, it said that those would be applied to
15:39:36 6 interest for these periods. Part of the period was
15:39:41 7 before Green Valley Commerce purchased the note. Part
15:39:46 8 of the payment was after.

15:39:49 9 So I broke that interest out before and after
15:39:54 10 Green Valley Commerce acquired the note. So part of it
15:39:57 11 was accrued interest they purchased. Not earned but
15:40:02 12 purchased. To me, that's an asset in a capital
15:40:08 13 transaction. And then the interest earned after they
15:40:12 14 acquired the note was interest they earned on carrying
15:40:16 15 the note and should be split 50/50.

15:40:19 16 So the first column shows the interest both parts
15:40:28 17 being allocated 50/50, the first three columns of
15:40:31 18 numbers. The second three columns of numbers will show
15:40:35 19 the interest earned after 6/3/11 being split 50/50, and
15:40:41 20 the interest received and payment of interest they
15:40:45 21 bought being split 70/30.

15:40:51 22 And then the distributions that follow. Profit
15:40:56 23 distributions are split 50/50, so that's the rental
15:41:00 24 income and the interest earned after 6/11. That's what
15:41:04 25 those distributions total. And that's all that.

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15:41:09 1 And then any distributions in excess of the
15:41:12 2 profits for the company. The ordinary income earned
15:41:18 3 from operations. Any distributions in excess of that is
15:41:22 4 a return of capital, and they distributed more money
15:41:25 5 than the income they received. And so that's a return
15:41:28 6 of capital, and it was distributed 50/50 in the first
15:41:32 7 year. And per the operating agreement, that return of
15:41:35 8 capital in my opinion is a capital transaction and
15:41:39 9 should be allocated 70/30.

15:41:42 10 **Q. Let me stop you there and then I'm going to let**
15:41:45 11 **you continue. You said that they distributed more money**
15:41:49 12 **than they received? What do you mean?**

15:41:51 13 A. I didn't say received. Earned. They distributed
15:41:54 14 more than their ordinary income. Part of that is they
15:42:04 15 received principal payments on the note during the year.
15:42:08 16 There was, like, around 82,000 that was booked as
15:42:11 17 principal payments on the note that reduced the note
15:42:15 18 balance. There was -- depreciation obviously reduces
15:42:20 19 ordinary income but doesn't reduce cash. So that's part
15:42:25 20 of why you have cash flow in excess of ordinary income.

15:42:34 21 **Q. And where did you find the -- where did you**
15:42:35 22 **locate the 82,000?**

15:42:37 23 A. Off the GL, general ledger. There's two
15:42:39 24 transactions. There was one before the deed of
15:42:42 25 foreclosure, 50-some thousand. I don't remember the

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15:42:47 1 exact numbers, but it was like 50-some thousand that
15:42:50 2 Green Valley Commerce received from the lender as
15:42:52 3 payment on the note, and that's how it was applied, and
15:42:55 4 it was applied just to principal.

15:42:57 5 And then in the closing, even though the closing
15:43:02 6 said they only got 360,000 or whatever that number was
15:43:08 7 on the escrow statement, they actually received more.
15:43:11 8 Part of the escrow statement said they had -- they would
15:43:14 9 receive the deposits from tenants. That was included in
15:43:23 10 the 300 figure, and then they also got it from the
15:43:27 11 property manager because the property manager was
15:43:29 12 holding the cash for those. I'm assuming. I don't know
15:43:32 13 that for a fact. But it appeared to me that the
15:43:35 14 property manager must have been holding those deposits
15:43:40 15 because there was a deposit for the exact amount of --
15:43:41 16 in the bank account for the exact amount of rent
15:43:45 17 deposits that they held that was on the escrow
15:43:47 18 statement. So they got that twice.

15:43:49 19 And then there was -- and then the difference
15:43:51 20 that was allocated to interest, you know, they
15:43:55 21 received -- of the money they received from the
15:44:01 22 borrower, they allocated -- what was it -- 311,000 or
15:44:06 23 something in that area to interest. Yeah, 3 -- yeah, it
15:44:13 24 was over 300,000 into interest. And then the balance
15:44:17 25 they allocated to principal, which makes up the

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15:44:20 1 difference. So there were two principal payments booked Page 874
15:44:25 2 on the general ledger.
15:44:27 3 **Q. Let's take a look at that general ledger.**
15:44:40 4 MR. LEWIN: Let me get the exhibit number here.
15:44:44 5 ARBITRATOR WALL: 95, I think.
15:44:47 6 BY MR. LEWIN:
15:44:47 7 **Q. Take a look at Exhibit 95.**
15:44:49 8 A. Okay. Where is 95?
15:44:52 9 **Q. It should be in Book No. 1, the black book**
15:44:55 10 **numbered 1.**
15:44:56 11 A. This one? Okay. This only goes to 45 though.
15:45:03 12 Oh, here it is. Here it is. I got it right here. I'll
15:45:11 13 make sure mine matches.
15:45:13 14 **Q. Would you please -- we talked about this \$82,000.**
15:45:17 15 **Please identify on this general ledger where that came**
15:45:21 16 **from.**
15:45:21 17 A. Okay. On this general ledger you have -- I'll
15:45:25 18 show you where you can see it nice and easy. If you
15:45:28 19 look at the second account, which is account 18,000,
15:45:31 20 says, "Mortgage American Nevada." You see the beginning
15:45:36 21 balance is \$4,049,250, and then you see on 7, June 18th,
15:45:51 22 2011 a deposit/principal reduction escrow proceed
15:45:54 23 \$57,546. Then on September 23rd, 2011, you see
15:46:01 24 principal reduction escrow proceed 34,171. That's
15:46:10 25 actually 90 -- yeah, that's actually -- what -- 91,000

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15:46:13 1 is what that totals.

15:46:22 2 Q. So as a principal deduction under Schedule B, how
15:46:29 3 should that money be distributed?

15:46:31 4 A. Again, it's -- it's a return of capital, a return
15:46:34 5 of their investment, and it should be allocated 70/30.

15:46:54 6 There were other items that they allocated to
15:46:57 7 income that I'm not sure should have been, but I just
15:47:00 8 left it the way the tax return was reported.

15:47:03 9 Q. Okay. So Mr. Bidsal has claimed that he didn't
15:47:07 10 prepare this ledger. This came from the property
15:47:10 11 manager of American Nevada and that Mr. Wilcox has
15:47:18 12 claimed that recording of the \$311,000 as interest was
15:47:23 13 an error. You saw that -- that these items all occurred
15:47:31 14 before the tax returns?

15:47:33 15 A. Correct.

15:47:34 16 Q. And Mr. Wilcox said it was an error?

15:47:37 17 A. Correct. I did hear him say that.

15:47:39 18 Q. First of all, do you agree it was an error,
15:47:42 19 number one? And number two, even if it was an error,
15:47:46 20 does that affect the economics of whether or not there
15:47:49 21 was a principal reduction?

15:47:50 22 A. It does affect the economics. I -- originally
15:47:55 23 when I looked at this, I believed it was an error was my
15:47:59 24 first impression in looking at the information and
15:48:02 25 actually agreed that it should have been treated as

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15:48:06 1 principal and all of it being split 70/30 instead of
15:48:11 2 part of it.

15:48:12 3 But then after looking at the deed in lieu of
15:48:16 4 foreclosure, I saw that there was this assignment of
15:48:19 5 rents, and this was rents that were really property of
15:48:22 6 the previous owner collected, earned by the previous
15:48:28 7 owner. Their rental income but it was assigned for
15:48:31 8 payments on the note.

15:48:33 9 Now, granted the assignment agreement said that
15:48:36 10 the lender could apply that assignment -- if they were
15:48:40 11 in default, they could apply it any way they wanted,
15:48:44 12 against expenses or against the debt, but the deed in
15:48:48 13 lieu of foreclosure specifically said it was applied to
15:48:53 14 interest.

15:48:54 15 Now, the IRS -- because I researched this at
15:48:57 16 first because I thought it was wrong. And I agreed with
15:48:58 17 Chris and I thought the posting of it as interest was
15:49:01 18 incorrect. But I disagree with him. It's not rent. It
15:49:04 19 should have been a principal payment. The IRS in their
15:49:08 20 audit manual --

15:49:08 21 MR. GERRARD: Your Honor, I have to object to
15:49:11 22 this testimony because this goes beyond the scope of
15:49:12 23 anything in his report. There's nothing in his report
15:49:15 24 that says anything about what he's testifying to right
15:49:18 25 now.

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15:49:18 1 ARBITRATOR WALL: Mr. Lewin?

15:49:18 2 MR. LEWIN: He's also designated to comment on

15:49:22 3 Mr. Wilcox's testimony.

15:49:27 4 ARBITRATOR WALL: That's fine. He gave a

15:49:27 5 rebuttal report. He doesn't have the right to go beyond

15:49:28 6 what is in the rebuttal report.

15:49:30 7 MR. LEWIN: He did refer to --

15:49:32 8 MR. GERRARD: To an audit manual from the IRS?

15:49:36 9 No.

15:49:36 10 MR. LEWIN: Referring to an audit manual doesn't

15:49:36 11 mean --

15:49:36 12 ARBITRATOR WALL: Well, he's testified about --

15:49:36 13 MR. LEWIN: Wait, please.

15:49:36 14 ARBITRATOR WALL: I'm sorry.

15:49:37 15 MR. LEWIN: The fact that he's testifying about

15:49:39 16 an audit manual is something that forms a basis for his

15:49:43 17 opinion. He doesn't necessarily have to lay out every

15:49:47 18 basis for his opinion or what books or records that he

15:49:52 19 relates to.

15:49:52 20 ARBITRATOR WALL: But it's not just some sort of

15:49:53 21 corollary learned treatise. He's just testified that

15:49:57 22 I -- initially I agreed with this and then I looked at

15:50:01 23 this audit manual, which is where we are.

15:50:05 24 THE WITNESS: No.

15:50:05 25 ARBITRATOR WALL: So hold on. The floor is mine

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15:50:08 1 right now.

15:50:09 2 THE WITNESS: I apologize.

15:50:11 3 ARBITRATOR WALL: And so to the extent it's a

15:50:13 4 commentary on Mr. Wilcox's testimony, I assume there was

15:50:17 5 a rebuttal report. Right?

15:50:19 6 MR. LEWIN: Mr. Wilcox's, as I objected to during

15:50:24 7 his testimony, went far beyond -- he went far beyond the

15:50:28 8 strict confines of his report.

15:50:30 9 ARBITRATOR WALL: I don't think I allowed that.

15:50:32 10 MR. GERRARD: That's exactly right. He gave his

15:50:35 11 opinions and he gave the basis of his opinions. And

15:50:37 12 this is not an opinion that was expressed in any report,

15:50:41 13 rebuttal or otherwise. This is something he came up

15:50:43 14 with yesterday after he listened to Chris's testimony

15:50:48 15 and he's trying to rebut the testimony.

15:50:51 16 ARBITRATOR WALL: Okay. I don't have the report

15:50:52 17 and the rebuttal report. Do you agree that

15:50:56 18 audit -- what was it -- IRS audit --

15:51:00 19 MR. SHAPIRO: Manual.

15:51:01 20 ARBITRATOR WALL: -- audit manual is not

15:51:02 21 referenced in the report or the rebuttal report?

15:51:07 22 MR. LEWIN: Why don't we ask him.

15:51:10 23 THE WITNESS: The audit report is not mentioned

15:51:12 24 in any report of mine.

15:51:16 25 ARBITRATOR WALL: Okay. Then I'm going to

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15:51:16 1 sustain the objection.

15:51:20 2 THE WITNESS: So I'll continue.

15:51:21 3 MR. GERRARD: I don't think he should be

15:51:23 4 continuing anything. His answer is now based upon some

15:51:26 5 other investigation that he supposedly did after he did

15:51:26 6 his report, so --

15:51:28 7 MR. LEWIN: That's not -- that's not --

15:51:28 8 ARBITRATOR WALL: You're going to ask him another

15:51:31 9 question, and his conclusions have to be and the

15:51:33 10 opinions he gives have to be the ones that are in his

15:51:36 11 original and rebuttal reports.

15:51:40 12 BY MR. LEWIN:

15:51:40 13 Q. Are your opinions with respect to this interest

15:51:43 14 issue --

15:51:46 15 A. They agree with my report.

15:51:46 16 Q. Pardon me?

15:51:46 17 A. They agree with my report.

15:51:48 18 ARBITRATOR WALL: You got to let him finish for

15:51:51 19 her benefit.

15:51:52 20 BY MR. LEWIN:

15:51:52 21 Q. My question is: Are your conclusions and

15:51:53 22 opinions that you're going to be stating about the

15:51:56 23 interest -- this interest issue solely relying on the

15:52:01 24 audit report or do you have independent -- do you have

15:52:03 25 other things that you refer to in your audit report --

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1 in your report that support it?

2 A. I actually took an opinion contrary to the audit
3 report. So that's -- I said initially I thought --

4 MR. GERRARD: Again, Judge, he hasn't actually
5 asked the question, so we don't know. He's just asking
6 does it conform with --

7 MR. LEWIN: Well, he was --

8 ARBITRATOR WALL: Hold on. This all has to do
9 with the treatment of the \$311,000 in interest. Right?
10 Okay. The opinions that you're going to give that
11 you're giving today regarding how that should be
12 treated, how it should have been treated, how it was
13 treated are contained within either your initial report
14 or your rebuttal report. Right?

15 THE WITNESS: Yes, they are.

16 MR. GERRARD: And I haven't objected to any of
17 those as he's already expressed those opinions. It's
18 just the new stuff that I objected.

19 ARBITRATOR WALL: All right. So let's ask a new
20 question. I sustain the objection.

21 MR. LEWIN: I almost forgot where we were.

22 BY MR. LEWIN:

23 Q. So what is your opinion regarding the treatment
24 of the opinion as stated in your report representing the
25 311,000?

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15:53:00 1 A. The opinion I state in my report was that, you
15:53:05 2 know, I treated it on my schedules as interest, and that
15:53:09 3 was based on the deed in lieu of foreclosure agreement
15:53:15 4 which specifically said that, which is why I changed my
15:53:21 5 initial thoughts was because of the deed in lieu of
15:53:24 6 foreclosure agreement.

15:53:25 7 Q. But actually, the deed in lieu of foreclosure
15:53:28 8 only refers to the money that's being transferred as
15:53:31 9 rent? Let's take a look at Exhibit --

15:53:31 10 A. Right. That's correct. That's where this
15:53:34 11 interest comes from.

15:53:35 12 Q. So -- and by the way, does an agreement that
15:53:42 13 characterizes a payment of money as one thing, is that a
15:53:46 14 binding characterization if it in fact relates to
15:53:49 15 something else?

15:53:50 16 MR. GERRARD: Objection. Calls for a legal
15:53:52 17 conclusion.

15:53:53 18 ARBITRATOR WALL: Overruled.

15:53:54 19 A. Could you repeat the question?

15:53:57 20 BY MR. LEWIN:

15:53:57 21 Q. My question is: You heard the example I gave to
15:54:00 22 Mr. Wilcox yesterday. If I earned money in Nevada -- if
15:54:06 23 I earn \$10,000 in gambling money and I pay my \$10,000
15:54:12 24 bill with him, is that a payment of an accounting bill
15:54:15 25 or is it a transfer of money?

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15:54:16 1 A. It's a payment of an accounting bill.

15:54:19 2 Q. So in terms of the description a payment of rent
15:54:21 3 in the deed of foreclosure in lieu of rent, is that
15:54:27 4 agreement binding on the IRS or anybody else?

15:54:29 5 A. Actually, in my opinion they would have to follow
15:54:32 6 the agreement or the character of what it is, and yes,
15:54:36 7 it would I think, and that's why I changed my opinion.
15:54:39 8 Because I believed even though the IRS has a position
15:54:43 9 one way, I think I could counter that position and say
15:54:48 10 it is interest and was to the benefit of Mr. Bidsal.
15:54:52 11 Because it was interest, it gets allocated. A portion
15:54:56 12 of it 50/50. If it's not interest, then it's 70/30.

15:55:02 13 Q. So what is your opinion? Tell His Honor what
15:55:05 14 exactly your opinion is with respect to the money that
15:55:07 15 was received from the former -- from the borrower.

15:55:12 16 MR. GERRARD: I'm going to object.

15:55:14 17 A. Repeat that.

15:55:15 18 BY MR. LEWIN:

15:55:15 19 Q. So I just want to make sure -- I think the
15:55:20 20 opinion is getting lost here. What exactly is -- is the
15:55:25 21 characterization that's set forth in this general ledger
15:55:29 22 of a principal reduction correct?

15:55:31 23 A. Yes.

15:55:32 24 Q. And on your schedule you actually go forward --
15:55:36 25 you have it as a return of capital. You say interest

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15:55:40 1 accrued after on Lines 4 and 5 on Exhibit 200. Interest
15:55:45 2 accrued after June 3rd. Interest accrued prior to
15:55:50 3 June 3rd. How did you come up with that calculation?
15:55:54 4 A. That I took the Email from -- what's the prior
15:56:08 5 attorney's name? LeGrand.
15:56:11 6 Q. LeGrand?
15:56:12 7 A. LeGrand. It came from an Email where he had
15:56:16 8 calculated what the amount of interest was forgiven
15:56:20 9 actually, and what happened is is it wasn't forgiven
15:56:23 10 because they received payment for it. And so I used his
15:56:29 11 calculation and how he was accruing it on a daily basis
15:56:35 12 and split it up between the accrual period shown on his
15:56:40 13 schedule.
15:56:40 14 Q. So let's assume it's not interest but it's rent.
15:56:43 15 Part of that rent would have accrued before Green Valley
15:56:48 16 purchased the note and part of the rent would have
15:56:50 17 accrued after Green Valley purchased the note. Right?
15:56:54 18 A. No. The interest would, but not the rent.
15:56:57 19 Q. Well, the deed in lieu agreement sets forth the
15:57:00 20 period for which the rent had not been paid, and part of
15:57:05 21 it is for before and part is after June 3rd?
15:57:09 22 MR. GERRARD: Again, leading.
15:57:11 23 ARBITRATOR WALL: Yeah, I mean, are you asking
15:57:13 24 him if he knows that or are you just --
15:57:17 25 ///

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15:57:17 1 BY MR. LEWIN:

15:57:17 2 Q. We can look at Paragraph 210 of Exhibit 8. What

15:57:24 3 it says here, it says the transferring -- the borrower

15:57:26 4 shall transfer to lender the amount of \$295,258.93,

15:57:36 5 which represents the net rents for the property that

15:57:38 6 have not previously been paid to lender or lender's

15:57:44 7 predecessors in interest for the period beginning

15:57:45 8 October 1, 2010 and ending September 21, 2011. There's

15:57:49 9 a friendly period before and after --

15:57:52 10 MR. GERRARD: Again, it's leading.

15:57:53 11 MR. LEWIN: Is it? But it's a fact.

15:57:57 12 MR. GERRARD: Can we not just ask the witness

15:58:00 13 what he makes out of this instead of having

15:58:03 14 Mr. Lewin give his testimony about what he thinks it is?

15:58:04 15 ARBITRATOR WALL: Let's put a question to him.

15:58:06 16 BY MR. LEWIN:

15:58:06 17 Q. How do you interpret that?

15:58:08 18 A. There was obviously rent that was assigned, and

15:58:11 19 they picked up -- when Green Valley picked up that note,

15:58:16 20 purchased that note, they also received that assignment

15:58:19 21 of rents. Some of those rents were rents earned and

15:58:24 22 paid prior to them acquiring the note. Some of those

15:58:27 23 rents were after they acquired the note, but I believe

15:58:31 24 all of the rents were prior to the transfer of property.

15:58:35 25 Q. So the question is: Does it many any -- does it

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15:58:39 1 make -- if the rents are for periods -- for the period
15:58:42 2 before June 3rd, wouldn't those still be -- would those
15:58:49 3 constitute part of the asset, part of the basis?

15:58:52 4 A. No. I think the note is what they paid and the
15:59:04 5 payment -- the assignment on those notes, until it's
15:59:07 6 collected, is -- it's a receivable. I -- I'm not sure
15:59:22 7 when they were in default.

15:59:23 8 Q. They were in default at the time they purchased
15:59:26 9 the note.

15:59:27 10 A. Were they in default at the time the rents
15:59:30 11 accrued? They must have been. Right? I don't know the
15:59:33 12 date.

15:59:33 13 Q. Assume that when they bought the note, they were
15:59:36 14 in default. There were amounts due. Would rents that
15:59:42 15 were due before they purchased the note be part of
15:59:46 16 the property that they purchased?

15:59:47 17 MR. GERRARD: Just a second. I'm not clear what
15:59:49 18 we're doing here. You're asking him to assume a
15:59:53 19 hypothetical? Is that what you're stating?

15:59:58 20 MR. LEWIN: I'm trying to --

15:59:59 21 MR. GERRARD: Well, you're telling him facts
16:00:02 22 related to this case, so if that's what you're doing,
16:00:03 23 then I'm going to say lack of foundation.

16:00:05 24 MR. LEWIN: I am taking the position that these
16:00:08 25 were rents, but they are rents for a period -- the

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16:00:13 1 period for the rents trails the purchase date. I'm just
16:00:18 2 asking if the rents is the purchase of the note.
16:00:20 3 BY MR. LEWIN:
16:00:20 4 Q. If those rents that would be for the period that
16:00:24 5 would have accrued for the period before June 3rd, would
16:00:28 6 those be considered -- the payment of those rents, would
16:00:33 7 that be considered a capital distribution?
16:00:36 8 MR. GERRARD: Payment would be considered a
16:00:39 9 distribution? Is that your question?
16:00:43 10 MR. LEWIN: Capital. Okay? A reduction in
16:00:45 11 principal.
16:00:46 12 MR. GERRARD: I'm going to object to the
16:00:47 13 question. It's vague and ambiguous. I don't understand
16:00:49 14 how payment could ever constitute a distribution.
16:00:53 15 MR. LEWIN: I rephrased it. I said could that
16:00:55 16 payment be a payment that reduces the capital.
16:01:00 17 ARBITRATOR WALL: You said reduces principal.
16:01:03 18 MR. LEWIN: Then I changed it. So it's --
16:01:04 19 ARBITRATOR WALL: No, you didn't.
16:01:04 20 MR. LEWIN: Okay.
16:01:06 21 ARBITRATOR WALL: Okay.
16:01:06 22 MR. GERRARD: Well, I'm still very confused
16:01:08 23 because a payment to a lender doesn't constitute
16:01:12 24 anything in terms of a distribution unless there is a
16:01:15 25 distribution.

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16:01:15 1 MR. LEWIN: I'll see if I can rephrase the
16:01:16 2 question better.
16:01:16 3 BY MR. LEWIN:
16:01:16 4 Q. If the borrower transferred monies that were due
16:01:20 5 and accrued and were due as of June 3rd, how would you
16:01:26 6 characterize the money that was transferred for the
16:01:28 7 period that were owed at the time the note was
16:01:32 8 purchased?
16:01:33 9 A. It was really an asset purchase, when they
16:01:36 10 purchased the note, if you really look at the detail.
16:01:40 11 That assignment was part of the purchase. They
16:01:43 12 purchased those assigned rents because with the note
16:01:47 13 they also purchase the assignment.
16:01:49 14 So you could allocate the basis of the original
16:01:54 15 purchase price of those assigned rents that accrued
16:01:58 16 prior to the purchase of the note were an asset
16:02:02 17 acquired.
16:02:04 18 Q. So this final question and I want to move on.
16:02:07 19 So on your calculation here on Lines 4 and 5,
16:02:10 20 whether it is a payment of interest or whether it is a
16:02:13 21 payment of rent that are due for a period prior to
16:02:16 22 June 3rd, 2011, does it make any difference in your
16:02:19 23 allocation?
16:02:20 24 A. No.
16:02:21 25 Q. Okay. You were explaining -- so we got down to

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16:02:27 1 return to capital, Line 7. Go on with your explanation
16:02:31 2 of Exhibit 200.

16:02:44 3 A. Okay. So I think I went through the first year,
16:02:53 4 and then the second year, 2012, you can see rental
16:03:01 5 income, which that's what's reported on the tax return
16:03:06 6 as ordinary income. That was the cash flow from
16:03:09 7 operations that resulted in ordinary income. It was,
16:03:12 8 you know, 338,854. That's split 50/50.

16:03:18 9 There was interest income on the note that -- or
16:03:21 10 not on the note. I'm not sure where the interest income
16:03:25 11 was from actually, but it was interest income earned by
16:03:27 12 the company, \$1,000. 1,034 split 50/50.

16:03:35 13 There was -- the 36,460 was reported in the GL as
16:03:43 14 a distribution, but it -- it wasn't ever distributed,
16:03:49 15 and I dug into it and looked at accountant's -- the tax
16:03:55 16 preparer's journal entries of reconciling the GL to the
16:04:00 17 books, and they were trying to reconcile the rental
16:04:05 18 manager's cash that they had on hand and they couldn't
16:04:08 19 figure out where 36,430 went. It appears and posted
16:04:15 20 it -- just plugged it to distributions that never
16:04:18 21 happened. I think those are expenses. The cash went
16:04:22 22 somewhere, but it didn't go to any of the members. So I
16:04:25 23 thought that should be booked as an expense and split
16:04:29 24 50/50.

16:04:30 25 There was a code section 481(a) adjustment. That

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16:04:35 1 was when they did the Cost Segregation Study. They
16:04:40 2 accelerated the depreciation on the property and took
16:04:43 3 additional deductions for that for prior years. That's
16:04:47 4 a depreciation expense and should be split 50/50.

16:04:52 5 And then when you add up the rents, the
16:04:56 6 missing -- subtracting missing cash, subtracting the
16:04:59 7 depreciation expense, you end up with 251,591 of cash
16:05:05 8 from operations that resulted in ordinary income that
16:05:08 9 should be distributed 50/50. That's the profit
16:05:13 10 distribution I show.

16:05:14 11 And then there is another \$180,409 in
16:05:23 12 distributions in excess of cash from operations that
16:05:26 13 resulted in ordinary income, and that is a return of
16:05:29 14 capital and in my opinion should be split 70/30.

16:05:39 15 So CLA Properties was shorted 36,000 that year,
16:05:44 16 and Mr. Bidsal received 36,000 more in distributions
16:05:50 17 than I believe he should have received from my
16:05:52 18 interpretation of the operating agreement.

16:05:54 19 **Q. What was the basis for the -- where did the**
16:05:59 20 **state made -- let me start over.**

16:06:02 21 **What distributions accounted for the wrongful**
16:06:06 22 **split 50/50 as opposed to 70/30?**

16:06:10 23 A. What distributions?

16:06:12 24 **Q. What composed -- what was the composition of**
16:06:13 25 **those distributions?**

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16:06:15 1 MR. GERRARD: Objection. Asked and answered. He Page 890
16:06:17 2 just finished answering that question.
16:06:17 3 MR. LEWIN: I'm trying to figure out if it's
16:06:20 4 depreciation or it's something else. I just want to
16:06:23 5 understand what the genesis of that is.
16:06:23 6 ARBITRATOR WALL: All right. You may answer.
16:06:26 7 A. I didn't reconcile it all the way, but it -- I'm
16:06:30 8 able to reconcile almost all of it, and it is from
16:06:34 9 depreciation expense. It's from the 481(a) adjustment,
16:06:40 10 which is an additional depreciation expense. And it's
16:06:43 11 from the depreciation that's already been subtracted
16:06:46 12 from the rental income for the current year.
16:06:50 13 BY MR. LEWIN:
16:06:50 14 Q. So that means that Mr. Bidsal got -- took \$36,000
16:06:54 15 in distributions that he shouldn't have gotten?
16:06:58 16 MR. GERRARD: Objection. Misstates the witness's
16:07:01 17 testimony.
16:07:01 18 ARBITRATOR WALL: Overruled.
16:07:03 19 A. Yes, that's my opinion.
16:07:06 20 ARBITRATOR WALL: I've got to weigh in when
16:07:08 21 there's an objection.
16:07:09 22 THE WITNESS: Sorry.
16:07:11 23 ARBITRATOR WALL: So I'll overrule.
16:07:11 24 BY MR. LEWIN:
16:07:11 25 Q. Again, looking at the middle column here, is this

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16:07:11 1 sort of the -- is this sort of continuing -- I'm sorry.

16:07:12 2 The column that says, "Distribution variance,"

16:07:16 3 the middle column with the most blanks in it, is that

16:07:22 4 the column that continues to show --

16:07:24 5 A. Yes. It's totals. It's a continuation, so it

16:07:27 6 was a 36,000 variance in the current year until 2012,

16:07:35 7 and then it adds the 2011 variance to come up with

16:07:40 8 73,685 as the total as of December 31st, 2012.

16:07:46 9 Q. So let's continue.

16:07:55 10 A. So then we go to 2013, and it's really the same

16:08:07 11 things other than we have a sale of one of the

16:08:09 12 properties this year. So we have rental income, 115,000

16:08:15 13 total. There's interest income of 1,426 in total. That

16:08:23 14 should be split 50/50. There was a 1231 gain of

16:08:35 15 110,290. Part of that gain, though, was from

16:08:37 16 depreciation taken in prior years. On the tax return

16:08:41 17 they split that gain 50/50, but because part of that

16:08:45 18 gain, 21,786 of the gain was from -- resulted from

16:08:51 19 depreciation taken on the property previously, that

16:08:55 20 portion of the gain should be split 50/50, according to

16:08:59 21 the operating agreement which we went over earlier. And

16:09:02 22 the remainder of the 1231 gain is the capital and should

16:09:08 23 be split 70/30 under the waterfall distribution.

16:09:12 24 Q. And this is the sale of what building?

16:09:16 25 A. I think it was C, was it?

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16:09:19 1 Q. And you've seen documents that show that there
16:09:21 2 was a \$95,000 distribution that was split 70/30. Right?

16:09:28 3 A. Yes.

16:09:28 4 Q. And so that was in accordance to the waterfall.
16:09:31 5 Right?

16:09:31 6 A. Yes. The 110,000, if you look down at the last
16:09:33 7 line of 2013 or second-to-last line, you can see the
16:09:39 8 110,290, and that was on the tax return and actually --
16:09:46 9 and the tax return followed the actual distributions
16:09:51 10 except for that previous year. That was split 70/30,
16:09:56 11 and you can see that on my schedule. It was off a
16:10:00 12 little -- it was off a little bit though. It wasn't
16:10:04 13 quite 70/30, for some reason, because my calculation of
16:10:08 14 70 percent was 77,203 to CLA and the actual distribution
16:10:15 15 was 74,200. I'm not sure why, but they were trying to
16:10:21 16 split it 70/30.

16:10:24 17 Q. Let's go back to 2014. So by the way, by the end
16:10:29 18 of 2013, the amount of improper -- the amount of
16:10:35 19 distribution can be readjusted now as 120,314?

16:10:40 20 A. Correct.

16:10:42 21 Q. Go to 2014 and explain what happened.

16:10:44 22 A. 2014 we have 198,536 of rental income, and
16:10:52 23 there's a 1231 gain of 410,691, which is from the sale
16:10:59 24 of one of the properties.

16:11:03 25 Part of the gain, 45,138 of that gain was due to

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16:11:09 1 prior years' depreciation. I'm splitting that gain
16:11:15 2 50/50. The balance of the gain I'm splitting 70/30
16:11:20 3 under the waterfall, Exhibit B. And then I calculate
16:11:24 4 what the total profits are from operations that result
16:11:29 5 in ordinary income, and that was the rental income,
16:11:32 6 \$198,536. That should be split 50/50.

16:11:39 7 The capital transaction -- the proceeds from that
16:11:43 8 sale was 793,195, and per the Schedule B, the entire
16:11:51 9 proceeds should be distributed 70/30. That's the
16:11:55 10 capital transaction. Not the basis of the property, but
16:11:58 11 the entire cash proceeds. So I -- and then the balance
16:12:06 12 of the distributions is really a return of capital. So
16:12:10 13 is the capital transaction -- part of it -- but I wanted
16:12:14 14 to identify what the cash proceeds were from the capital
16:12:20 15 transaction and show that being split 70/30, and the
16:12:24 16 balance is capital return. It's a distribution in
16:12:28 17 excess of profits, and should be split 70/30 in my
16:12:33 18 opinion.

16:12:33 19 **Q. Okay. I want to go back -- before we finish this**
16:12:37 20 **up, I want to go back to why the sale of the Building C**
16:12:43 21 **is showing up in your 2013 column when it was sold in**
16:12:48 22 **2012.**

16:12:48 23 A. That's when it was reported. It was a deferred
16:12:53 24 like-kind exchange. So really what happened is is they
16:12:56 25 sold the property in 2012 and then using a deferred

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16:13:04 1 like-kind exchange, they put the money -- it was sold. Page 894
16:13:07 2 Cash was there. But they had the money held in escrow
16:13:11 3 so that they had 90 days to identify a replacement
16:13:15 4 property and 180 days to actually buy it. Well, they
16:13:19 5 didn't close and get the -- have the escrow exchange
16:13:22 6 agent or the exchange accommodator actually acquire the
16:13:24 7 replacement property until the following year. So it
16:13:29 8 didn't happen and probably should have been amended and
16:13:33 9 reported in the prior year, but they picked it up in the
16:13:38 10 year they got the replacement property.

16:13:40 11 Q. Going back to 2014, Mr. -- so the three sales of
16:13:47 12 Building C, which we already talked about, Building E --

16:13:52 13 A. Was that the second one?

16:13:55 14 Q. That's the second one.

16:13:55 15 -- and then Building B, which is coming further
16:13:58 16 out. Mr. Bidsal testified that what he did is he split
16:14:03 17 the basis -- the cost 70/30 and he took the gain as
16:14:10 18 50/50.

16:14:10 19 ARBITRATOR WALL: For B and E?

16:14:10 20 MR. LEWIN: Correct.

16:14:12 21 BY MR. LEWIN:

16:14:13 22 Q. Is that consistent with what Schedule B requires?

16:14:18 23 A. No.

16:14:20 24 Q. You know, at the end of Mr. Wilcox's testimony,
16:14:30 25 we had a lot of talk about what is a nonrecurring event.

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16:14:35

1 Is the sale of one property a nonrecurring event?

16:14:39

2 A. Generally I would treat it as a non-reoccurring

16:14:44

3 because it's not what you're in the business of selling

16:14:47

4 every day. It's you're selling rents every day.

16:14:51

5 Q. So would it be fair to say the Green Valley

16:14:57

6 properties were all held as investment properties.

16:15:01

7 Right?

16:15:01

8 A. Correct.

16:15:02

9 Q. The investment properties are considered to be

16:15:05

10 what by the IRS?

16:15:07

11 A. They're considered to be 1231 property, which the

16:15:11

12 gain would be treated as capital unless there's

16:15:15

13 depreciation recaptured.

16:15:19

14 Q. Just talking about B and E, the sales -- in your

16:15:25

15 opinion are the sales of both those properties

16:15:29

16 nonrecurring events even if they weren't a capital

16:15:30

17 transaction?

16:15:30

18 A. I mean, I'm looking at them. I didn't really

16:15:33

19 look at whether they're nonrecurring or not. I looked

16:15:36

20 at them as a capital transaction.

16:15:36

21 Q. Assuming they --

16:15:36

22 A. I -- if -- if -- if they were in the trade or

16:15:42

23 business, for one, they're treating them as

16:15:44

24 nonrecurring, because if you're in the trade or business

16:15:48

25 of selling real estate, it becomes inventory and

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16:15:51 1 ordinary income. And so they're treating them as
16:15:54 2 investment property. That's -- and they should. I
16:15:56 3 mean, I agree with that. And so it's not an ordinary
16:16:03 4 reoccurring item.

16:16:04 5 Q. So it's a nonrecurring transaction then. Right?

16:16:09 6 A. In my opinion, yes.

16:16:10 7 Q. Okay. And just to be clear, on the tax returns
16:16:14 8 these were reported as capital gain transactions.
16:16:20 9 Right?

16:16:20 10 A. That's correct. Just 1231 gains, yes, which get
16:16:28 11 the capital gain treatment.

16:16:28 12 Q. Does that have anything to do with whether or not
16:16:34 13 they are a capital transaction?

16:16:36 14 A. Yes. I mean, I believe that falls in the
16:16:39 15 definition of a capital transaction.

16:16:41 16 Q. Okay. Do we have anything else to talk about in
16:16:46 17 terms of 2014?

16:16:48 18 A. I think we said everything.

16:16:55 19 Q. So the difference in the distributions that you
16:16:59 20 think that were missed -- taken by Mr. Bidsal 50/50
16:17:06 21 instead of 70/30 for 2014 represented -- is roughly
16:17:08 22 \$84,000. Is that correct?

16:17:11 23 A. That's correct. And you can see that, like I
16:17:17 24 said, on the capital transaction, on the line before the
16:17:21 25 subtotal, the 793,195, they did not split that 50/50

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16:17:31 1 because they were trying to split the costs 70/30, but
16:17:35 2 the rest of the proceeds from that capital transaction
16:17:39 3 they split 50/50. They didn't split the entire proceeds
16:17:43 4 70/30 and that's part of the difference.

16:17:44 5 **Q. Let's go to 2015. Tell Your Honor what your**
16:17:51 6 **opinions are what took place in 2015.**

16:17:54 7 A. We had rental income of 229,956 which should be
16:18:04 8 split 50/50 and it was. We have 1231 gain of 333,160
16:18:09 9 which was split 50/50 among the members on their tax
16:18:14 10 return, but according to the operating agreement, it
16:18:19 11 should have been 21,925 should have been split 50/50
16:18:26 12 which is depreciation taken on that gain that's part of
16:18:29 13 that gain, and the balance should have been split 70/30
16:18:33 14 as far as allocation of profits.

16:18:36 15 Then on the distributions the only profits
16:18:42 16 that -- during that year from operations that result in
16:18:47 17 ordinary income was the 229,906 in rental income. And
16:18:54 18 then the capital transaction, the sales proceeds from
16:18:58 19 the sale of that building was \$584,020. They split part
16:19:08 20 of that 70/30 and part of it 50/50. I think the entire
16:19:12 21 proceeds should be 70/30.

16:19:15 22 And the balance of the distributions is a return
16:19:18 23 of capital and should be split 70/30 in my opinion. And
16:19:23 24 that's the balance of the distributions with 93,784. So
16:19:29 25 you got differences there, and we got accumulated

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16:19:36 1 differences of 283,732 at the end of 2015.

16:19:44 2 **Q. Let's go to 2016.**

16:19:47 3 A. 2016 no sales of buildings that year. We had
16:19:54 4 income or cash flow from operations that resulted in
16:19:59 5 ordinary income. There was rental income of \$391,907.

16:20:05 6 You got profit distributions which would be the same
16:20:09 7 amount which should be split 50/50. And if you'll
16:20:13 8 notice, the company has always every year distributed
16:20:18 9 100 percent of their profits, so there's no accumulated
16:20:22 10 profits left.

16:20:23 11 And then they had a distribution -- a capital --
16:20:28 12 return of capital of \$28,093, and that should have been
16:20:33 13 split 70/30 in my opinion versus 50/50 as it was shown
16:20:39 14 on the tax return and as actually had been distributed.

16:20:43 15 **Q. In terms of the capital return, so is that**
16:20:48 16 **just -- are you extrapolating from the total**
16:20:51 17 **distributions the portion that was above the ordinary**
16:20:56 18 **income?**

16:20:56 19 A. Yes. Exactly. I've taken the total
16:20:59 20 distributions that were on the tax return and agreed
16:21:02 21 with the general ledger and also the other schedules of
16:21:07 22 distributions and subtracted what was a profit
16:21:11 23 distribution from the total, and the balance is a
16:21:15 24 distribution return of their capital.

16:21:18 25 **Q. In other words, it's a distribution of cash flow**

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16:21:22

1 over and above ordinary income. Right?

16:21:25

2 A. That's right. As long as there's no accumulated

16:21:28

3 income left in the company, as long as they've

16:21:31

4 distributed all of the profits, anything in excess of

16:21:35

5 the accumulated -- the current profits and the

16:21:36

6 accumulated profits, any distributions in excess of that

16:21:39

7 is a return of capital. It's the same as with a

16:21:42

8 corporation when you get your 1099 dividends from

16:21:49

9 publicly traded companies that you'll see tax free

16:21:49

10 non-return of capital on some of them.

16:21:50

11 Q. What is the legal support for that -- your tax

16:21:54

12 support for that?

16:21:55

13 A. Well, it's not a distribution of income because

16:21:58

14 there isn't anything left to distribute. So the only

16:22:01

15 thing it can be is a return in capital, and it's a

16:22:05

16 reduction in their capital account, which by definition

16:22:09

17 is return of capital.

16:22:10

18 Q. Okay. So then in 2017, tell us what was going on

16:22:14

19 there.

16:22:14

20 A. 2017 I split -- I'm trying to split the income

16:22:23

21 based on September 2nd, 2017. I did this pro rata based

16:22:33

22 on number of days. So technically, yeah, probably

16:22:38

23 should use actual close the books on those days but I

16:22:43

24 did not have that information, so I split the rental

16:22:46

25 income that was for the total year on the tax return

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16:22:49 1 from -- and the September 2nd I think was the date I
16:22:54 2 asked what I should use from you on when that deal --
16:23:00 3 sales deal was supposed to have closed. That's again,
16:23:06 4 debatable. I'm not issuing an opinion on that.

16:23:16 5 And these schedules can be adjusted very easily
16:23:21 6 based on any decisions made. But I'm splitting their
16:23:24 7 rental income from before and after the disposition of
16:23:28 8 the membership interest so that the rental income earned
16:23:33 9 after 9/2/17 should be 100 percent CLA's rental income
16:23:40 10 because Mr. Bidsal would have no longer been a member of
16:23:44 11 the entity. And it was split 50/50 on the tax return
16:23:52 12 and I'm breaking it up. The income before 9/2 was
16:23:59 13 50/50. The income after is 100 percent CLA's.

16:24:02 14 **Q. You're not forming an opinion as to whether or**
16:24:06 15 **not Mr. Bidsal is entitled to that 56,000. You split it**
16:24:06 16 **up to show the event that it's entitled to distributions**
16:24:06 17 **before the distributions --**

16:24:06 18 A. It would be allocated to. Yes. I'm sorry. I
16:24:16 19 should let you finish.

16:24:16 20 **Q. You're not making -- there's no -- you're not**
16:24:20 21 **making the determination that he's entitled to the**
16:24:27 22 **56,000. This is your way of demonstrating what would**
16:24:27 23 **happen just before His Honor rules that he is entitled**
16:24:27 24 **to that?**

16:24:34 25 ARBITRATOR WALL: The 56,000 was before September

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		Page 901
16:24:38	1	2nd?
16:24:38	2	MR. LEWIN: Right.
16:24:39	3	ARBITRATOR WALL: We're not questioning that.
16:24:39	4	Right?
16:24:41	5	MR. LEWIN: No. There was no distributions in
16:24:43	6	2017 until before July -- before July 7th.
16:24:57	7	ARBITRATOR WALL: No, there was a February one.
16:24:57	8	Wasn't there?
16:24:59	9	THE WITNESS: Let me explain. Yeah, I think I
16:25:01	10	can clear that up. The 56,000 he received, and yes, I'm
16:25:04	11	saying it was his to take.
16:25:07	12	ARBITRATOR WALL: It doesn't require any
16:25:09	13	assumption, legal or otherwise, as to whether he's
16:25:11	14	entitled to a distribution based on a sale of 9/2
16:25:16	15	because anything before 9/2 he's entitled to no matter
16:25:23	16	what. Right?
16:25:23	17	THE WITNESS: Correct. It's a distribution of
16:25:24	18	profits before 9/2 that occurred before 9/2. And he had
16:25:27	19	an allocation -- if it was in excess of the profits,
16:25:30	20	then I would say he wasn't entitled to it. But the
16:25:34	21	profits allocated to him was 120,000 and he only
16:25:39	22	received 56,000. So he was -- I -- actually, my opinion
16:25:41	23	is he was entitled to the 56,000.
16:25:44	24	MR. LEWIN: Your Honor, just so we're clear, our
16:25:46	25	view is that --

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16:25:47 1 MR. GERRARD: Well, I don't think we need to do Page 902
16:25:48 2 arguments right now.
16:25:50 3 MR. LEWIN: Since we're talking about it, the
16:25:53 4 cash on hand as of the time Mr. Bidsal made his
16:25:56 5 valuation, our opinion is that is part of the fair
16:25:58 6 market value of the company, the cash on hand, therefore
16:26:02 7 he can't dilute that fair market value.
16:26:06 8 ARBITRATOR WALL: These are distributions he had
16:26:08 9 already received.
16:26:08 10 MR. LEWIN: He's already received that.
16:26:13 11 ARBITRATOR WALL: Right.
16:26:13 12 BY MR. LEWIN:
16:26:15 13 **Q. He received these distributions by July 7th?**
16:26:18 14 A. Yes, this was before, and so they weren't part of
16:26:19 15 the value. At that time they had already been
16:26:20 16 distributed.
16:26:20 17 **Q. So they were not (inaudible) as of July 7th?**
16:26:20 18 A. Right.
16:26:22 19 **Q. All right.**
16:26:25 20 A. And then the other distributions made after 9/2
16:26:30 21 which were split 50/50 on the return and actually
16:26:34 22 received by the members, any distributions after 9/2 I
16:26:40 23 thought 100 percent should go to CLA and nothing to
16:26:46 24 Mr. Bidsal because he was no longer a member at that
16:26:49 25 time.

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16:26:49 1 MR. LEWIN: If the judge determines that.

16:26:53 2 ARBITRATOR WALL: What you determined for post

16:26:56 3 9/2/17 just carries through all the way through 2019?

16:27:04 4 THE WITNESS: Correct.

16:27:06 5 ARBITRATOR WALL: Based in your assessment that

16:27:06 6 had he got this distribution if he wasn't entitled to a

16:27:10 7 distribution because he wasn't a member anymore, then

16:27:13 8 he's been overpaid this much?

16:27:14 9 THE WITNESS: That is correct.

16:27:14 10 ARBITRATOR WALL: And that's the difference

16:27:14 11 between the 289, 351, and the 789,851. Well, 289 plus

16:27:22 12 part of 2017.

16:27:22 13 THE WITNESS: Right.

16:27:22 14 ARBITRATOR WALL: Okay. All right.

16:27:34 15 THE WITNESS: And that's what the rest of the

16:27:35 16 spreadsheet shows.

16:27:36 17 BY MR. LEWIN:

16:27:36 18 **Q. The rest of the spreadsheet is consistent with**

16:27:39 19 **that. We don't need to go -- unless His Honor wants to**

16:27:41 20 **hear to that.**

16:27:41 21 ARBITRATOR WALL: I think that's the reason I

16:27:42 22 asked the question.

16:27:47 23 BY MR. LEWIN:

16:27:47 24 **Q. Now, at the bottom of the sheet you've got a**

16:27:50 25 **total -- you've got some calculations that goes 1**

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16:27:53 1 through 10. What are these?

16:27:56 2 A. Oh, that's just reconciling. I'm just stating

16:28:00 3 these are the total distributions made in those years.

16:28:04 4 ARBITRATOR WALL: Those are like footnotes to

16:28:04 5 other --

16:28:04 6 THE WITNESS: That's correct.

16:28:06 7 ARBITRATOR WALL: Like, if we look in 2019 after

16:28:08 8 private distributions, it's got a little Footnote 10 and

16:28:13 9 that goes back to No. 10.

16:28:15 10 THE WITNESS: Again, it was to reconcile to the

16:28:18 11 tax return and what was shown there.

16:28:21 12 BY MR. LEWIN:

16:28:21 13 Q. At the end of -- this schedule ends at

16:28:26 14 12/31/2019?

16:28:27 15 A. Correct.

16:28:28 16 Q. Have you updated this in 2020?

16:28:33 17 A. I have not.

16:28:34 18 Q. And what is your conclusion as to the variance in

16:28:42 19 distributions that Mr. Bidsal received as opposed to

16:28:47 20 what he shouldn't have received in your opinion?

16:28:51 21 A. At the end of 2019 -- as of December 31st, 2019,

16:28:57 22 Mr. Bidsal received 789,851 -- let me repeat that --

16:29:07 23 \$789,851 in excess of what he should have received.

16:29:23 24 That also -- that's what that shows.

16:29:35 25 Q. There is no interest calculation on that. Is

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16:29:38 1 that correct?

16:29:38 2 A. There is no interest calculation on that.

16:29:41 3 Q. By the way, I just have to -- I want to clear

16:29:43 4 things up. Go to the deed in lieu agreement again. You

16:29:48 5 said that the money that was transferred --

16:29:53 6 A. Which schedule is that?

16:29:58 7 Q. Exhibit 8.

16:29:59 8 A. Exhibit A?

16:30:00 9 MR. GERRARD: 8.

16:30:03 10 BY MR. LEWIN:

16:30:03 11 Q. 8. I have two questions here. It says here

16:30:07 12 "borrower shall transfer to lender." Is that -- does

16:30:12 13 the word "transfer" --

16:30:13 14 MR. GERRARD: Where are you reading, Rob? We're

16:30:16 15 on Exhibit 8, but it's a long paragraph.

16:30:19 16 MR. LEWIN: Paragraph 2.10. Collected rent.

16:30:22 17 BY MR. LEWIN:

16:30:23 18 Q. When it says "borrower shall transfer" instead of

16:30:27 19 "borrower shall pay," does that have a meaning in the

16:30:29 20 accounting world?

16:30:29 21 MR. GERRARD: I'm going to object. Calls for

16:30:31 22 speculation. And it's also not a part of his opinion

16:30:33 23 anywhere. He hasn't offered any opinion on the

16:30:38 24 difference between the word "shall transfer" and "shall

16:30:40 25 pay."

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16:30:41 1 ARBITRATOR WALL: I'll allow it.

16:30:42 2 You may answer.

16:30:46 3 A. If you're transferring cash, it's the same as

16:30:51 4 paying to me. I mean, it's --

16:30:52 5 ARBITRATOR WALL: All right. Next question.

16:30:54 6 BY MR. LEWIN:

16:30:54 7 Q. And you said that there's a reference that

16:31:01 8 they're paying interest. It says here -- it says -- it

16:31:04 9 says here "lender's predecessors in interest." And I

16:31:07 10 know this was part of your deposition. How do you

16:31:10 11 interpret that "in interest?" That that was an interest

16:31:14 12 payment as opposed to something else?

16:31:16 13 MR. GERRARD: Again, objection. Leading. You

16:31:19 14 didn't ask "How do you interpret this language in the

16:31:22 15 agreement?" You told him.

16:31:23 16 And then he asked him, "What do you think about

16:31:25 17 that?"

16:31:25 18 MR. LEWIN: That isn't the way I asked the

16:31:33 19 question.

16:31:33 20 MR. GERRARD: Of course it is.

16:31:35 21 ARBITRATOR WALL: It is, but I'm going to allow

16:31:37 22 it.

16:31:38 23 A. It specifically says that the borrower shall

16:31:41 24 transfer an amount of X dollars, which amount represents

16:31:46 25 the net rents from the property that have not been

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16:31:49 1 previously paid to the lender, which, you know, due to Page 907
16:31:53 2 the assignment, is how I'm interpreting that or lender's
16:31:58 3 predecessors in interest. So it was required to be
16:32:02 4 paid --
16:32:03 5 ARBITRATOR WALL: You mean a predecessor in
16:32:05 6 interest?
16:32:07 7 THE WITNESS: No, predecessor -- well, it says
16:32:09 8 lenders prede -- it says, "have been paid to lender or
16:32:11 9 lender's predecessors in interest."
16:32:18 10 ARBITRATOR WALL: So there's a legal significance
16:32:21 11 to a predecessor in interest. You're not looking at it
16:32:31 12 that way? You're not --
16:32:34 13 THE WITNESS: I'm not looking at it that way.
16:32:35 14 I'm looking at it as not paid to the lender or --
16:32:37 15 ARBITRATOR WALL: All right. Let's move on to
16:32:38 16 another area.
16:32:39 17 THE WITNESS: -- in interest, and it does say for
16:32:41 18 the period beginning --
16:32:42 19 MR. GERRARD: I don't think there's a question
16:32:42 20 pending.
16:32:45 21 ARBITRATOR WALL: Yeah, there isn't.
16:32:45 22 THE WITNESS: Okay. Sorry.
16:32:47 23 BY MR. LEWIN:
16:32:47 24 Q. And so in terms of the -- in terms of calculating
16:33:07 25 the purchase price, did you calculate the purchase price

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16:33:16 1 for Mr. Bidsal's interest?

16:33:19 2 A. I did.

16:33:19 3 Q. Do you have a schedule for that?

16:33:21 4 A. I do.

16:33:22 5 Q. And what schedule is that?

16:33:24 6 A. It was in my report.

16:33:30 7 ARBITRATOR WALL: Do you have it, Mr. Lewin?

16:33:32 8 MR. LEWIN: I do. His report is actually an

16:33:36 9 exhibit, which is Exhibit --

16:33:54 10 THE WITNESS: I can pull it up, I guess.

16:33:57 11 MR. LEWIN: Exhibit -- report is 162 and exhibits

16:34:01 12 are 163.

16:34:02 13 MR. GERRARD: Of course we've objected to his

16:34:05 14 report, but we don't have any objection to the Court

16:34:09 15 looking at the schedule.

16:34:09 16 ARBITRATOR WALL: Right. That's what we did with

16:34:09 17 Mr. Wilcox.

16:34:10 18 MR. GERRARD: Exactly.

16:34:10 19 MR. LEWIN: I'll offer 163 into evidence then.

16:34:14 20 MR. SHAPIRO: Got to lay some --

16:34:17 21 ARBITRATOR WALL: Is that the schedule or the

16:34:19 22 report?

16:34:19 23 MR. LEWIN: The report is 162.

16:34:24 24 THE WITNESS: I don't have that.

16:34:26 25 MR. LEWIN: You can look on your computer.

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16:34:29 1 THE WITNESS: I just want to make sure I'm
16:34:31 2 looking at the same...
16:34:32 3 MR. LEWIN: You can also look at 163 then.
16:34:34 4 MR. SHAPIRO: So, Rod, in the .pdf your office
16:34:37 5 sent to us, it's a whole report. I just want to make
16:34:40 6 sure that --
16:34:40 7 MR. GERRARD: There's nothing broken out. Right?
16:34:43 8 MR. SHAPIRO: -- it's just exhibits as opposed to
16:34:45 9 the entire report.
16:34:46 10 MR. LEWIN: It is intended to be just exhibits.
16:34:49 11 MR. GERRARD: Is that your Exhibit 3, Mr. Gerety?
16:34:49 12 THE WITNESS: Let me see.
16:34:49 13 MR. GERRARD: I'm looking at rebuttal report,
16:35:01 14 Exhibit 3. It was Exhibit 5 on the original report is
16:35:02 15 what it says at the top. Is that what we're looking
16:35:18 16 for?
16:35:18 17 THE WITNESS: I don't have it on this flash
16:35:20 18 drive.
16:35:20 19 ARBITRATOR WALL: I've got one in 163 that is
16:35:23 20 rebuttal report. Exhibit 3 was Exhibit 5 on original
16:35:25 21 report. That appears to be the formula.
16:35:28 22 THE WITNESS: That's what I'm looking for. Is
16:35:28 23 that what you're talking about right here?
16:35:35 24 MR. GERRARD: Yes.
16:35:35 25 ARBITRATOR WALL: All right. We're going to mark

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16:35:37 1 this as 202.

16:35:40 2 THE WITNESS: Thank you.

16:35:40 3 ARBITRATOR WALL: Do you have the document,

16:35:40 4 Mr. Lewin?

16:35:40 5 MR. LEWIN: I'm sure.

16:35:50 6 ARBITRATOR WALL: Any objection to 202?

16:35:53 7 MR. GERRARD: Well, we don't have a 202.

16:35:56 8 MR. SHAPIRO: He just took what you just handed

16:35:58 9 him and designated it.

16:36:01 10 MR. GERRARD: Oh. Gotcha. Yeah, no objection to

16:36:02 11 this. Sorry.

16:36:11 12 ARBITRATOR WALL: All right. And 201 is our --

16:36:14 13 no, I'm sorry. 200 is the schedule we just dealt with.

16:36:16 14 MR. SHAPIRO: 201 was Chris Wilcox's schedule.

16:36:16 15 ARBITRATOR WALL: Just 200. Do you have an

16:36:20 16 objection to 200?

16:36:20 17 MR. GERRARD: So 200 being that one -- oh, that

16:36:20 18 one. I see what you're saying. I do not. That's

16:36:22 19 already in the binder. Right?

16:36:25 20 MR. LEWIN: Yeah.

16:36:25 21 MR. GERRARD: I don't have an objection.

16:36:28 22 ARBITRATOR WALL: Okay. So 200 and 202 will be

16:36:31 23 admitted.

16:36:31 24 (Exhibits 200 and 202 were admitted into

16:36:33 25 evidence.)

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16:36:33 1 MR. LEWIN: Thank you, Your Honor.

16:36:33 2 BY MR. LEWIN:

16:36:34 3 Q. Would you run through this schedule, Exhibit 3,
16:36:40 4 arbitration sales price?

16:36:40 5 A. Yes. I actually lay it out in two alternatives
16:36:44 6 based on how you interpret capital -- I forget now the
16:36:52 7 exact wording in the operating agreement, but capital
16:36:56 8 contribution at the time of purchase of the property.
16:37:03 9 Offering members capital at the time of purchase, how
16:37:07 10 you interpret that.

16:37:08 11 So I laid out two alternative calculations.
16:37:12 12 Everybody, I think, is in agreement with the 5 million
16:37:17 13 fair market value. Don't need to explain that. The COP
16:37:23 14 is -- goes off of another schedule. I can explain the
16:37:34 15 differences between my COP and Mr. Wilcox's COP or -- is
16:37:39 16 that necessary?

16:37:41 17 ARBITRATOR WALL: Yeah.

16:37:42 18 BY MR. LEWIN:

16:37:42 19 Q. We'll do that.

16:37:44 20 A. Chris and I both used the cost seg on the
16:37:51 21 properties that were received and still on hand at the
16:37:56 22 time of the sale of the membership interest. The
16:38:01 23 differences were there was the Arizona property, and
16:38:07 24 Chris wanted to use the cost of purchase of Building C,
16:38:13 25 which was sold in 2012, as the COP of Green Valley, and

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16:38:21 1 I used the value per the escrow statement that I saw and Page 912
16:38:27 2 cited.
16:38:28 3 ARBITRATOR WALL: Escrow statement for the
16:38:31 4 purchase of the Arizona property?
16:38:33 5 THE WITNESS: Correct.
16:38:35 6 A. That was one big difference just on that Arizona
16:38:39 7 property.
16:38:40 8 And then the second difference was on the common
16:38:46 9 area of the property, Chris's beginning number agrees
16:38:51 10 with my beginning number, so we both started in the same
16:38:56 11 point. The difference, though, is Chris reduced his
16:38:59 12 number by a percentage. I believe it was -- I shouldn't
16:39:07 13 speak for Chris, but he reduced his number by a
16:39:11 14 percentage of the square footage of the property sold.
16:39:14 15 ARBITRATOR WALL: Right.
16:39:15 16 A. And I did not. And the reason I did not is when
16:39:18 17 I checked the county assessor's records, Green Valley
16:39:25 18 still owned 100 percent of the common area. So I did
16:39:29 19 not reduce it by -- as if a percentage of it had been
16:39:33 20 sold in those prior sales.
16:39:36 21 Otherwise, besides those two things, our numbers
16:39:41 22 are the same.
16:39:42 23 BY MR. LEWIN:
16:39:43 24 Q. So going to the common area, there are
16:39:49 25 easements -- you've seen that there's easements --

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16:39:51 1 A. Uh-huh.

16:39:52 2 Q. -- that give the owners of C, B, and E right to

16:39:56 3 the common area?

16:39:57 4 A. Right.

16:39:58 5 Q. But on the flip side of that, when Mr. Bidsal was

16:40:04 6 allocating costs for B and E, the cost for C, B and E in

16:40:16 7 terms of evaluating the basis for the properties, did he

16:40:19 8 take into consideration -- did he reduce -- did he add

16:40:22 9 to the cost the allocated portion of the parking lot or

16:40:25 10 the common area?

16:40:26 11 A. Repeat that. I'm not sure I followed.

16:40:37 12 Q. In establishing the cost of the basis for C, B,

16:40:45 13 and E, there was no reduction on account of the

16:40:49 14 percentage of the allocated cost of the parking lot. No

16:40:55 15 addition to the basis for the parking lot?

16:40:58 16 A. On the sale you mean?

16:40:58 17 Q. Yes.

16:41:02 18 A. That's correct. The basis was not -- there was

16:41:05 19 no allocation of the common area to the basis of

16:41:09 20 property C, B, and E upon the sale of those assets on

16:41:14 21 the tax return.

16:41:14 22 Q. So would it be fair to say that if using Chris's

16:41:19 23 approach that you have, you got to reduce because

16:41:23 24 there's easements, that there are some rights to the

16:41:27 25 parking area for the new owners of the property you have

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16:41:32 1 to -- there's also some cost -- cost that was not
16:41:36 2 included would have to be added back and distributed to
16:41:40 3 CLA on a 70/30 basis?

16:41:45 4 A. I'm sorry, Rob. One more time, please.

16:41:49 5 Q. If you were to use Chris's approach saying, okay,
16:41:53 6 we're going to reduce the common area --

16:41:56 7 A. Uh-huh.

16:41:57 8 Q. -- the cost of the common area because of the
16:41:59 9 easements, then is it true that a portion of the sales
16:42:05 10 price should have been allocated to the basis to
16:42:09 11 compensate for the fact that part of the parking lot had
16:42:12 12 been essentially sold, according to Chris's viewpoint?

16:42:17 13 A. Yes, it should have been in part of the cost that
16:42:21 14 was sold.

16:42:23 15 Q. What is the difference between Chris's number and
16:42:27 16 your number?

16:42:27 17 A. I don't recall the exact difference.

16:42:29 18 Q. Can you tell us?

16:42:31 19 ARBITRATOR WALL: The difference what?

16:42:32 20 MR. LEWIN: Between Chris's evaluation of the COP
16:42:36 21 to the parking lot and --

16:42:38 22 ARBITRATOR WALL: Mr. Gerety's is \$3,686,293 and
16:42:44 23 Mr. Wilcox's \$3,136,431 rounded it out.

16:42:52 24 MR. LEWIN: Right now I'm just talking about the
16:42:53 25 difference on the parking lot, because that is -- if

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16:42:56 1 we're going to reduce -- if you're going to reduce COP Page 915
16:43:03 2 by the value of the sale, that has to be returned.
16:43:06 3 A. That would reduce the gains on the previous
16:43:09 4 sales, and -- well, if you assume Chris is right in his
16:43:18 5 interpretation of the operating agreement and they were
16:43:23 6 correct in just distributing 70/30 of the basis, they
16:43:28 7 should have distributed 70/30 of the cost that he's
16:43:32 8 reducing it by.
16:43:32 9 BY MR. LEWIN:
16:43:32 10 Q. That's what I want to talk about. What was the
16:43:32 11 difference between the two costs as you interpret it?
16:43:35 12 A. I can come up with it quick but not right at this
16:43:40 13 second. Hang on.
16:43:44 14 Q. So how do you --
16:43:46 15 A. Well, I do have Chris's report here.
16:43:49 16 ARBITRATOR WALL: Hold on here. It's...
16:43:55 17 MR. LEWIN: I have the numbers \$116,280.
16:44:00 18 ARBITRATOR WALL: Difference?
16:44:01 19 MR. LEWIN: Difference.
16:44:02 20 MR. GERRARD: Mr. Lewin is not here to testify.
16:44:08 21 MR. LEWIN: Isn't this an exhibit --
16:44:08 22 ARBITRATOR WALL: He's pretty close to what I
16:44:08 23 thought.
16:44:10 24 MR. LEWIN: -- he used yesterday?
16:44:11 25 MR. SHAPIRO: I don't know what you're holding

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16:44:13 1 up.

16:44:14 2 ARBITRATOR WALL: 201?

16:44:14 3 MR. GERRARD: Yeah. That's out of Mr. Wilcox's

16:44:16 4 report.

16:44:18 5 MR. LEWIN: Is this 201, Your Honor?

16:44:20 6 ARBITRATOR WALL: Yes.

16:44:22 7 BY MR. LEWIN:

16:44:22 8 Q. So what do we do now? How do we adjust your

16:44:27 9 numbers to accommodate Chris's difference if we were

16:44:31 10 going to use that difference of 116,280?

16:44:34 11 A. Well, we would adjust my COP on this calculation,

16:44:40 12 if it was determined that we should reduce the COP on

16:44:47 13 the parking lot.

16:44:49 14 Q. But then how do we account for the fact that the

16:44:53 15 basis on -- the cost basis on the sales of the B and E

16:44:59 16 was not increased?

16:45:01 17 MR. GERRARD: Objection. None of this is in his

16:45:03 18 report. It's not in his report or his rebuttal report.

16:45:06 19 There's nothing in there about this.

16:45:08 20 ARBITRATOR WALL: I'll sustain that if that's

16:45:11 21 true.

16:45:12 22 MR. LEWIN: Okay. But Mr. Wilcox --

16:45:15 23 MR. GERRARD: That's because it is in

16:45:18 24 Mr. Wilcox's report.

16:45:18 25 MR. LEWIN: He talked about all kinds of things

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16:45:21 1 that was not in his report. I'm trying to figure out -- Page 917

16:45:22 2 ARBITRATOR WALL: I know what you're trying to

16:45:24 3 figure out, but I sustained the objection and we've got

16:45:28 4 to move on.

16:45:29 5 MR. LEWIN: All right.

16:45:29 6 BY MR. LEWIN:

16:45:30 7 **Q. In terms of determining COP, you used the amount**

16:45:36 8 **that was set forth in the Cost Segregation Study?**

16:45:41 9 A. For the buildings that were still in existence,

16:45:44 10 yes, I did.

16:45:45 11 **Q. All right. Do you have any other opinions?**

16:45:59 12 A. Yes. And then the last part of this

16:46:05 13 computation -- two parts actually, but -- not the last.

16:46:11 14 We have differences in the offering members

16:46:13 15 capital at the time of purchase, and differences here,

16:46:24 16 Alternative -- Alternative A assumes -- let's see.

16:46:40 17 Alternative A assumes -- it comes off of my spreadsheet.

16:46:46 18 Make sure I'm picking up the right column here. Let me

16:47:18 19 see.

16:47:22 20 Alternative A assumes that Mr. Bidsal is required

16:47:27 21 to return that capital, and his capital account would be

16:47:37 22 84,643. If he wasn't required to return it --

16:47:42 23 MR. GERRARD: Your Honor, I move to strike the

16:47:44 24 testimony. Because the answer was -- the question was

16:47:47 25 about the application of the formula. What's the sales

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16:47:52 1 price. The sales price has nothing to do with his
16:47:55 2 theory that there should be some offsets to the sales
16:47:59 3 price. There's two different things. There's one
16:48:02 4 that's a formula with a calculation and then there's
16:48:05 5 this other theory that he's advanced that there were
16:48:06 6 other distributions, so they're not tied to each other.
16:48:11 7 The formula doesn't say anything about see if you can
16:48:13 8 find out some way to get some money back from one of the
16:48:17 9 partners.

16:48:19 10 ARBITRATOR WALL: All right. I need some sort of
16:48:22 11 explanation as to what the difference is between
16:48:25 12 Alternative A and Alternative C in relation -- because
16:48:28 13 the difference is remaining capital of Mr. Bidsal as of
16:48:32 14 the time of purchase. Right?

16:48:34 15 And so I assume the 975 number in Alternative C
16:48:40 16 is taking the 1.215 and reducing that by the share of
16:48:50 17 the buildings that were already sold.

16:48:53 18 THE WITNESS: That is correct. It's the capital
16:48:55 19 contributed to purchase the original --

16:48:59 20 ARBITRATOR WALL: Note.

16:49:01 21 THE WITNESS: -- purchase of each building that
16:49:04 22 is in existence at the time of the sale.

16:49:07 23 ARBITRATOR WALL: Right. So it's basically the
16:49:08 24 basis under the cost seg report of the remaining
16:49:15 25 properties, including Greenway?

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16:49:15 1 THE WITNESS: Correct.

16:49:18 2 ARBITRATOR WALL: Although Greenway wasn't part
16:49:21 3 of the cost seg report. So what is -- what I don't
16:49:25 4 understand is Alternative A.

16:49:26 5 THE WITNESS: Alternative A is actually kind of
16:49:26 6 using Chris's philosophy, or logic I should say, and
16:49:31 7 only I don't think he calculated it correctly.

16:49:36 8 You should be able to look at the capital
16:49:42 9 account -- in the capital account at the time of the
16:49:44 10 sale and determine what the remaining capital is. And
16:49:47 11 that's what Chris was saying except he just -- he didn't
16:49:52 12 look at -- he only looked at, okay, on these three years
16:49:55 13 we've had a distribution when there was a sale, but he
16:49:59 14 didn't look at the distributions that were in excess of
16:50:02 15 profits that would reduce the capital. And it does make
16:50:06 16 a difference on whether there's a return or not of those
16:50:10 17 previous capital contributions because it affects the
16:50:15 18 ending balance of Mr. Bidsal's capital account. Because
16:50:23 19 if he didn't have to pay it back, it would be the
16:50:25 20 capital account that's on the tax return. And if you
16:50:28 21 follow Chris's logic, I believe he should have been
16:50:31 22 using the capital account on the tax return.

16:50:35 23 ARBITRATOR WALL: Okay. Got it.

16:50:38 24 BY MR. LEWIN:

16:50:38 25 Q. Looking at your Exhibit 200 where you showed

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1 Mr. Bidsal received \$789,851 of distributions that
2 should have gone to CLA because they were capital --
3 they were resulting from capital transactions on
4 capital -- is that correct?
5 A. Yes.
6 Q. So in calculating the remaining capital under the
7 formula, wouldn't you reduce -- wouldn't you simply
8 reduce what Mr. Bidsal had been previously paid, his
9 capital that he shouldn't have been?
10 A. No. And the reason is because there's
11 differences in allocations of the income also, what
12 should have been and what wasn't. And those have affect
13 on the ending capital of what should have been and what
14 wasn't.
15 The problem is, you know, a lot of those
16 allocations some of them could be fixed if we amended
17 the returns right away. '17, '18, '19 can all be
18 amended, but they're running out of time. But there's
19 some -- it doesn't just say, "Oh, it's equal to this
20 number on that schedule." You can't just take that.
21 Q. For example, the distributions of ordinary
22 income -- distributions of income after the September
23 date that you have added in here, those would not be
24 returns of capital, would they?
25 A. I'm sorry. One more time.

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16:52:18 1 Q. You've identified distributions of --
16:52:23 2 distributions that Mr. Bidsal took for a period after
16:52:27 3 September 2nd?
16:52:28 4 A. Right.
16:52:28 5 Q. Would those be returns -- if Mr. Bidsal had kept
16:52:31 6 those, would those be return of capital to him or would
16:52:32 7 those be ordinary income?
16:52:32 8 A. If -- well, those would be a return of capital if
16:52:39 9 he paid those back.
16:52:41 10 Q. I am not saying if he didn't pay them back. He
16:52:41 11 just kept them.
16:52:45 12 A. If he just kept them, it reduces his basis in his
16:52:51 13 interest, yes.
16:52:51 14 Q. It reduces his capital?
16:52:55 15 A. And reduces his capital account.
16:52:55 16 Q. So just to make -- so I understand it, so in
16:52:56 17 terms of determining the purchase price, you have not
16:52:59 18 included any part of the 789,000. Is that correct?
16:53:04 19 A. I have included -- I assume that he would be
16:53:14 20 required to pay those excess distributions back, but at
16:53:22 21 the time -- yeah, I need the -- I've got a -- there's
16:53:24 22 another schedule here.
16:53:25 23 Q. Take a look at the other schedule.
16:53:28 24 A. And I don't have that with me. I didn't drop it
16:53:39 25 in my report.

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16:53:41	1	Q. Your report is here if you want to look at it.	Page 922
16:53:44	2	It's Exhibit 162.	
16:53:50	3	A. I don't have a Tab 162.	
16:54:08	4	ARBITRATOR WALL: Can I ask a question while	
16:54:10	5	you're doing that? Mr. Gerety?	
16:54:10	6	THE WITNESS: Yes.	
16:54:09	7	ARBITRATOR WALL: While you're doing that, can I	
16:54:09	8	ask you a question?	
16:54:12	9	THE WITNESS: Sure.	
16:54:13	10	ARBITRATOR WALL: That over distribution	
16:54:16	11	number that -- I'm just going to call it an over	
16:54:19	12	distribution number that came from your schedule that's	
16:54:20	13	roughly \$789,000. It was roughly \$289,000 prior to	
16:54:29	14	September 2nd of 2017. Right?	
16:54:32	15	THE WITNESS: Right.	
16:54:32	16	ARBITRATOR WALL: So it's a \$500,000 adjustment	
16:54:38	17	based on a determination that Mr. Bidsal shouldn't be	
16:54:45	18	entitled to anything after September 2nd, 2017. Right?	
16:54:50	19	THE WITNESS: Correct.	
16:54:50	20	ARBITRATOR WALL: Okay. So let's say we used	
16:54:53	21	your Alternative C final purchase price of 1,598,000?	
16:55:06	22	THE WITNESS: Yes.	
16:55:08	23	ARBITRATOR WALL: Would it be your testimony that	
16:55:10	24	\$289,000 -- well, I got to back up.	
16:55:17	25	If I determined that the appropriate date of sale	

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16:55:21 1 was whenever I do an award --

16:55:30 2 THE WITNESS: Right.

16:55:32 3 ARBITRATOR WALL: -- then it's really only

16:55:37 4 298,000 in excess distributions?

16:55:40 5 THE WITNESS: It would be excess distributions

16:55:46 6 through September 2nd.

16:55:48 7 ARBITRATOR WALL: If I found he was still a

16:55:50 8 member until today.

16:55:53 9 THE WITNESS: If you found he was still a member

16:55:55 10 until today, there would be -- it would be a little more

16:55:58 11 than that, but it wouldn't be that full number I have.

16:56:02 12 If you found he was still a member until today, you

16:56:06 13 would have to look at what the return of capital was in

16:56:08 14 those years, which can be -- I think it's identified but

16:56:12 15 not totaled.

16:56:14 16 ARBITRATOR WALL: Right.

16:56:17 17 THE WITNESS: Because if he was a member through

16:56:19 18 today, he would still have a right to profit

16:56:23 19 distributions of 50 percent.

16:56:23 20 ARBITRATOR WALL: Right.

16:56:25 21 THE WITNESS: And so you would have to subtract

16:56:27 22 those profit distributions from my number.

16:56:30 23 ARBITRATOR WALL: From the 789 number?

16:56:34 24 THE WITNESS: Yes.

16:56:35 25 ARBITRATOR WALL: Which is roughly 500,000.

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16:56:38 1 THE WITNESS: Yeah, that's probably -- there
16:56:39 2 wasn't very many returns of capital after -- actually,
16:56:50 3 let me look here.
16:56:54 4 ARBITRATOR WALL: There's one in 2019.
16:56:56 5 THE WITNESS: There's one in '17 of 43,000 and
16:57:02 6 then there's one in '19. Other than those two, yeah, I
16:57:09 7 mean, that's -- you're correct.
16:57:13 8 ARBITRATOR WALL: But if I found that he was --
16:57:14 9 it was September 2nd, then it's your -- the numbers
16:57:16 10 you've laid out?
16:57:18 11 THE WITNESS: Correct.
16:57:20 12 ARBITRATOR WALL: All right. I gotcha.
16:57:24 13 BY MR. LEWIN:
16:57:24 14 **Q. Did you find your schedule?**
16:57:26 15 MR. SHAPIRO: You mean you can't answer a
16:57:28 16 question and be flipping through exhibits at the same
16:57:31 17 time?
16:59:06 18 A. I found the language.
16:59:09 19 BY MR. LEWIN:
16:59:10 20 **Q. Where are you finding that?**
16:59:11 21 A. You're asking where the 840?
16:59:15 22 **Q. Yes.**
16:59:16 23 A. It comes from Exhibit No. 1, which we were just
16:59:21 24 going through, at least a form of that, and it is the
16:59:29 25 capital account at the end of 12/31/16 is where that

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16:59:39 1 number is coming from, assuming that the allocations
16:59:43 2 were done correctly as if he had paid back the 289,251.

16:59:52 3 **Q. So explain that again. I'm not...**

16:59:56 4 A. Well, his capital account at the end of 12/31/16
17:00:01 5 per the tax return, Mr. Bidsal's I should say capital
17:00:06 6 account was 730,170. If the allocations had been done
17:00:13 7 properly, it should have been 840,643.

17:00:18 8 **Q. I see.**

17:00:19 9 A. So I used the correct allocation, and if this
17:00:24 10 gets removed, you should go back to the tax return, what
17:00:28 11 the capital account was on the tax return.

17:00:30 12 **Q. So this 840,643 reflects the reducing his capital**
17:00:38 13 **account by the amount of capital returns. Is that**
17:00:41 14 **correct?**

17:00:42 15 A. It -- repeat that again. Let me make sure I
17:00:57 16 answer correctly.

17:00:59 17 **Q. Does the \$840,000 represent a number based on his**
17:01:05 18 **original capital of 192,015 --**

17:01:06 19 A. Yes.

17:01:07 20 **Q. -- less all returns of capital up to the end of**
17:01:10 21 **2016?**

17:01:11 22 A. And plus all of the income that should have been
17:01:13 23 allocated to him, yes. That is correct.

17:01:21 24 **Q. The last item on the Schedule 3 is the prorated**
17:01:28 25 **liabilities, and yesterday you heard my discussion with**

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17:01:32 1 Mr. Wilcox about that. If -- do you have any comment on
17:01:40 2 Chris's position with respect to the security deposits?
17:01:44 3 A. There's a -- yes, I do. And he said there's a
17:01:52 4 liability on the books. It doesn't matter if there's
17:01:55 5 cash on hand. You still have a liability. And the
17:01:58 6 agreement said that you need to prorate. That's part of
17:02:03 7 the formula, to subtract the prorated liabilities. And
17:02:09 8 the only liabilities that I was aware of -- there may
17:02:13 9 have been more -- was the rent deposits.
17:02:16 10 Q. So the prorated liabilities relates to the amount
17:02:20 11 of cash on hand in some respect?
17:02:23 12 A. Not necessarily.
17:02:24 13 Q. Okay.
17:02:29 14 A. There's no requirement to keep that in escrow
17:02:32 15 that I'm aware of.
17:02:36 16 Q. Do you have any other opinions from your
17:02:40 17 assignment -- forgetting about commenting on Mr.
17:02:50 18 Wilcox's report. I'm going to ask you about that in a
17:02:53 19 second. Any other opinions you want to share with His
17:02:57 20 Honor in terms of getting to the purchase price to be
17:03:00 21 paid to Mr. Bidsal?
17:03:03 22 A. I believe we've covered it.
17:03:16 23 Q. Do you have any comments about -- you read
17:03:21 24 Mr. Wilcox's report and you heard his testimony. In
17:03:25 25 terms of his report, do you have any -- you issued a

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1 **rebuttal report. Do you have any comments that you**
2 **haven't already expressed regarding Mr. Wilcox?**

3 A. Well, listening to testimony, I heard some
4 contradictory -- one, he said the sale of the property
5 at the point of the time is a nonrecurring event, but
6 then he just said it wasn't a capital transaction under
7 the agreement. I thought that was contradicting.

8 Two, I don't know how he can ignore the specific
9 intent in the last section of Exhibit B that says that
10 profits means -- what does it say -- income from
11 operations or cash flow from operations. Profits from
12 operations that result in ordinary income. And he just
13 kind of ignores that as being a specific intent.

14 Two, three -- I forget the count. If you follow
15 Chris's interpretation of the operating agreement in
16 Exhibit B, somebody could be selling property or getting
17 payments on the note and CLA would never get their
18 capital returned.

19 I mean, just say they kept the property. It
20 fuller depreciated. Just the depreciation alone and the
21 cash flow distributions, Mr. Bidsal's capital account
22 would go below zero. CLA's capital account would be
23 positive. And let's say that somebody drops a nuke in
24 this thing and those properties are worthless at the
25 time. There's no sales proceeds. There's nothing to

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17:05:41 1 liquidate. You've got Mr. Bidsal receiving more than
17:05:48 2 his share of the profits and distributions, and CLA ends
17:05:54 3 up with a positive capital account but never gets any
17:05:59 4 cash for it. And you -- and I could illustrate, you
17:06:03 5 know, that easily, but I think it's kind of obvious and
17:06:09 6 it just shows that his interpretation of Exhibit B
17:06:15 7 causes the operating agreement not to work, which he
17:06:19 8 said in his own testimony, that it doesn't work. But,
17:06:23 9 you know, these distributions of 70/30 and the basis is
17:06:28 10 just -- you know, it's reasonable but it's not in
17:06:31 11 accordance with the operating agreement.

17:06:35 12 The reason it doesn't work is he's interpreting
17:06:39 13 it wrong. If you interpret it the way I interpret it,
17:06:43 14 the operating agreement works and the partners end up to
17:06:47 15 50/50 after a period of time and nobody goes below zero
17:06:52 16 in their capital accounts.

17:06:54 17 **Q. Any other opinions?**

17:06:55 18 A. That's it.

17:06:57 19 MR. LEWIN: I pass the witness.

17:06:59 20 ARBITRATOR WALL: Do you want to take a break or
17:07:01 21 what are you thinking?

17:07:12 22 MR. GERRARD: No, no. I mean, unless the court
17:07:14 23 reporter needs a break or somebody else needs a break, I
17:07:15 24 just want to plow through as quick as we can.

17:07:15 25 ARBITRATOR WALL: Okay.

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17:07:20 1 EXAMINATION

17:07:20 2 BY MR. GERRARD:

17:07:20 3 Q. Mr. Gerety, let's start with this concept that --

17:07:20 4 kind of that you ended with. You saw in Mr. Wilcox's

17:07:22 5 report his Schedule 5 that -- basically his breakdown of

17:07:26 6 how he calculated the purchase price. Correct?

17:07:29 7 A. I don't remember what his Schedule 5 was, but he

17:07:33 8 did have a schedule.

17:07:36 9 MR. GERRARD: I don't know that we copied one

17:07:39 10 ever to put in the book.

17:07:41 11 ARBITRATOR WALL: It was part of Exhibit 201,

17:07:44 12 Schedule 5.

17:07:44 13 MR. GERRARD: So do you have the book there that

17:07:49 14 has 201 in?

17:07:49 15 ARBITRATOR WALL: I don't know if we put it in

17:07:51 16 the book.

17:07:52 17 MR. LEWIN: I've got it here.

17:07:55 18 BY MR. GERRARD:

17:07:56 19 Q. So if we look at Schedule 5 --

17:08:02 20 MR. LEWIN: Mind if I look over his shoulder?

17:08:06 21 ARBITRATOR WALL: Not at all.

17:08:08 22 MR. GERRARD: Not at all.

17:08:10 23 ARBITRATOR WALL: I think he was asking me.

17:08:11 24 MR. GERRARD: I know. I shouldn't have answered.

25 Sorry.

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1 MR. LEWIN: You know what? I think I have it. I
2 have his report.

3 MR. GERRARD: You do?

4 MR. LEWIN: Yeah, I do.

17:08:16 5 MR. GERRARD: Okay.

17:08:16 6 BY MR. GERRARD:

17:08:16 7 Q. Do you have that in front of you, sir?

17:08:17 8 A. I do.

17:08:18 9 Q. So do you see in this formula -- let's start with
17:08:19 10 the formula so we're clear. We go back to Exhibit 5 --

17:08:21 11 ARBITRATOR WALL: The operating agreement.

17:08:23 12 BY MR. GERRARD:

17:08:24 13 Q. -- the operating agreement that has the formula
17:08:26 14 in it at Article 5, Section 4.2. And I know you
17:08:33 15 probably have this formula memorized by now, but go
17:08:37 16 ahead and look at it. It's on Page 11.

17:08:40 17 A. Okay.

17:08:41 18 Q. Let me know when you're there.

17:08:43 19 A. I'm there.

17:08:44 20 Q. Okay. So you see the formula that we're looking
17:08:47 21 at. It's the last formula on that page right above the
17:08:50 22 Section 4.3.

17:08:55 23 A. Yes.

17:08:55 24 Q. So the formula says FMV, which we know is fair
17:09:00 25 market value. Correct?

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17:09:02 1 A. Yes.

17:09:02 2 Q. Minus COP. Right?

17:09:04 3 A. Correct.

17:09:05 4 Q. So that formula is designed to essentially

17:09:07 5 determine what the appreciation is in the property.

17:09:10 6 Right?

17:09:10 7 A. I agree.

17:09:11 8 Q. Okay. And then we'd multiply that in half, so

17:09:13 9 each party is supposed to get their half of the

17:09:16 10 appreciation. Right?

17:09:16 11 A. Correct.

17:09:17 12 Q. And then we're supposed to add to that something

17:09:19 13 called capital contribution of the offering members at

17:09:22 14 the time of purchasing the property. Do you see that?

17:09:25 15 A. I do.

17:09:26 16 Q. Okay. So at the time -- there's only two types

17:09:30 17 of property this company has ever owned. Right? They

17:09:34 18 owned a note and then later they owned real property.

17:09:38 19 Correct?

17:09:38 20 A. Correct.

17:09:39 21 Q. Okay. So at the time that they bought the note,

17:09:44 22 what was the capital contribution of Mr. Bidsal?

17:09:50 23 1,215,000. Correct?

17:09:51 24 A. Correct.

17:09:51 25 Q. And if -- at the time that they acquired the

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17:09:53 1 property through the deed in lieu, what was the capital
17:09:56 2 contribution of Mr. Bidsal? 1,215,000. Correct?
17:10:02 3 A. I'm sorry. Repeat, please.
17:10:05 4 Q. Sure. In September of 2011 when they obtained
17:10:08 5 the real property through the deed in lieu of
17:10:10 6 foreclosure agreement, what was the capital contribution
17:10:17 7 on that date of Mr. Bidsal? 1,215,000. Correct? There
17:10:24 8 had been no sales of any property yet. Right?
17:10:27 9 A. Yeah. It would be very close to that. I can't
17:10:32 10 remember if there were any distributions prior to that.
17:10:35 11 Q. So under this formula, once we determine what the
17:10:38 12 appreciation of the property is, Mr. Bidsal is supposed
17:10:41 13 to get back his capital contribution at the time of
17:10:45 14 purchasing the property, which we've just established
17:10:48 15 would be 1,215,000, but both you and Mr. Wilcox have
17:10:53 16 taken the position that it wouldn't be fair to give him
17:10:56 17 back 1,215,000 if he's already received some return of
17:11:01 18 capital from the sale of each of these buildings.
17:11:05 19 Correct?
17:11:05 20 A. Correct.
17:11:06 21 Q. So if we didn't take into account the money that
17:11:11 22 Mr. Bidsal received from the sale of Building C,
17:11:15 23 Building B, and Building E, then you'd have to add it in
17:11:20 24 to this formula because his capital contribution would
17:11:25 25 still be 1,215,000. Correct?

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17:11:29 1 A. And you would also have to --

17:11:31 2 Q. Just a yes or no, sir. This is

17:11:33 3 cross-examination, and I'm not asking for your opinions.

17:11:33 4 A. You missed one part of it, but yes.

17:11:35 5 Q. Sir, is it yes or no?

17:11:35 6 A. Yes.

17:11:36 7 Q. Okay. So although you're calling it an offset to

17:11:39 8 what Mr. Bidsal would be entitled to receive under this

17:11:44 9 formula, it's not really an offset because if he hadn't

17:11:50 10 received that money there, he would receive it here.

17:11:50 11 Correct?

17:11:50 12 A. It depends on --

17:11:52 13 Q. It's yes or no, sir. Yes or no?

17:11:52 14 ARBITRATOR WALL: Here's the thing:

17:11:54 15 Cross-examination, as you've told me you've testified

17:11:56 16 quite a bit before, a yes/no question he is entitled to

17:11:59 17 yes, no, I don't know, I don't recall, I can't remember,

17:12:03 18 I don't understand the question, or I can't answer it

17:12:06 19 yes or no.

17:12:08 20 THE WITNESS: Okay.

17:12:09 21 A. Could you please repeat?

17:12:09 22 BY MR. GERRARD:

17:12:12 23 Q. Sure. So if Mr. Bidsal had not received those

17:12:15 24 distributions that reduced his capital contribution --

17:12:19 25 in other words, he hadn't received a share of the

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17:12:23 1 proceeds from the sales of Buildings B, C, and E -- then Page 934
17:12:33 2 he would have received that same amount of money under
17:12:35 3 either your analysis or Mr. Wilcox's analysis when you
17:12:39 4 applied this formula?
17:12:40 5 A. No.
17:12:41 6 Q. Right?
17:12:42 7 A. Incorrect.
17:12:43 8 Q. Okay. But you, in doing your calculation, you
17:12:50 9 first of all said that Mr. Bidsal received too much
17:12:53 10 money from the sale of Building C, B, and E. Correct?
17:12:57 11 A. Correct.
17:13:00 12 ARBITRATOR WALL: Well, just B and E, I think.
17:13:03 13 MR. GERRARD: C -- well, okay. B and E. That's
17:13:04 14 fair.
17:13:05 15 BY MR. GERRARD:
17:13:05 16 Q. And you also took that into account. In other
17:13:10 17 words, the money that he had received you didn't give
17:13:13 18 him a credit back for that in your analysis when you
17:13:16 19 calculated this formula, did you?
17:13:24 20 A. I don't follow what you're...
17:13:25 21 Q. Well, sure. Let me make it clear for you.
17:13:26 22 The formula says he gets a million 215,000
17:13:30 23 because that's what his contribution was on those two
17:13:33 24 dates. Correct?
17:13:34 25 A. I'm not sure the formula says that.

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17:13:37 1 Q. Okay. Isn't that what the words say? It says, Page 935
17:13:37 2 "Capital contribution of the offering member at the time
17:13:39 3 of purchasing the property," and we just established
17:13:45 4 what the property is. Right? There's only two
17:13:47 5 properties they've ever owned, and on both of those
17:13:51 6 dates, Mr. Bidsal, his contribution was 1,215,000.
17:13:56 7 Correct?
17:13:56 8 A. But what's being --
17:13:58 9 Q. Sir. Is it yes or no?
17:14:00 10 A. I think you're mixing the properties. No, in
17:14:02 11 other words.
17:14:02 12 Q. Okay. So there was a note --
17:14:02 13 A. You're misinterpreting.
17:14:02 14 Q. There was a note. Right? And on the date that
17:14:03 15 they acquired the note, his contribution was a million
17:14:08 16 215,000. Correct?
17:14:09 17 A. Correct.
17:14:10 18 Q. And then later they acquired the real property,
17:14:12 19 and on that date his contribution was a million 215,000.
17:14:18 20 Correct?
17:14:18 21 A. Correct.
17:14:18 22 Q. Okay.
17:14:20 23 A. When you say --
17:14:21 24 Q. Sir, there are no more -- there is no question
17:14:22 25 for you to answer.

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17:14:22 1 A. Okay.

17:14:24 2 Q. So you basically reduced the formula by what you
17:14:29 3 thought was fair. Not by what it says but what you
17:14:31 4 thought was fair because he had received a return of
17:14:32 5 capital, and then you also tried to deduct on the other
17:14:34 6 side by saying he'd received too much. Didn't you?

17:14:38 7 A. No. I balanced it out.

17:14:40 8 Q. So let's talk about the basic fundamental
17:14:45 9 disconnect between you and Mr. Wilcox.

17:14:49 10 A. All right.

17:14:49 11 Q. You have taken a position under this operating
17:14:52 12 agreement that unless we are talking about cash
17:14:59 13 distributions of profits from operations that result in
17:15:02 14 ordinary income, everything other than that is a capital
17:15:07 15 transaction. That's your interpretation of Exhibit B.
17:15:11 16 Correct?

17:15:11 17 A. It is.

17:15:12 18 Q. Okay. And Mr. Wilcox has interpreted Exhibit B
17:15:20 19 to say, no, capital transaction is something that's been
17:15:24 20 determined by the parties in this operating agreement to
17:15:27 21 be either a cashout financing or a sale of all or a
17:15:33 22 substantial portion of the company's assets. Correct?

17:15:36 23 MR. LEWIN: Objection. That misstates -- that
17:15:39 24 misstates Mr. Wilcox's testimony.

17:15:41 25 ARBITRATOR WALL: Well, he heard it, so he can

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17:15:43 1 answer.

17:15:44 2 A. Yes.

17:15:44 3 BY MR. GERRARD:

17:15:45 4 Q. Okay. So in Mr. Wilcox's view, in his

17:15:49 5 interpretation of this and, by the way, also

17:15:52 6 Mr. Bidsal's interpretation, if something does not fit

17:15:57 7 into that definition I just gave you of capital

17:16:01 8 transaction, it's supposed to be a 50/50 allocation.

17:16:05 9 Correct?

17:16:05 10 A. That was Chris's opinion, yes.

17:16:07 11 Q. Right. And that's something that's far broader

17:16:10 12 than just this narrow thing that you defined as being

17:16:13 13 cash distributions of profits from operations resulting

17:16:18 14 in ordinary income. Right?

17:16:20 15 A. No, it's not broader.

17:16:22 16 Q. You don't think it's broader?

17:16:23 17 A. I think it's narrower.

17:16:23 18 Q. Oh, you don't think that the definition --

17:16:25 19 ARBITRATOR WALL: Depends on which way you're

17:16:28 20 looking at it. It's narrower on cash -- on what's 50/50

17:16:34 21 or it's narrower on what's 70/30.

17:16:36 22 BY MR. GERRARD:

17:16:37 23 Q. It's much broader as to what would apply for

17:16:40 24 50/50 allocations and distributions. Correct?

17:16:43 25 Mr. Wilcox's approach will result in more things

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17:16:46 1 qualifying for 50/50 distributions. Correct?

17:16:50 2 A. That is correct.

17:16:50 3 Q. Let's look at what the actual operating agreement

17:16:54 4 says. Let's look at Exhibit A to the operating

17:16:59 5 agreement.

17:16:59 6 ARBITRATOR WALL: Page 23.

17:17:01 7 MR. GERRARD: Exhibit 5 and we will be looking at

17:17:04 8 Page 23.

17:17:04 9 BY MR. GERRARD:

17:17:12 10 Q. Let me know when you're there, sir. Do you have

17:17:19 11 that open?

17:17:20 12 A. Yes, I do.

17:17:21 13 Q. Okay. So here in Section 5.1 it says, "each

17:17:27 14 member's distributive share of income, gain, loss

17:17:32 15 deduction or credit." That's pretty much everything.

17:17:32 16 Right?

17:17:32 17 A. Correct.

17:17:35 18 Q. So each member's distributive share is going to

17:17:43 20 A. Correct.

17:17:50 22 gain, loss, deduction or credit shall be allocated among

17:17:54 23 the members in proportion to their percentage interest

17:17:58 24 as set forth in Exhibit B." Let's stop there. That's

17:18:03 25 the 50/50 percentage. Correct?

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17:18:04 1 A. Correct.

17:18:04 2 Q. "...subject to the preferred allocation schedule

17:18:07 3 contained in Exhibit B." Did I read that right?

17:18:10 4 A. Yes, you did.

17:18:11 5 Q. So that creates a general rule that everything in

17:18:14 6 this company is going to be divided 50/50 unless you

17:18:17 7 trigger the preferred allocations. Correct?

17:18:19 8 A. Correct.

17:18:21 9 Q. Okay. So then when we go to Exhibit B --

17:18:23 10 MR. LEWIN: Keep your voice up.

17:18:25 11 ARBITRATOR WALL: Sorry?

17:18:26 12 MR. LEWIN: I just told him to keep his voice up.

17:18:27 13 BY MR. GERRARD:

17:18:27 14 Q. So then when we go to Exhibit B, we have language

17:18:35 15 in the first paragraph. The language in the first

17:18:39 16 paragraph -- well, before we go there, let's make one

17:18:43 17 thing clear. Your determination and your opinions of

17:18:46 18 what a capital transaction is is not based upon the

17:18:50 19 operating agreement. It's based upon what a capital

17:18:53 20 transaction would be for tax purposes. Correct?

17:18:56 21 A. Not just tax. So not correct.

17:19:01 22 Q. Okay. So where in this -- strike that. That

17:19:05 23 won't get us anywhere.

17:19:06 24 These cash -- let's read the first sentence. It

17:19:09 25 says, "Cash distributions from capital transactions will

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17:19:13 1 be distributed per the following method." So the
17:19:15 2 members of the LLC have decided what things are going to
17:19:20 3 be distributed and allocated in accordance with these
17:19:24 4 steps. Correct?

17:19:25 5 A. The members, yes.

17:19:32 6 Q. And by the way, this says distributions and
17:19:36 7 allocations, doesn't it? Says preferred allocation and
17:19:42 8 distribution schedule?

17:19:43 9 A. Yes.

17:19:44 10 Q. So that means the things that we see in this
17:19:47 11 waterfall are supposed to be allocated and distributed
17:19:51 12 in accordance with this schedule. Correct?

17:19:53 13 A. Yes.

17:19:54 14 Q. All right. So if we look at the first sentence
17:19:57 15 after this -- the one I just read, it says, "Upon any
17:20:01 16 refinancing event." That's pretty self-explanatory.
17:20:05 17 Right? You understand what that means, don't you?

17:20:07 18 A. Yes.

17:20:08 19 Q. "...and upon the sale of company asset." It's
17:20:11 20 singular. Isn't it?

17:20:12 21 A. It is.

17:20:13 22 Q. Okay. And at the time that this language was
17:20:16 23 developed, this operating agreement went back and forth
17:20:20 24 between the members for many months before it was ever
17:20:23 25 signed. Were you aware of that?

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17:20:24 1 A. I've been informed of that.

17:20:26 2 Q. Okay. All right. And at the time that this
17:20:28 3 was -- let's use early September -- okay -- early
17:20:32 4 September 2011 as a marker because we have an exhibit
17:20:36 5 that shows that this language was in the operating
17:20:39 6 agreement by that point in time. So in early September
17:20:44 7 of 2011, what did this company own?

17:20:47 8 A. I believe it just owned a promissory note.

17:20:54 9 Q. Right. It had one asset, which was a note, and
17:20:57 10 if it sold that one asset, whatever it got for it would
17:21:01 11 have been essentially a liquidation event. It would
17:21:04 12 have been all that there was to sell. Right?

17:21:07 13 A. Well, it could have -- no.

17:21:10 14 Q. It's yes or no. If they sold at that --

17:21:11 15 A. No. There's other options.

17:21:13 16 Q. -- point in time, was there something else that
17:21:15 17 they had to sell other than the note?

17:21:17 18 A. That was the only thing to sell.

17:21:19 19 Q. All right. Thank you.

17:21:21 20 And then the next thing it says is, "Cash is
17:21:23 21 distributed according to a stepdown allocation. If
17:21:27 22 there's the sale of 'company asset,'" and then we go to
17:21:33 23 the bottom. This is the language that you were most
17:21:37 24 persuaded by. Right? The language that says, "It is
17:21:38 25 the express intent of the parties." Right?

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1 A. Correct.

2 Q. And it says, "It is the express intent of the

3 parties that cash distributions of profits refers to

4 distributions generated from operations resulting in

5 ordinary income in contrast to" -- what does that word

6 mean to you? In compared to or as opposed to? Is that

7 what we're talking about?

8 A. Yes.

9 Q. Okay. "As opposed to or in contrast to cash

10 distributions arising from capital transactions or

11 nonrecurring events such as a sale of all or a

12 substantial portion of the company's assets or a cashout

13 financing."

14 Do you see that language?

15 A. I do.

16 Q. Okay. So Mr. Bidsal has testified that what was

17 intended by the parties when this language was put in

18 was that if there was an event that happened in this

19 company that resulted in a sufficient amount of money,

20 that they could return to both members all the capital

21 that they had put in, that that's when they were going

22 to return that capital.

23 Do you believe that that interpretation is

24 consistent with the words you see on this page?

25 A. No.

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17:22:44 1 Q. Okay. And the reason you think it's not
17:22:47 2 consistent is because of your conclusion that you've
17:22:50 3 come up with that only cash that was generated from
17:22:56 4 operations that resulted in ordinary income could be
17:22:59 5 divided 50/50. Everything else by definition under your
17:23:03 6 analysis had to be 70/30. Right?

17:23:06 7 A. That's not the only --

17:23:07 8 Q. Okay. But that's primarily your reasoning.
17:23:10 9 Right?

17:23:10 10 A. One of the primary reasons, yes.

17:23:15 11 Q. Okay. So --

17:23:15 12 MR. LEWIN: You're stepping on his answers. Give
17:23:18 13 him a chance to --

17:23:18 14 MR. GERRARD: I apologize. If I am, I'm sorry.
17:23:21 15 I'm not trying to do that. I'm just trying to move
17:23:23 16 along so that we can get done.

17:23:24 17 ARBITRATOR WALL: All right.

17:23:28 18 BY MR. GERRARD:

17:23:29 19 Q. You know who Chris Wilcox is. Right?

17:23:31 20 A. Yes, I do.

17:23:33 21 Q. And you've dealt with him over the years many
17:23:36 22 times. Right?

17:23:36 23 A. Yeah. We're friends.

17:23:37 24 Q. Yeah. And what's his reputation in town as a
17:23:41 25 certified public accountant?

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17:23:41 1 A. Has a very good reputation.

17:23:44 2 Q. And by the way, he said you do too.

17:23:48 3 ARBITRATOR WALL: He probably heard it.

17:23:50 4 THE WITNESS: I did. Oh, that was nice.

17:23:52 5 BY MR. GERRARD:

17:23:52 6 Q. So that tells you that two people reading the

17:23:54 7 same thing who are both very well educated and have a

17:23:57 8 lot of experience have come to a different conclusion

17:23:59 9 about what this language means. Correct?

17:24:01 10 A. That is correct.

17:24:02 11 Q. Do you consider yourself to be a reasonable

17:24:04 12 person?

17:24:04 13 A. I do.

17:24:05 14 Q. Do you consider Chris Wilcox to be a reasonable

17:24:09 15 person?

17:24:09 16 A. Yes, I do.

17:24:09 17 Q. All right. So reasonable minds can differ about

17:24:12 18 what this language means?

17:24:13 19 A. Obviously.

17:24:15 20 Q. Okay. So let's talk about for just a minute this

17:24:16 21 whole concept of the interest and the rents. Okay?

17:24:16 22 A. Okay.

17:24:20 23 Q. So let's open up to Exhibit 8.

17:24:20 24 A. 8?

17:24:30 25 Q. 8. It's in one of your binders in front of you,

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17:24:33 1 sir. Go back. I made a lot of notes while you were
17:24:49 2 talking.
17:24:50 3 So in this deed in lieu of foreclosure agreement,
17:24:54 4 this is an agreement that was between two -- well,
17:24:59 5 really three different parties. Right?
17:24:59 6 A. Correct.
17:25:01 7 Q. I mean, it was between the former owner of the
17:25:03 8 property and who the lender was at that time that was
17:25:06 9 going to become the new owner of the property, that
17:25:11 10 being Green Valley Commerce. Right?
17:25:11 11 A. Correct.
17:25:13 12 Q. And then there were some other ancillary parties
17:25:14 13 who were parent companies and/or management people who
17:25:16 14 are doing property management. Correct?
17:25:18 15 A. That is correct.
17:25:20 16 Q. So in this deed in lieu of foreclosure
17:25:23 17 agreement -- first of all, you understand the concept of
17:25:26 18 a deed in lieu of foreclosure. Correct?
17:25:29 19 A. I do.
17:25:29 20 Q. You're not converting a lien interest, a deed of
17:25:36 21 trust into title through a deed in lieu of foreclosure
17:25:38 22 agreement, are you?
17:25:39 23 A. Well, you're taking title to the property --
17:25:42 24 Q. Right. But that happens --
17:25:42 25 A. -- in exchange for the note, yes.

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1 Q. But in a deed in lieu agreement it requires an
2 actual conveyance. Right? You don't just magically
3 convert your deed of trust lien into a title interest.
4 You actually have to get a conveyance. Correct?
5 A. That is correct.
6 Q. And that's what happened in this case. There was
7 a conveyance at the conclusion of the transaction.
8 Correct?
9 A. Correct.
10 Q. Okay. And so when we look at -- when we look at
11 the language that you had focused on earlier in your
12 questioning by Mr. Lewin, which is Section 2.10 on
13 Page 4, I'd like to look at that for a minute carefully.
14 So this language says -- let me know when you're
15 there.
16 A. I'm there.
17 Q. It says, "Upon execution of this agreement" -- so
18 when it was signed. Right? "-- the borrower shall
19 transfer to the lender the amount of 295,258.93, which
20 amount represents" what? What does it say?
21 A. "Net rents from the property that had not
22 previously been paid to lender."
23 Q. Okay.
24 A. Okay.
25 Q. Now, the agreement calls this net rents that are

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17:26:53 1 in the possession of whom?

17:26:55 2 A. The borrower.

17:26:58 3 Q. Right. It's not in the possession of the lender.

17:27:01 4 Correct? It's in the possession of the former owner of

17:27:04 5 the property and borrower under the loan. Correct?

17:27:07 6 A. Correct.

17:27:08 7 Q. Okay. Now, you understand the concept of an

17:27:10 8 assignment of rents. Correct?

17:27:12 9 A. I do.

17:27:13 10 Q. Okay. Is your opinion in this case that the

17:27:17 11 rents must be characterized as interest in part based

17:27:21 12 upon the assignment of rents agreement between the

17:27:24 13 borrower and the lender?

17:27:26 14 A. Yes. It's a part of that.

17:27:29 15 Q. Yeah. I mean, you just gave that testimony.

17:27:31 16 Right?

17:27:31 17 A. Yes.

17:27:32 18 Q. And the premise of that is the rents, when

17:27:34 19 provided to Green Valley Commerce, the lender, must

17:27:38 20 result in a credit being given by the lender to the

17:27:41 21 borrower as a payment of interest against the loan.

17:27:45 22 Correct?

17:27:45 23 A. That is correct.

17:27:46 24 Q. Okay. Let's take a look at that agreement

17:27:52 25 quickly. Let's take a look at Exhibit 85. Now, let me

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17:28:14 1 know when you have that open.

17:28:23 2 A. I do.

17:28:24 3 Q. Okay. Now this -- we just established from your

17:28:29 4 testimony that at the time the deed in lieu of

17:28:31 5 foreclosure agreement was entered into, the borrower,

17:28:36 6 the prior owner of the property, was holding collected

17:28:40 7 rents. Correct?

17:28:41 8 A. Correct.

17:28:41 9 Q. And they hadn't been transferred prior to the

17:28:44 10 deed in lieu of foreclosure being entered into. They

17:28:49 11 were still being held by the borrower. Correct?

17:28:52 12 A. Correct.

17:28:53 13 Q. Okay. Let's look at Page 6, Paragraph 1. This

17:29:05 14 is the assignment of leases and rents. Okay?

17:29:07 15 A. Uh-huh.

17:29:07 16 Q. Is that --

17:29:08 17 A. Okay.

17:29:09 18 Q. Okay. So Paragraph 1 the first sentence says,

17:29:16 19 "Assignor." Now, who is assignor is this case? That's

17:29:17 20 the owner, the borrower. Correct? The property owner

17:29:20 21 and the borrower. Correct?

17:29:20 22 A. That is correct.

17:29:20 23 Q. "Intends that this assignment constitutes a

17:29:24 24 present, absolute, and unconditional assignment and not

17:29:26 25 an assignment for additional security only."

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17:29:31 1 That means the borrower has given an absolute
17:29:34 2 assignment of the rents to this lender. Correct?
17:29:37 3 A. Correct.
17:29:37 4 Q. Now let's read down about halfway through that
17:29:41 5 paragraph. On the left-hand margin there's a word that
17:29:45 6 says, "Hereunder." Do see where that is?
17:29:50 7 A. How far down?
8 Q. About halfway down that paragraph on the
9 left-hand margin. Do you see where --
10 A. On your left.
11 Q. Okay. About maybe a third.
12 A. Okay.
17:29:51 13 Q. Okay. So right after that there's a sentence
17:29:53 14 that says: "Nevertheless, subject to the terms of this
17:29:57 15 agreement, assignee" --
17:30:00 16 ARBITRATOR WALL: Of this assignment.
17:30:00 17 MR. GERRARD: What did I say? Agreement?
17:30:02 18 ARBITRATOR WALL: Yeah.
17:30:02 19 BY MR. GERRARD:
17:30:03 20 Q. "Nevertheless, subject to the terms of this
17:30:06 21 assignment, assignee grants to assignor" -- and assignee
17:30:06 22 is the lender. Correct?
17:30:06 23 A. Correct.
17:30:12 24 Q. "-- grants to assignor a revocable limited
17:30:14 25 license subject to its revocation, termination and the

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17:30:20 1 other applicable terms and provisions of this assignment
17:30:24 2 to exercise and enjoy all incidents of the status of a
17:30:28 3 lessor with respect to the leases and rents, including
17:30:31 4 without limitation, the right to collect, demand, sue
17:30:35 5 for, attach, levy, recover and receive the rents."

17:30:39 6 We can just stop there. You see the language I'm
17:30:42 7 reading?

17:30:42 8 A. I do.

17:30:44 9 Q. So under this agreement the lender has given the
17:30:48 10 right back to the borrower to collect all the rents and
17:30:50 11 to use them. Right?

17:30:52 12 A. Correct.

17:30:52 13 Q. Now let's go back to the bottom of the paragraph.

17:30:56 14 A. Okay.

17:30:57 15 Q. The very bottom, the last sentence in the
17:31:02 16 paragraph starts with the word "Furthermore." Let me
17:31:05 17 know when you find that. The last sentence on the page.
17:31:13 18 Do you see that?

17:31:14 19 ARBITRATOR WALL: About five lines up on the
17:31:17 20 right side.

17:31:20 21 BY MR. GERRARD:

17:31:20 22 Q. Did you find the word "furthermore"?

17:31:21 23 A. Yes.

17:31:21 24 Q. Okay. So let's read that. It says,
17:31:22 25 "Furthermore, and notwithstanding the provisions of this

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17:31:26 1 Section 1 or Section 2, no credit shall be given by
17:31:30 2 assignee" -- that's the lender -- "for any rent until
17:31:34 3 the money collected is actually received by the
17:31:38 4 assignee."

17:31:39 5 So let's stop there for a minute. That means
17:31:42 6 that the lender doesn't give any credit to the borrower
17:31:46 7 until it has the money in its hands. Correct?

17:31:49 8 A. Correct.

17:31:50 9 Q. Let's continue on. "And no such credit shall be
17:31:52 10 given for any rents after foreclosure or other transfer
17:31:56 11 of the trust property (or part thereof from which the
17:32:02 12 rents are derived pursuant to this assignment) to
17:32:06 13 assignee or any other third party." Do you see that?

17:32:10 14 A. I do.

17:32:10 15 Q. Okay. So according to that provision, the lender
17:32:13 16 will not give credit for any rents that it receives
17:32:19 17 after the trust property has been transferred. Correct?

17:32:22 18 A. That's what it says.

17:32:24 19 Q. And in this case the rents were received after
17:32:26 20 the trust property was transferred to Green Valley
17:32:30 21 Commerce?

17:32:30 22 MR. LEWIN: Objection. There's no evidence to
17:32:32 23 that. If you look at the documents --

17:32:34 24 ARBITRATOR WALL: He's already testified that it
17:32:36 25 doesn't take place until after the agreement and the

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17:32:39 1 conveyance, as he walked through the deed in lieu
17:32:45 2 agreement.
17:32:45 3 MR. LEWIN: Well, the deed --
17:32:46 4 ARBITRATOR WALL: So I overruled the objection.
17:32:49 5 BY MR. GERRARD:
17:32:50 6 Q. So it's yes or no?
17:32:51 7 A. That's not what I believe, no.
17:32:57 8 Q. All right.
17:32:55 9 A. I thought...
17:32:58 10 Q. So the monies that were the collected rents were
17:33:01 11 transferred after this agreement was signed. Right?
17:33:04 12 MR. LEWIN: Objection. Lacks foundation.
17:33:06 13 BY MR. GERRARD:
17:33:06 14 Q. And they were transferred through an escrow.
17:33:10 15 Correct?
17:33:10 16 A. They were transferred at time of closing.
17:33:13 17 Q. Right.
17:33:15 18 A. Right.
17:33:15 19 Q. So the rents were not received until after this
17:33:21 20 transfer had been completed. Correct?
17:33:24 21 MR. LEWIN: Objection. Lacks foundation.
17:33:27 22 ARBITRATOR WALL: He's asking him, so overruled.
17:33:30 23 A. No, that's not --
17:33:34 24 BY MR. GERRARD:
17:33:34 25 Q. Have you ever been --

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17:33:36 1 MR. LEWIN: Hold on for a minute.

17:33:36 2 MR. GERRARD: He just said no.

17:33:36 3 MR. LEWIN: I understand that.

17:33:37 4 MR. GERRARD: That's it. It's a yes or no.

17:33:37 5 ARBITRATOR WALL: It's a yes-or-no question.

17:33:38 6 BY MR. GERRARD:

17:33:38 7 Q. Have you ever been involved, sir, in an escrow?

17:33:41 8 A. I have.

17:33:42 9 Q. And in an escrow when money is deposited into an

17:33:46 10 escrow and there's a deed that's deposited into

17:33:48 11 escrow --

17:33:49 12 A. Right.

17:33:50 13 Q. -- what happens? The deed has to be recorded and

17:33:54 14 then the money is transferred. Correct?

17:33:55 15 A. Doesn't it happen at the same time?

17:33:57 16 Q. Does it happen simultaneously? Have you ever

17:33:59 17 received a check from escrow prior to the deed being

17:34:02 18 recorded?

17:34:03 19 A. I don't recall.

17:34:06 20 Q. Okay. So isn't it true, sir, that the deed is

17:34:10 21 always recorded first and then the escrow releases the

17:34:14 22 money, meaning in this case the rents were not received

17:34:17 23 until after the property had been transferred. Right?

17:34:17 24 A. Okay.

17:34:17 25 Q. Okay?

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17:34:21 1 A. I'll assume that's correct.

17:34:23 2 Q. All right. And under the language that we just
17:34:25 3 read, that means that that would not be credited --
17:34:27 4 would not be credited by the lender as any payment on
17:34:34 5 the loan. That's what the language says. Correct?

17:34:35 6 A. Correct.

17:34:36 7 Q. All right. Thank you.

17:34:37 8 Now, the rents themselves were actually received
17:34:44 9 by Green Valley Commerce and they were allocated and
17:34:48 10 distributed 50/50. Correct?

17:34:50 11 A. Correct.

17:34:50 12 Q. In fact, the 2011 tax return made that abundantly
17:34:55 13 clear, didn't it? Just take a look at it. It's Exhibit
17:35:03 14 No. 12.

17:35:03 15 A. It -- I mean, I know what the tax returns showed.

17:35:07 16 Q. Okay. So you know that on Exhibit 12, if we look
17:35:10 17 at Schedule K, it shows all the rents that were received
17:35:13 18 through that escrow. Shows it as \$311,265, and, in
17:35:19 19 fact, it calls it interest income, doesn't it?

17:35:21 20 A. Correct.

17:35:22 21 Q. But then that money which was called on the tax
17:35:26 22 return interest income was both allocated and
17:35:30 23 distributed 50/50. Correct?

17:35:32 24 A. That is correct.

17:35:32 25 Q. So under your interpretation of -- oh, and your

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17:35:35 1 client has already admitted he received this tax return
17:35:39 2 after it was filed. So your --
17:35:43 3 ARBITRATOR WALL: It's not his client.
17:35:46 4 MR. GERRARD: Well, usually -- okay.
17:35:46 5 BY MR. GERRARD:
17:35:46 6 Q. Mr. Golshani has testified that he received this
17:35:51 7 tax return after it was filed, so he had all the
17:35:56 8 information that told him that this money had both been
17:35:59 9 allocated and distributed on a 50/50 basis. Correct?
17:36:04 10 A. That's correct.
17:36:04 11 Q. And when is the first time that Mr. Golshani
17:36:08 12 said, "I think this money was allocated and distributed
17:36:11 13 improperly. I think it should have been 70/30"? Was it
17:36:15 14 after you issued your expert report in this case?
17:36:18 15 A. I don't know --
17:36:18 16 Q. All right.
17:36:21 17 A. -- when he said that. I have no idea.
17:36:24 18 Q. All right. Now, I found it interesting as a part
17:36:29 19 of your engagement you were asked to go beyond the
17:36:33 20 statute of limitations -- you know what the statute of
17:36:37 21 limitations is. Right?
17:36:39 22 A. I do.
17:36:40 23 Q. You can't recover money in an LLC that you think
17:36:43 24 was improperly distributed ten years ago, can you?
17:36:47 25 MR. LEWIN: Objection. Your Honor, that calls

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17:36:47 1 for a legal conclusion.

17:36:47 2 MR. GERRARD: Asking him for his understanding.

17:36:47 3 MR. LEWIN: That's beyond the scope of his

17:36:48 4 assignment and opinions.

17:36:52 5 ARBITRATOR WALL: Well, no. The question is

17:36:54 6 regarding the scope of his assignment, so I'll overrule

17:36:57 7 it.

17:36:57 8 If you know.

17:36:58 9 A. I -- actually, I don't know as far as a legal

17:37:01 10 claim what the actual statute is.

17:37:03 11 BY MR. GERRARD:

17:37:04 12 Q. All right. That's fair. That's fair enough. I

17:37:05 13 just asked what your understanding was. But you did go

17:37:08 14 back ten years to look for things. As a part of your

17:37:11 15 assignment, you were actually asked to try to find

17:37:14 16 offsets to what this was going to be -- what was going

17:37:18 17 to be paid in this purchase price, weren't you?

17:37:21 18 A. It wasn't --

17:37:23 19 Q. It's yes or no.

17:37:24 20 A. Yes.

17:37:29 21 Q. Now, let's talk about this 704(b) code section,

17:38:04 22 IRC 704(b), and the regulations. I thought you did a

17:38:06 23 great job of explaining that, by the way. But you

17:38:09 24 already determined that everything that you saw in this

17:38:12 25 operating agreement had substantial economic effect.

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17:38:16

1 Correct?

17:38:17

2 A. I tested it actually, so yes, I did determine.

17:38:20

3 Q. Okay. So 704(b) doesn't even come into play

17:38:24

4 because 704(b) says if it has substantial economic

17:38:29

5 effect, the operating agreement determines how income

17:38:32

6 and gain are allocated and distributed. Correct?

17:38:35

7 A. Correct.

17:38:36

8 Q. Okay. So what it really all comes back to is

17:38:41

9 what the language in the operating agreement means.

17:38:44

10 Correct?

17:38:48

11 A. Correct.

17:38:49

12 Q. Isn't it true, sir, your theory and the one

17:38:53

13 advanced by CLA in this case is that all of the money

17:38:56

14 from the sale of Building C, E, and B, all of the

17:39:02

15 revenue that was generated from those sales should have

17:39:05

16 been distributed and allocated 70/30 -- 70 percent to

17:39:12

17 CLA and 30 percent to Mr. Bidsal?

17:39:15

18 A. Yes, with the exception.

17:39:17

19 Q. All right. So you've reviewed all the tax

17:39:21

20 returns. Right? I don't need to walk you through each

17:39:24

21 one of them, do I?

17:39:26

22 A. No.

17:39:26

23 Q. In every one of the tax returns where there was a

17:39:30

24 sale of property in that -- in the tax year that it was

17:39:32

25 reported, all of the gain was allocated on a 50/50

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17:39:37 1 basis. Correct?

17:39:38 2 A. Correct.

17:39:40 3 Q. So when --

17:39:41 4 MR. LEWIN: Hold on a second. Okay. I'm sorry.

17:39:49 5 BY MR. GERRARD:

17:39:49 6 Q. So when CLA received its tax return and saw on

17:39:53 7 its K-1 that all of the gain from the sale shown on

17:39:58 8 Schedule K had been divided 50/50 instead of 70/30, it

17:40:02 9 would have known immediately that it didn't get the

17:40:06 10 distributions that it is now claiming that were due

17:40:09 11 under this preferred allocation schedule. Correct?

17:40:11 12 MR. LEWIN: Objection. Calls for speculation.

17:40:13 13 ARBITRATOR WALL: Overruled.

17:40:14 14 A. That is correct.

17:40:15 15 BY MR. GERRARD:

17:40:15 16 Q. Okay. But yet, all of those monies were

17:40:19 17 distributed in all those years. Did you ever see any

17:40:21 18 evidence that CLA said "I think that this is being done

17:40:24 19 wrong"?

17:40:33 20 A. I did not.

17:40:33 21 Q. Okay. Did you ever talk with Mr. Golshani to

17:40:37 22 discuss your opinions before you gave them?

17:40:39 23 A. Yes.

17:40:44 24 Q. Okay. I'm not going to ask you for the contents

17:40:47 25 of the communications. Those are really privileged.

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17:40:49 1 But what I do want to know is did -- whether you come
17:40:52 2 away with an understanding that there had been a
17:40:54 3 discussion between Mr. Golshani and Mr. Bidsal when
17:40:59 4 Building C was first sold, the first sale of any
17:41:01 5 property, about how to make these distributions. Were
17:41:04 6 you aware of that?

17:41:05 7 MR. LEWIN: That question, there are terms which
17:41:12 8 suppose some information --

17:41:16 9 MR. GERRARD: No, I just asked for his
17:41:17 10 understanding.

17:41:17 11 MR. LEWIN: No, you can't -- you can't --

17:41:17 12 ARBITRATOR WALL: Wait a minute. Wait a minute.
17:41:23 13 You asked a lot of questions of Mr. Wilcox regarding his
17:41:29 14 conversations with Mr. Bidsal.

17:41:32 15 MR. LEWIN: He didn't object.

17:41:36 16 MR. GERRARD: And I don't care about that.

17:41:36 17 ARBITRATOR WALL: All right.

17:41:37 18 MR. GERRARD: But I did not ask for a privileged
17:41:38 19 communication. All I asked is if he came away with an
17:41:40 20 understanding that there was an agreement between
17:41:42 21 Mr. Bidsal and Mr. Golshani about how distributions were
17:41:49 22 supposed to be made.

17:41:50 23 ARBITRATOR WALL: That's still -- the only way
17:41:51 24 that could come about is from a conversation with
17:41:54 25 Mr. Golshani.

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17:41:56 1 MR. GERRARD: Okay. I'll ask the question a Page 960
17:41:58 2 different way.
17:41:58 3 BY MR. GERRARD:
17:41:58 4 Q. In preparing your opinions, did you have an
17:42:01 5 understanding that an agreement existed between Mr.
17:42:01 6 Golshani and Mr. Bidsal about how distributions were
17:42:08 7 going to be made from the sale of individual buildings
17:42:09 8 as opposed to a sale of everything?
17:42:14 9 MR. LEWIN: That's the same question.
17:42:16 10 ARBITRATOR WALL: No, it's not. Overruled.
17:42:17 11 A. No.
17:42:18 12 BY MR. GERRARD:
17:42:18 13 Q. Okay. Now, if there had been an agreement
17:42:20 14 between Mr. Bidsal and Mr. Golshani about what this
17:42:25 15 Exhibit B actually meant and that the agreement was
17:42:31 16 that -- what it meant was there would be a distribution
17:42:34 17 70/30 of the basis of each property sold and that the
17:42:39 18 rest of the gain would be divided 50/50, if that
17:42:42 19 agreement existed, would that change your opinions?
17:42:45 20 A. It could, yes.
17:42:46 21 Q. Okay. And in fact, what I just described is
17:42:50 22 consistent with what you saw in all the tax returns.
17:42:53 23 Correct?
17:42:53 24 A. Yes.
17:43:00 25 Q. And in fact, Mr. Main -- do you know who Mr. Main

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17:43:07 1 is?

17:43:07 2 A. I know of him.

17:43:09 3 Q. Okay. Not much experience with you like you have

17:43:09 4 with Mr. Wilcox?

17:43:09 5 A. No.

17:43:12 6 Q. Okay. Mr. Main, who's a licensed CPA here in

17:43:16 7 Nevada, he made his own determination about whether that

17:43:21 8 preferred allocation schedule had been triggered, didn't

17:43:25 9 he?

17:43:25 10 A. He did.

17:43:25 11 Q. And he, as you can see from the tax returns,

17:43:29 12 determined that that had not been triggered because he

17:43:33 13 allocated the gain from every sale on a 50/50 basis?

17:43:36 14 MR. LEWIN: Objection. Lacks foundation. It

17:43:39 15 calls for speculation.

17:43:40 16 MR. GERRARD: There's no speculation. It's on

17:43:40 17 the tax return.

17:43:42 18 ARBITRATOR WALL: Yeah, he's asking him if

17:43:43 19 somebody reviewed the tax returns.

17:43:43 20 You understood that?

17:43:43 21 THE WITNESS: Yeah.

17:43:43 22 ARBITRATOR WALL: Okay.

17:43:46 23 A. Based on the tax returns, that's what he did.

17:43:49 24 BY MR. GERRARD:

17:43:50 25 Q. Okay. So now we have two different CPAs here in

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17:43:53 1 town that have come to the conclusion that this

17:43:55 2 distribution schedule, the preferred distribution

17:43:57 3 schedule was never triggered, and we have your opinion

17:44:01 4 that says that it was triggered. Correct?

17:44:04 5 A. That is correct.

17:44:35 6 Q. Okay. And ultimately what constitutes a capital

17:44:39 7 transaction for purposes of triggering the special

17:44:43 8 allocation language of the operating agreement is

17:44:46 9 determined solely by the operating agreement, not by the

17:44:50 10 tax code. Correct?

17:44:51 11 A. The operating agreement refers to the tax code.

17:44:56 12 Q. And then the tax code refers you right back to

17:44:58 13 the operating agreement. Correct?

17:45:00 14 A. It does.

17:45:01 15 Q. Okay. So would you agree with me, based upon

17:45:12 16 that, that the determination of what a capital

17:45:15 17 transaction is for purposes not of reporting taxes but

17:45:17 18 for purposes of triggering the special allocation

17:45:20 19 language of the operating agreement, is determined by

17:45:23 20 the operating agreement. Yes or no?

17:45:26 21 A. Yes.

17:45:26 22 Q. When the company took title to this property --

17:45:36 23 now, at the time that it took -- before it took title to

17:45:40 24 this property, it was a lender. Right? It has a note

17:45:44 25 and it was acting as a lender. Correct?

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17:45:46 1 A. Correct.

17:45:47 2 Q. After it took title to the property, it

17:45:50 3 immediately began the process of subdividing the

17:45:55 4 property. Correct?

17:45:55 5 A. Correct.

17:45:56 6 Q. And within a month of taking title, they had

17:46:00 7 subdivided the property into nine different parcels.

17:46:04 8 Correct?

17:46:04 9 A. I'm not sure of the timing.

17:46:06 10 Q. And then within a few months after that, no more

17:46:09 11 than five months after that, they had listed all the

17:46:13 12 properties for sale. Were you aware of that?

17:46:16 13 A. No.

17:46:16 14 Q. Would that change your opinion at all about

17:46:19 15 whether this company was in the business of obtaining

17:46:24 16 loans, converting it to property, and then selling the

17:46:28 17 property off as inventory?

17:46:32 18 A. It could, yes.

17:46:33 19 Q. And if that was the case, if what they were doing

17:46:37 20 was selling the property off as now as their inventory,

17:46:40 21 that would change whether the proceeds from each of the

17:46:43 22 sales is ordinary income or capital gain. Correct?

17:46:47 23 A. It would.

17:46:48 24 Q. And it would all be ordinary income if that's the

17:46:51 25 business they were in. Correct?

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17:46:52 1 A. That is correct.

17:46:54 2 Q. Let's talk about this word "nonrecurring," and

17:47:01 3 the judge correctly pointed out yesterday we keep saying

17:47:06 4 non-reoccurring but the word is actually nonrecurring as

17:47:11 5 in N-O-N-R-E-C-U-R-R-I-N-G. Correct?

17:47:14 6 A. Correct.

17:47:15 7 Q. Now, I'm looking at the Merriam-Webster

17:47:19 8 dictionary definition of that word, and it says --

17:47:23 9 ARBITRATOR WALL: It's very close.

17:47:25 10 MR. GERRARD: What's that?

17:47:25 11 ARBITRATOR WALL: It's very close to

17:47:25 12 non-reoccurring.

17:47:25 13 MR. GERRARD: Yeah.

17:47:25 14 BY MR. GERRARD:

17:47:26 15 Q. But the definition is specifically "unlikely to

17:47:30 16 happen again." When this company sold Building C, which

17:47:39 17 is its first sale of property, would you believe that

17:47:40 18 that was nonrecurring at that time, a nonrecurring

17:47:45 19 event?

17:47:47 20 A. It would not fall under that definition, no.

17:47:50 21 BY MR. GERRARD:

17:47:50 22 Q. Okay. But certainly by the time that it sold a

17:47:53 23 second property and then a third property, you couldn't

17:47:55 24 say that those sales were nonrecurring under that

17:48:00 25 definition, could you?

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17:48:02 1 A. Not under that definition.

17:48:03 2 Q. Okay. Now, the other thing that you said that

17:48:17 3 was incorrect about the way money was distributed -- I

17:48:20 4 mean, really there were basically two big things.

17:48:21 5 Right? There was the -- there was the proceeds from the

17:48:23 6 sale of the buildings which you thought should have been

17:48:26 7 all 70/30 distributions, and then there were the other

17:48:30 8 things that are not ordinary income generated from

17:48:36 9 rental operations of the company. Right? Those other

17:48:38 10 things, most of which was depreciation. Right?

17:48:41 11 A. It was return of distributions and excess of

17:48:44 12 profits.

17:48:44 13 Q. Right. And so -- and most of those were created

17:48:46 14 by depreciation. Right?

17:48:46 15 A. That's correct.

17:48:48 16 Q. Okay. So that was the other big thing. And

17:48:51 17 isn't it true, sir, that under this operating agreement,

17:48:55 18 depreciation is allocated on a 50/50 basis?

17:48:59 19 A. Yes, it is.

17:49:41 20 MR. GERRARD: Judge, can I take a five-minute

17:49:45 21 break? I just talk to my cocounsel and see if there's

17:49:46 22 anything else I want to cover.

17:49:46 23 ARBITRATOR WALL: We'll take ten.

17:49:46 24 ///

17:49:51 25 ///

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17:49:51	1	***	Page 966
17:49:51	2	(RECESS TAKEN FROM 5:49 TO 6:00)	
17:59:28	3	***	
17:59:28	4	MR. GERRARD: I'm done. Pass the witness.	
17:59:32	5	ARBITRATOR WALL: Redirect?	
17:59:34	6	FURTHER EXAMINATION	
17:59:34	7	BY MR. LEWIN:	
17:59:34	8	Q. Do you know what instructions Mr. Bidsal gave	
17:59:38	9	Mr. Main in connection with the preparation of the tax	
17:59:42	10	returns?	
17:59:43	11	A. No.	
17:59:43	12	Q. Do you know what Mr. Bidsal may have told	
17:59:46	13	Mr. Main about what the alleged agreement he had with	
17:59:50	14	Mr. Golshani?	
17:59:52	15	A. No.	
17:59:52	16	Q. So is there any conclusion that you can validly	
17:59:57	17	come to regarding the tax returns without knowing what	
18:00:02	18	instructions and discussions were between Mr. Bidsal and	
18:00:06	19	Mr. Main regarding how the sales should be allocated?	
18:00:09	20	MR. GERRARD: I'm sorry. Objection. Vague and	
18:00:11	21	ambiguous. When you say "conclusions," there's a lot of	
18:00:14	22	conclusions you can draw from those tax returns.	
18:00:18	23	MR. LEWIN: I'll rephrase it.	
18:00:19	24	BY MR. LEWIN:	
18:00:19	25	Q. Can you really render an opinion as to what	

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18:00:22 1 Mr. Main was thinking when he prepared the tax returns
18:00:25 2 without knows what communications and instructions were
18:00:28 3 given to him by Mr. Bidsal?
18:00:30 4 A. No, I cannot.
18:00:35 5 ARBITRATOR WALL: I assume you haven't spoken
18:00:37 6 with Mr. Main?
18:00:39 7 THE WITNESS: I have not.
18:00:40 8 ARBITRATOR WALL: Regarding this?
18:00:42 9 THE WITNESS: No, not at all.
18:00:44 10 ARBITRATOR WALL: Thanks.
18:00:45 11 BY MR. LEWIN:
18:00:46 12 Q. Now, Mr. Gerety pointed out that on the first
18:00:51 13 sale --
18:00:51 14 ARBITRATOR WALL: Mr. Gerrard.
18:00:51 15 BY MR. LEWIN:
18:00:51 16 Q. Pardon me. Mr. Gerrard pointed out that on the
18:00:51 17 first sale, despite the fact that the gain -- the boot
18:00:54 18 was distributed 70/30, the -- it was allocated 50/50 on
18:01:01 19 the tax returns?
18:01:02 20 A. In 2012, yes, that's correct.
18:01:04 21 Q. Was that 2012?
18:01:07 22 A. '13.
18:01:08 23 Q. 2013. Do you think that was a mistake?
18:01:11 24 A. Yes.
18:01:12 25 Q. Okay. Because if, according to what discussion

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18:01:17 1 you just had with Mr. Gerrard, it should have been
18:01:20 2 allocated 70/30. Right?
18:01:23 3 A. Correct.
18:01:24 4 Q. Now, in connection with the definition of
18:01:33 5 nonrecurring -- did I get that right?
18:01:35 6 MR. GERRARD: Nonrecurring.
18:01:37 7 MR. LEWIN: Nonrecurring.
18:01:37 8 BY MR. LEWIN:
18:01:37 9 Q. In connection with that, I'll agree that the fact
18:01:41 10 that sales take place means sales in the future for
18:01:46 11 those that -- so that's not necessarily nonrecurring,
18:01:48 12 but is it true that if -- is it true you said in
18:01:56 13 questioning by Mr. Gerrard that they might have been
18:02:01 14 treated as ordinary income if it was deemed to be
18:02:04 15 recurring sales? Do you remember that testimony?
18:02:08 16 ARBITRATOR WALL: That's not what he said. The
18:02:10 17 question was if -- if the fact -- if he knew that all
18:02:13 18 the properties had been listed for sale and selling the
18:02:17 19 properties was an objective or a purpose of the business
18:02:21 20 itself, would that change his opinion as to whether sale
18:02:23 21 proceeds would be considered income from operations and
18:02:29 22 therefore 50/50. Is that right?
18:02:32 23 THE WITNESS: That's correct.
18:02:32 24 MR. GERRARD: I did ask if -- I did ask if it was
18:02:40 25 ordinary income, and he had said yes.

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18:02:40 1 BY MR. LEWIN:

18:02:40 2 Q. So in connection with this, Mr. Bidsal testified

18:02:43 3 that there was no intention when they bought the note

18:02:45 4 and got the property to sell the properties. Would that

18:02:50 5 change your opinion?

18:02:52 6 A. Well, yeah, I mean, it's -- yes.

18:02:55 7 Q. And the tax accountant, Mr. Main, how did he book

18:03:01 8 the transactions on the tax returns?

18:03:05 9 MR. GERRARD: I'm sorry. Objection vague and

18:03:07 10 ambiguous. There's a lot of transactions.

18:03:09 11 MR. LEWIN: I'm talking about the sales

18:03:11 12 transactions.

18:03:13 13 MR. GERRARD: The sale transactions?

18:03:15 14 MR. LEWIN: Yeah.

18:03:15 15 BY MR. LEWIN:

18:03:16 16 Q. They weren't recorded as ordinary income, were

18:03:18 17 they?

18:03:18 18 A. No. They were recorded as a sale of an asset

18:03:22 19 used in trade of business and not inventory.

18:03:25 20 Q. You heard Mr. Wilcox testify the same thing, that

18:03:28 21 he thought that these were not -- these were capital

18:03:35 22 transactions. Is that correct?

18:03:35 23 MR. GERRARD: I'm going to object. It misstates

18:03:37 24 the witness's testimony. He didn't say that there were

18:03:37 25 capital transactions for purposes of the operating

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18:03:39 1 agreement. He said that for tax reasons they have to be
18:03:46 2 treated as capital transactions because that's what the
18:03:50 3 code says.

18:03:52 4 So, you know, you've -- my objection is you've
18:03:53 5 misstated Mr. Wilcox's testimony.

18:03:53 6 ARBITRATOR WALL: I'll sustain the objection.
18:03:55 7 Let's rephrase the question.

18:03:56 8 BY MR. LEWIN:

18:03:57 9 Q. Yeah. Mr. Wilcox's testimony is what it is.
18:04:01 10 We'll have a transcript of what he said.

18:04:09 11 We're now ten years after the fact. They sold
18:04:12 12 three properties. Would that appear to be a business
18:04:16 13 that would require those transactions to be deemed as
18:04:21 14 ordinary income as opposed to capital transactions?

18:04:25 15 A. No. It's clear they're held for trade of
18:04:28 16 business and leasing.

18:04:29 17 Q. And that is what's stated in the operating
18:04:32 18 agreement. Right?

18:04:34 19 MR. GERRARD: What is?

18:04:35 20 BY MR. LEWIN:

18:04:36 21 Q. That the properties are held for leasing. Take a
18:04:40 22 look.

18:04:40 23 A. I don't recall. I don't remember.

18:04:43 24 Q. It's right in front of you.

18:04:47 25 A. Let's see. That's 5.

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18:04:50 1 ARBITRATOR WALL: Exhibit 5, Page 1 under Page 971
18:04:52 2 definitions. Business of the company. Is that right,
18:04:52 3 Mr. Lewin?
18:05:03 4 MR. LEWIN: Yes, Your Honor.
18:05:03 5 A. Operation, it states that it's after acquisition,
18:05:09 6 operation and management of real estate.
18:05:13 7 BY MR. LEWIN:
18:05:21 8 Q. Mr. Gerrard talked to you at some length about
18:05:26 9 the deed in lieu and then he asked you isn't it true
18:05:31 10 that before the deed in lieu agreement the -- Green
18:05:40 11 Valley only owned the note. Remember that?
18:05:43 12 A. Yes.
18:05:44 13 Q. We looked at the assignment of leases and rents.
18:05:50 14 That was, I think, Exhibit 95. And based on -- and
18:05:54 15 going through Mr. Gerrard's questioning, doesn't it
18:05:57 16 appear to you -- does it appear to you that not only
18:06:00 17 that Green Valley owned the note but it also owned the
18:06:04 18 leases?
18:06:05 19 A. It had the -- the leases had been assigned to it,
18:06:10 20 yes.
18:06:10 21 Q. And so the -- I don't want to belabor the point
18:06:17 22 because that document says what it says. But if they
18:06:21 23 owned the leases, they owned more than the note. Right?
18:06:27 24 A. Yes.
18:06:28 25 MR. GERRARD: I'm going to object to the question

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18:06:30 1 because it misstates the document. The document doesn't
18:06:33 2 say they owned the leases. Page 972

18:06:35 3 MR. LEWIN: It said that they were assigned to
18:06:37 4 them. Says it was an absolute assignment.

18:06:41 5 MR. GERRARD: Assignment of rents. Not leases.

18:06:44 6 A. The lease contracts were assigned to them,
18:06:44 7 weren't they?

18:06:44 8 BY MR. LEWIN:

18:06:49 9 Q. As I said, the document speaks for itself. So
18:06:49 10 it'll be easier if I just say that.

18:06:54 11 Take -- as a matter of fact, let's just take a
18:06:56 12 look at 95. I'm not going to spend much time on this.
18:07:00 13 I wanted to point two things out on this.

18:07:03 14 MR. GERRARD: Your Honor, Exhibit 95 was not used
18:07:06 15 in the cross-examination, so this goes beyond the scope
18:07:07 16 of the cross-examination --

18:07:10 17 MR. LEWIN: I mean 85.

18:07:14 18 ARBITRATOR WALL: What's 85?

18:07:16 19 MR. LEWIN: 85 is the assignment of leasing
18:07:18 20 rights.

18:07:27 21 BY MR. LEWIN:

18:07:27 22 Q. Looking at the first page in Paragraph A.

18:07:38 23 ARBITRATOR WALL: Wait. Okay.

18:07:43 24 BY MR. LEWIN:

18:07:43 25 Q. It says, quote, "Signor for good and valuable

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18:07:46 1 consideration receipt whereof is hereby acknowledged,
18:07:49 2 hereby grants transfers and absolutely unconditionally
18:07:53 3 assigns to assignee all of the following property
18:07:56 4 rights, interests, and estates now owned or hereinafter
18:08:00 5 acquired by assignor. The entire lessor's interest in
18:08:02 6 and to all leases and other agreements now existing
18:08:05 7 against or hereafter made whether or not in writing and
18:08:10 8 whether made before or after the filing by -- or against
18:08:14 9 assignor of any petition for relief."

18:08:18 10 I'm not going to read this whole thing. It's
18:08:21 11 talking about effecting the use, enjoyment, occupancy of
18:08:29 12 all or in part of a certain lot or piece of land more
18:08:29 13 particularly described in Exhibit A. We can all read
18:08:33 14 it.

18:08:34 15 So is that what you're talking about when you
18:08:36 16 said that you thought that they were assigned the
18:08:39 17 leases?

18:08:39 18 A. Yes.

18:08:40 19 Q. And then in terms of the -- there's two more
18:08:43 20 questions on this.

18:08:45 21 Going back to Paragraph No. 1 that we went over
18:08:48 22 with Mr. Gerrard --

18:08:51 23 MR. SHAPIRO: Of which exhibit?

18:08:53 24 MR. LEWIN: Same exhibit.

18:08:55 25 ARBITRATOR WALL: Paragraph 1?

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18:08:57 1 MR. LEWIN: Paragraph 1.

18:08:57 2 BY MR. LEWIN:

18:08:57 3 Q. In the middle of the page it starts out "Whenever

18:08:58 4 an addendum default exists."

18:09:02 5 ARBITRATOR WALL: What page are you on?

18:09:04 6 MR. LEWIN: I'm sorry. Page 6, Paragraph 1. It

18:09:10 7 says -- starting out where it says, "Whenever an event

18:09:15 8 of default exists." You found it?

18:09:19 9 ARBITRATOR WALL: Halfway down middle of the

18:09:22 10 page. Middle of the paragraph.

18:09:23 11 THE WITNESS: Okay.

18:09:26 12 BY MR. LEWIN:

18:09:28 13 Q. "Whenever an event of default exists, assignor

18:09:32 14 hereby agrees to receive all rents and hold the same to

18:09:35 15 be applied and to apply the rent so collected first in

18:09:38 16 the payment of debt next to," and it goes on.

18:09:41 17 So in terms of -- is that what you're talking

18:09:44 18 about when you said the payments went against the note?

18:09:46 19 A. Yes.

18:09:47 20 Q. Now, lastly on this paragraph -- this document --

18:09:55 21 you know what? I don't have to ask you that. I can

18:09:58 22 argue that myself.

18:10:00 23 When you -- in terms of Mr. Gerrard asking you

18:10:05 24 about whether or not it was true that the money was

18:10:11 25 received after the deed was recorded, you don't know --

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18:10:17 1 you know there was an escrow?

18:10:19 2 A. Yes.

18:10:20 3 Q. Does that affect your -- any opinion you have as

18:10:25 4 to whether or not the money and the transfer were done

18:10:32 5 sort of concurrently?

18:10:34 6 A. The contract said it was done concurrent so that

18:10:38 7 the money had to be transferred at the time of closing

18:10:42 8 the contract. So to me, I interpreted that to be at the

18:10:48 9 same time the deed was transferred.

18:10:51 10 Q. Okay. You're lucky I can't read most of my

18:10:56 11 handwriting here so my questioning is going to be much

18:11:00 12 more limited.

18:11:02 13 MR. GERRARD: Rod, what happened to all the other

18:11:04 14 examinations, man?

18:11:06 15 MR. LEWIN: I tell you.

18:11:10 16 MR. GERRARD: Never mind. I was just joking.

18:11:10 17 ARBITRATOR WALL: All right. Let's roll.

18:11:15 18 BY MR. LEWIN:

18:11:16 19 Q. Oh. Does -- is it your view that -- strike that.

18:11:24 20 Did -- Mr. Gerrard asked you if Mr. Wilcox

18:11:36 21 interpreted the agreement differently than you, and he

18:11:41 22 also said Mr. Main interpreted the agreement different

18:11:45 23 than you. Isn't it correct that Mr. Wilcox actually

18:11:50 24 interprets the Schedule B consistent with you in some

18:11:57 25 respects?

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18:11:58 1 A. In some respects, but he still comes to the
18:12:08 2 conclusion that it's never triggered, so -- which is a
18:12:11 3 complete different interpretation.

18:12:13 4 Q. But you and he both have the same opinion that
18:12:16 5 the part -- "expressed intent" paragraph, that the words
18:12:20 6 "such as" are expressions of an example. It's not an
18:12:25 7 all-inclusive list. Isn't that correct?

18:12:27 8 MR. GERRARD: I'm going to object to that. I
18:12:29 9 think it misstates Mr. Wilcox's testimony.

18:12:32 10 ARBITRATOR WALL: It'll stand for -- but I
18:12:34 11 mean --

18:12:34 12 MR. LEWIN: You don't need it?

18:12:35 13 ARBITRATOR WALL: All right.

18:12:38 14 MR. LEWIN: Fine. I'll withdraw.

18:12:38 15 BY MR. LEWIN:

18:12:57 16 Q. You know, I lied. I'm going to go back to
18:13:02 17 Exhibit 85 for just one question and then I'll be
18:13:06 18 finished.

18:13:08 19 A. Exhibit A?

18:13:10 20 ARBITRATOR WALL: 85. The assignment of rent.

18:13:21 21 BY MR. LEWIN:

18:13:21 22 Q. Looking at -- I'm sorry. It's not the assignment
18:13:59 23 of rents. It's the deed in lieu of foreclosure. I'm
18:14:02 24 sorry. Back to Exhibit 8. It's Paragraph 3.17 on
18:14:10 25 Page 8.

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18:14:25 1 Okay. Did you consider the -- did you consider
18:14:30 2 this part of 3.17 where it says, "The borrower requested
18:14:34 3 conveyance of title to the property in lieu of the
18:14:37 4 exercise of lender's remedies under the loan documents"?
18:14:41 5 Did you consider that in connection with the
18:14:44 6 determination of whether or not this was a purchase or a
18:14:49 7 conversion of the note into fee title?

18:15:01 8 A. Not sure if I -- I don't recall if I -- this
18:15:09 9 swayed my opinion one way or the other.

18:15:11 10 MR. LEWIN: Okay. All right. I think we're
18:15:12 11 done.

18:15:12 12 ARBITRATOR WALL: Mr. Gerrard?

18:15:15 13 MR. GERRARD: I'll make this super quick.

18:15:15 14 FURTHER EXAMINATION

18:15:15 15 BY MR. GERRARD:

18:15:17 16 Q. Look at Exhibit 10, please.

18:15:26 17 A. Okay.

18:15:27 18 Q. Exhibit 10 is grant bargain and sale deed for
18:15:30 19 when the property was transferred from the former owner
18:15:34 20 to Green Valley Commerce as a result of the deed in
18:15:37 21 lieu. Do you see that?

18:15:38 22 A. I see it.

18:15:39 23 Q. Okay. And do you see that the recording date at
18:15:41 24 the top is September 22nd, 2011 at 2:17 p.m.?

18:15:52 25 A. Yes.

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18:15:53 1 Q. Okay. Look at Exhibit 95 that you were looking
18:15:59 2 at earlier. That's the general ledger you were looking
18:16:08 3 at that had been prepared by American Nevada. Correct?
18:16:11 4 A. Right.
18:16:11 5 Q. Do you see the deposit --
18:16:14 6 A. Yes.
18:16:15 7 Q. -- under account 10,000 the deposit of the
18:16:20 8 \$345,436.94 which you already testified included those
18:16:27 9 rents?
18:16:27 10 A. I do.
18:16:28 11 Q. That was September 23rd, 2011. Correct?
18:16:31 12 A. Yes.
18:16:32 13 Q. Okay. So at least according to that general
18:16:34 14 ledger, the money was received by the company the day
18:16:37 15 after the deed was recorded. Correct?
18:16:40 16 A. According to the dates of when it was posted,
18:16:45 17 yes.
18:16:45 18 Q. Okay. And typically you post an entry on the day
18:16:49 19 you make the deposit to the bank. Right?
18:16:51 20 A. Yes.
18:16:52 21 Q. So if that had been done properly, then that
18:16:55 22 would reflect that the money was received after the deed
18:16:57 23 was recorded. Correct?
18:16:59 24 A. It was deposited in the bank, yes.
18:17:02 25 Q. All right. And we already looked at the

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18:17:05 1 language -- I don't remember what that is. Is it 95? Page 979
18:17:13 2 85?
18:17:13 3 MR. GERRARD: By the way, Judge, can we move to
18:17:15 4 admit Exhibit 85? I don't know it's in evidence. We've
18:17:21 5 been talking about it.
18:17:29 6 MR. LEWIN: I thought we did.
18:17:29 7 MR. GERRARD: I don't see it on my list. That's
18:17:33 8 why I'm asking.
18:17:33 9 ARBITRATOR WALL: Yeah, if was offered and
18:17:34 10 admitted.
18:17:34 11 MR. GERRARD: Okay. I must not have heard you.
18:17:36 12 MR. LEWIN: We can admit it again, please.
18:17:36 13 BY MR. GERRARD:
18:17:36 14 Q. All right. So go back to Exhibit 85, go back to
18:17:39 15 Page 6. We read that language in the middle of
18:17:51 16 Paragraph 1. It says that notwithstanding that there's
18:17:53 17 been an assignment of the leases and rents to the
18:17:56 18 lender, that the lender is granting a license back to
18:17:59 19 the borrower to exercise and enjoy all incidents of the
18:18:06 20 lessor under those leases and the rents. Correct?
18:18:10 21 A. Correct.
18:18:10 22 Q. And gave them the right to collect the rent.
18:18:13 23 Right?
18:18:13 24 A. Correct.
18:18:13 25 Q. And it's not disputed, is it, sir, that on the

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18:18:16 1 date that the deed in lieu of foreclosure was signed
18:18:21 2 that those rents had not been turned over to Green
18:18:25 3 Valley Commerce?
18:18:25 4 A. I'm not disputing that.
18:18:27 5 Q. Okay. And the last -- and you're likewise not
18:18:32 6 disputing the last sentence of the agreement that says
18:18:36 7 that if those rents are received -- well, first of all,
18:18:39 8 the first part of it says no credit is given until the
18:18:42 9 money is actually received by Green Valley Commerce, who
18:18:46 10 would be the assignee under this agreement. Correct?
18:18:49 11 A. Correct.
18:18:49 12 Q. And so we've already established that as of the
18:18:53 13 date when the deed in lieu of foreclosure agreement was
18:18:56 14 signed, Green Valley Commerce had not received any
18:19:00 15 rents. And then it says right after that that there's
18:19:04 16 no credit given for those rents against the loan after a
18:19:08 17 foreclosure or a transfer of the trust property. Right?
18:19:13 18 That's what it says, doesn't it?
18:19:14 19 A. That's what it says.
18:19:16 20 Q. All right.
18:19:16 21 MR. GERRARD: I have nothing further.
18:19:17 22 MR. LEWIN: I just have a maximum three
18:19:19 23 questions.
18:19:19 24 ///
18:19:19 25 ///

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18:19:21 1 FURTHER EXAMINATION

18:19:21 2 BY MR. LEWIN:

18:19:21 3 Q. In your business is there a concept of -- for --

18:19:24 4 of constructive receipt of funds?

18:19:26 5 A. There is.

18:19:26 6 Q. And what is that?

18:19:27 7 A. Well, if you have the rights to those funds, it's

18:19:32 8 considered received. For instance, if you have -- even

18:19:37 9 though you haven't received it, it's really a taxable

18:19:42 10 income concept, but just because you didn't collect

18:19:47 11 something or you didn't receive it by year-end, if you

18:19:50 12 had constructive receipt, you could have taken it. It

18:19:54 13 was sitting there waiting for it. Just because it's

18:19:57 14 available to you, it's taxable to you as a constructive

18:20:01 15 receipt concept.

18:20:02 16 Q. Such as money that's being held in escrow?

18:20:05 17 MR. GERRARD: Objection. Leading.

18:20:07 18 ARBITRATOR WALL: Sustained.

18:20:08 19 BY MR. LEWIN:

18:20:13 20 Q. Does money that is being held in escrow on a

18:20:18 21 conveyance of property, is there a constructive receipt

18:20:26 22 of that?

18:20:26 23 A. Not necessarily, until the terms of the escrow

18:20:29 24 have been completed. If the terms of the escrow are

18:20:33 25 completed, yes.

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18:20:34 1 Q. When the deed is recorded -- when the deed is
18:20:39 2 recorded?
18:20:39 3 A. The terms of escrow have been probably I assume
18:20:42 4 complete. I didn't read the escrow agreements.
18:20:46 5 MR. GERRARD: I'm going to object. This goes
18:20:48 6 well beyond anything he's given.
18:20:49 7 ARBITRATOR WALL: All right. Anything else?
18:20:51 8 MR. LEWIN: Nope, I'm done.
18:20:52 9 ARBITRATOR WALL: All right. Oh, you have
18:20:52 10 another question.
18:20:52 11 MR. GERRARD: Just one. I'm sorry to even do it.
18:20:54 12 FURTHER EXAMINATION
18:20:54 13 BY MR. GERRARD:
18:20:55 14 Q. Sir, you still have the document in front of you.
18:20:58 15 Right?
18:20:58 16 A. I do.
18:20:59 17 Q. Okay. The third-to-last line it says, "the money
18:21:01 18 collected is actually received." Right?
18:21:09 19 A. It does.
18:21:10 20 Q. Okay. So that's different from constructive.
18:21:12 21 Right? Actual and constructive are two different
18:21:14 22 concepts. Right?
18:21:15 23 A. I agree.
18:21:17 24 MR. GERRARD: Okay. Thank you.
18:21:17 25 ARBITRATOR WALL: All right.

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18:21:17

1 Mr. Gerety, thank you very much.

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18:21:20

2 THE WITNESS: You're welcome. Glad to be part of

18:21:23

3 all this fun.

4 ARBITRATOR WALL: We're done. We're off the
5 record.

6 (The proceedings concluded at 6:21 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

SS:

3 COUNTY OF CLARK)

4 I, KELE R. SMITH, Certified Shorthand Reporter,
5 do hereby certify that I took down in shorthand
6 (Stenotype) all of the proceedings had in the
7 before-entitled matter at the time and place indicated;
8 and that thereafter said shorthand notes were
9 transcribed into typewriting at and under my direction
10 and supervision and the foregoing transcript constitutes
11 a full, true, and accurate record of the proceedings
12 had.

13 IN WITNESS WHEREOF, I have hereunto affixed
14 my hand this 29th day of March, 2021.



18 KELE R. SMITH, NV CCR #672, CA CSR #13405

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