IN THE SUPREME COURT OF THE STATE OF NEVADA

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CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**No. 86438**
CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**No. 86817**

APPELLANT'S APPENDIX

VOLUME 33

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CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

EXHIBIT 270

APPENDIX (PX)007103

JAMS

SHAWN BIDSAL, AN INDIVIDUAL,
CLAIMANT/COUNTER RESPONDENT,
VS.
CLA PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
RESPONDENT/COUNTER CLAIMANT.

NO. 17026

REMOTE TRANSCRIPT OF PROCEEDINGS

AUGUST 5, 2021

1:07 P.M.

TECKLA T. CLAY, CSR 13125
OFFICIAL REPORTER PRO TEMPORE

APPEARANCES

JAMS ARBITRATOR:	HONORABLE DAVID WALL
FOR CLAIMANT:	GERRARD, COX & LARSEN BY: DOUGLAS D. GERRARD 2450 ST. ROSE PARKWAY, SUITE 200 HENDERSON, NEVADA 89076
FOR RESPONDENT:	LAW OFFICES OF RODNEY T. LEWIN BY: RODNEY T. LEWIN 8665 WILSHIRE BOULEVARD, SUITE 210 BEVERLY HILLS, CALIFORNIA 90211 -AND- LEVINE & GARFINKEL BY: LOUIS E. GARFINKEL 1671 WEST HORIZON RIDGE PARKWAY SUITE 230 HENDERSON, NEVADA 89012
ALSO PRESENT:	JUDGE ROB BARE BEN GOLSHANI SHAWN BIDSAL JIM SHAPIRO

Thursday, August 5, 2021

Transcript of Proceedings

1:07 p.m.

THE COURT: We're on the record in this arbitration Bidsal versus CLA Properties. I am David Wall the arbitrator in the case, Rodney Lewin, Rob Bare, Mr. Doug Gerrard and Jim Shapiro appearing on behalf of the claimant. The claimant is present Shawn Bidsal, Mr. Lewin, Mr. Garfinkel, Judge Bare on behalf of the respondent CLA which it's representative Ben Golshani is on as well.

Do you need any spellings? I know with Zoom everybody's name is up there. Do you need, do you need anything further at this point?

COURT REPORTER: No thank you.

THE COURT: We reconvened after our hearing on June 25th was truncated and we, I determined that there would be additional briefing. Since the time of that hearing I received a supplemental brief from the respondents on July 9th. I received a supplemental brief on behalf of claimant on July 23rd. Both of those were timely based on the briefing schedule I set forth on June 25th.

So I will turn it over to respondents at

this point. I know Judge Bare you have begun your argument and we stopped you there during it. So you may conclude that argument at this point.

MR. BARE: Well thank you Judge Wall. I wanted to sort of simplify this at least in my own mind given the passage of time. And then of course now having the benefit of the recently filed supplemental brief by the opposition. And so I wanted to say really as far as I see this, it's pretty clear that at the end of the day the appropriate decision would be to issue an order that Attorney LeGrand appear to testify in this arbitration.

And the reason it's actually in some ways fairly simple I think is that you have an anomaly situation something that imagine if we practice another 30 something years we may never see again. We have past legal activities, substantial and material legal events where issues that we want to now discuss in this arbitration have already been broached and discussed.

And so this is what's happened of course we know but it's really I think the most salient and relevant part of this analysis it starts with of course the Bidsal versus Golshani district court case at Clark County district court focusing on the timeframe of February 2018. That case has been affectionately

referred to as the Mission Square case. If you look at what happened in the Mission Square case in relevance to us, of course there was a notice of deposition of Mr. LeGrand. And I'm going to talk about the specifics from our supplemental briefs that we've provided. But I want to give sort of more of a 10,000 foot view if you will right now.

If you look at it's interesting that case again is Bidsal versus Golshani, certainly Mr. Bidsal is there, he's the plaintiff in that district court case. And so certainly as a 50/50 manager in the Green Valley Commerce he's there, and in the Mission Square case the documents and subject matter having to do with the operating agreement of Green Valley Commerce become relevant in that case because the operating agreements were substantially similar as between Green Valley Commerce and Mission Square.

So who's participating in this Bidsal Golshani Clark County district court case? Well the name of it again Bidsal Golshani. So the same principals, the same managers, it's 50/50. These are the two guys that are running in the whole dispute about Green Valley Commerce it's their entity, it's their LLC.

And you'll see and I'll reference that it

comes up in here, you know, all this argument about wait a second Green Valley Commerce is not a party there, not a party there. Well I'm going to suggest and argue I think effectively that that's not so relevant. What's really relevant is requests for the information that's held by Green Valley Commerce and is it privileged. To the extent it is privileged is it then disclosed and used throughout these other cases. That's really the issue.

Because most importantly Mr. Bidsal is there. It's his lawsuit in district court, Bidsal versus Golshani. Certainly he's in privity with Green Valley Commerce as one of the 50/50 managers. It's essentially practically speaking it's the same party in my opinion that we're dealing with here. If you look at what that case was really all about.

So we have in the Bidsal versus Golshani that LeGrand deposition notice. And look at what happened in regard to that. Again I'll get more specific on it when I get into the individual items. But at this point again with the three cases I want to talk about this 10,000 foot view.

In the LeGrand deposition, the notice, all the providing of the documents relevant to the 16.1 disclosures and all that, respectfully Mr. Bidsal and

the same counsel that you have on this Zoom meeting right now more specifically Mr. Shapiro, respectfully they actively participated in everything having to do with LeGrand's deposition. They did not object. They never asserted privilege at all in everything having to do with Bidsal versus Golshani district court including the deposition of LeGrand. That's case one that stands for the proposition. I think it's an anomaly in that you have all this disclosed material, you have all this testimony by the lawyer Mr. LeGrand and again active participation by the same lawyers and judge that you have here. I've covered that. That's one of three.

The second one is of course and I don't know how to pronounce and I've asked, everybody tells me differently. Maybe judge you can tell me, how do you pronounce Judge Steven Haberfeld? Is it Haberfeld or Haberfeld?

THE COURT: My understanding it's Haberfeld.

MR. BARE: Haberfeld, okay. Of course as you know in just a few months after the reference point I've given in the Bidsal versus Golshani district court case which was February of 2018, May eight 8 and 9 of 2018 JAMS has what we can refer to as arbitration one, having to do with what? Having to do with the dispute between Mr. Bidsal and Mr. Golshani having to do with

the buy/sell provision in the operating agreement of Green Valley Commerce.

But if you look at those parties in Judge Haberfeld JAMS arbitration one, CLA Properties made the demand for arbitration. What is CLA Properties? It's wholly, 100 percent owned by Mr. Golshani. We'll stipulate when we say CLA Properties, we're really just saying Mr. Golshani. He's the only principal, manager, owner of CLA Properties, that's him.

And who's the then respondent in that arbitration one? Sean Bidsal, not the entity, but Sean Bidsal. Interesting. Clark County district court case, plaintiff individual Sean Bidsal. Arbitration one with Judge Haberfeld respondent Sean Bidsal represented by again respectfully the same lawyers we have here. And again they actively participate. They don't object or assert any privilege having to do with LeGrand's testimony which was received by Judge Haberfeld.

We then have this matter. Well who made the demand for arbitration in this matter? Sean Bidsal. So he appears in all three of these matters with the same counsel. And as we know what happens here in this arbitration as everybody knows resolves only because of the result in the Judge Haberfeld

arbitration. In a general sense is that arbitration was all about who gets to buy and who gets to own the Green Valley Commerce properties that came out of the foreclosure.

And ultimately Judge Haberfeld rightly so found that Mr. Golshani prevails in that. And so now we have the related, it had to be related of course because given that Mr. Golshani wins with Judge Haberfeld now there's an issue maybe no issue, but of course now there's an issue because we have an arbitration going on. Issue is okay under the Exhibit B waterfall provision given that there is a buy/sell, how is that supposed to work. So it's all related.

Certainly it's related. When I say it's the buy/sell provision which started off the Dutch auction and all that. All that is clearly related and directly related to where we're at now that being Exhibit B the waterfall provision given that Mr. Golshani has exercised his writes under the agreement.

So what is at issue in all three of these matters that I've just generally outlined that everybody is aware of? What's at issue in all three of the matters where Mr. Bidsal is either the plaintiff, respondent or the demand for arbitration plaintiff, if you will claimant, what's at issue is the Green Valley

Commerce LLC operating agreement. That is what is at issue. Everybody knows that.

The key issue, what's at issue just like with Judge Haberfeld, respectfully Judge Wall, we all know that, you know, we heard this probably second year of law school within a written agreement if there's some vagueness we can have parole evidence. We can call witnesses. We can try to figure out the party's intent, what was the intent in these documents or contractual provisions that might have some ambiguity or vagueness. Well that's the issue. That has been the issue all along. What is the party's intent?

When I say "parties", you know, the issue has always been again with Judge Haberfeld and with you, what is Mr. Bidsal's intent as a manager of Green Valley Commerce? What is Mr. Golshani's intent in working through this buy/sell provision and this Exhibit B waterfall which of course rightly so compliments to Mr. LeGrand was all necessary. Why was it necessary? Because Mr. Golshani put in $2,834,250 into Green Valley Commerce and Mr. Bidsal put in 1,215,000. Or put another way Mr. Golshani puts in 70 percent of the money.

Of course if you're going to have a buy/sell provision where one guy puts in 70 percent of

whatever that is four million bucks you have to figure out how to distribute that in fairness given the disparity of the investment. That's where we're at. What has this all been about? What did Judge Haberfeld have to do and respectfully what you are wrapping your mind around?

Okay we have some vagueness. We have some interpretation issues. Let's do what we can to figure out how this was supposed to work. What are was Bidsal's intent? What was Golshani's intent? The way this comes out of course Mr. LeGrand just like everybody on this Zoom probably, we can't independently remember a lot from many years ago. Okay we can't. We can't remember all of that. We have to call upon documents, all these e-mails that are disclosed. But what do we actually remember?

We're going to take six months, I'm going to walk through this if I'm lucky enough to have the time to do it. It takes six months for LeGrand to work with Bidsal and Golshani and eight drafts to finally get to the Green Valley LLC operating agreement. That's what this lawyer has to have in that circumstance. He happens to have, as shown clearly by testimony that he's given both in the arbitration and in the district court case, Mr. LeGrand clearly has an

understanding practically speaking of the intent that he had as a lawyer which then becomes relevant to the intent.

He's the one that's responsible for drafting this thing with these two individuals whether they're clients as Judge Haberfeld sort of represented. Either way it's clear that LeGrand as Judge Haberfeld rightly said is a key witness because he knows and has an understanding of the intent of Bidsal Golshani. And certainly again his intent as a lawyer, he only gets the intent, the six months where there's e-mails back and forth individually with these guys, phone calls to Bidsal by the way for months before Mr. Golshani is involved which I'd like to cover, to formulate as a lawyer his understanding as to the intent of the buy/sell provision and then if it's exercised how the waterfall Exhibit B is supposed to work.

Because you know what, it all comes down now in this arbitration the third matter where a gentleman named Sean Bidsal is a litigant, it all comes down to one thing and one thing only, when section 4.2 is purchased or sell procedure the buy/sell provision if you will, when it is exercised which it was, how then to deal with the situation under this waterfall provision, excuse me.

And that's really what it's all about. What did the parties intend in the language having to do with this waterfall provision is really what's in front of you. I will make a representation, it will be quick I hope, as to I felt respectfully, and I'm not trying to, you know, I never by the way I've learned not to play judge any more. But I will say with that as a caveat I would think that an arbitrator or judge would appreciate an offer proof as to where is Mr. Lewin going with this. If we call Mr. LeGrand what by way of an offer of proof are we going to be asking for?

I'll cover that in two or three things specifically I'll represent that Mr. Lewin is going to ask him.

THE COURT: Let me stop you there for a second, if the offer of proof is intended to contain potentially privileged material I don't want to hear it. I don't need it. What the testimony ultimately might be let's say about a party's intent as communicated to apparently to Mr. LeGrand is not relevant to the inquiry from me that I have to deal with about whether there's been a waiver of attorney client privilege. I don't want --

MR. BARE: I can leave it at this if you'd like. I could simply leave it that of course Mr. Lewin wants

to ask questions about the party's intent, that being Mr. Bidsal, Mr. Golshani's intent as understood, if understood, which we think it was by Mr. LeGrand as to how essentially the waterfall is supposed to work given that the Judge Haberfeld decision happened and here we are. I can leave it at that if you'd like.

Okay. I wanted to now do something that is a little different game plan wise than I had thought about and that is I wanted to go through Mr. Bidsal's supplemental brief because, I want to do this not by way attacking it necessarily as some sort of ploy or strategy. But really I'd like to talk about some things that are mentioned in this brief and let you know what we agree with and let you know what respectfully how we think the law in this situation operates in regard to, you know, the positions taken in the supplemental brief.

Would that be helpful? It's maybe a different approach. But I'm going to try to do that and I think it will be helpful. I am looking at the 17 page supplemental brief and on page two, again this is the opposition supplemental brief, and on page two line five it's states, "Bidsal's attorneys objected to LeGrand testifying on the basis that only the intent of the parties to the operating agreement, the meaning of

the operating agreement was at issue. And the only way LeGrand could testify regarding the intent of Mr. Bidsal would be to disclose privileged communications between LeGrand and Bidsal during which Mr. Bidsal communicated to LeGrand his intent and understanding of the language of the operating agreement."

We agree with that. Of coarse if we didn't have everything that happened in that Mission Square case and including of course the deposition of LeGrand, and if we didn't have arbitration one with Judge Haberfeld with the testimony of LeGrand of course you have a situation where we agree. The privilege is held by Green Valley Commerce.

And only both members since it's 50/50, both members would have to agree to waive a privilege held because companies can only act through the individuals of course. If Green Valley Commerce has the privilege, which they do, we agree. The only way if it exists at all that it could be waived would be both parties have to agree to waive it. Neither party could unilaterally waive it.

Obviously in this arbitration Mr. Bidsal in his discretion because he wants Mr. LeGrand to add the evidence of what the intent of the parties, I mean that's really why wouldn't anybody want to know what

the intent of the parties were? That's what Mr. Golshani wants to do.

And so the idea here is I represent to you that no doubt we agree with Mr. Bidsal's counsel when they say, "hey wait a second the privilege is held by Green Valley Commerce." And it would have to be waived by both. You can't have a unilateral waiver. In fact I know judge that the proceedings before I got involved I read through the transcript and you said that. You said, "wait we can't have a unilateral waiver here." We agree with that.

That's not what happened here. This is not an arbitration without the past history where we're trying to get away in some way with Mr. Golshani saying, "I waive and therefore a waiver should be operative." No we would agree that if it wasn't for all this past activity the items would be privileged. Why aren't they? If they are, if there was a privilege at all why are they waived essentially?

Well Judge Haberfeld heard it all basically he received a lot of testimony from LeGrand about the intent of the parties. The court reporter there in the arbitration one with JAMS heard it all. The court reporter taking the deposition in the district court case heard it all. For that matter as

you probably know arbitration one was appealed. Well first it went to Judge Kishner to approve the arbitration award. All the stuff is in there so Judge Kishner knows all about it. Her law clerk knows all about it probably better than her. You have all that. And where else? The supreme court with the appeal they know, it's all mentioned in there.

So what I'm getting to is when I look at their brief they seem to suggest that we don't know that the privilege is held by Green Valley Commerce. So I want to make it clear, we know that's who holds the privilege. We know that under normal circumstances unilateral waiver could never apply.

And by the way as a quick, hopefully quick segway to all this, it's come up from time to time you know to the extent there's a privilege, to the extent there's a privilege, to the extent there's a privilege. That's a good point because these two co-managers given that this lawyer decided and everybody knew it there was no objection, Sean didn't object is what, part of what I'm going to read later if I get the time to do it.

I mean the protocol was individually deal with Bidsal, individually deal with Golshani for six months in various e-mails reflected in the billings

reflected in all the e-mails disclosed. Talk to them, talk to Bidsal on the weekend I'm going to show you that, LeGrand, you know, and come up with this operating agreement.

It's interesting all this to the extent there's a privilege because you know what? These two and Judge Haberfeld felt it was joint representation, we agree with that, that's a fair assessment of what was going on here. In any event there's no privilege as between these two joint clients. Whether you want to view them as joint managers or whether you want to view them as two clients or however you want to view them.

You know it can't be and it always would have to be if LeGrand talks to Bidsal as they did for a month and a week before they ever talked to Golshani, I'm going to show that too, has all these discussions and both of the parties know that's fine with them, it can't be LeGrand that he is somehow unable to share with Ben you know what Sean told him on the weekend or vice versa. Anything either one of them tells their lawyer the other one gets to know about it and everybody agreed to that. So is that even a privilege really?

I mean, but what we have here is we have

an invocation late after by the way, and I think, respectfully this is an important thing I think, in this arbitration with you Bidsal called LeGrand as a witness. And he pulled that rug out when? The last day of the testimony as I understand it, the last day of the hearing. Now all of a sudden after all this time he decides, "you know what, we're worried about what LeGrand is going to tell the truth about here on this waterfall. Let's assert privilege." That's what's really going on here. And that's important.

I think timing should be important. And you know what when I go through this Wardley analysis, again there's a lot to this I'm sorry it takes a while, but fairness is always in the air of course. I know it always was when you were a judge and as an arbitrator certainly it was with me. I think the 8th Judicial District Court would be proud of the way we were fair. Fairness is always in the air.

But you know what? Under Wardley fairness is an element. It's an element to be considered having to do with whether there was a waiver. It's not just in the air, it's also an element to be considered. Fairness. So that goes to the fairness issue.

All right going to page three of their brief on line six they say, "importantly the CLA brief

failed to identify any testimony of LeGrand divulging any communication with Bidsal about the meaning of the operating agreement." And that's bolded and emphasized. Well I said this already but you know of course it could be most likely LeGrand cannot remember specifically a lot of things that were in these discussions that he billed for and that were at least described in a lot of these e-mails that were disclosed that were just between him and Bidsal. In the e-mails between LeGrand and Bidsal only he doesn't remember the specifics. What does he remember? And we know it because we saw it in Haberfeld. He remembers the intent of the parties.

In fact I'm going to cover if I have time questioning the opposition did with him that where clearly he's asked about the intent of the parties. It's real clear that LeGrand knows what was the intent of the parties in the buy/sale provision. And he knows the intent of the parties and what you're dealing with that is this waterfall provision.

Page three at the bottom of their brief it seems to be a criticism that I'm going to agree with. "What the CLA supplemental brief does make clear is the real reason CLA is seeking LeGrand's testimony, CLA simply wants LeGrand to testify about the meaning of

the operating agreement language which is what the arbitrator is supposed to decide." What? Look, we think that it's likely that just like Judge Haberfeld, Judge Wall you'd be interested in potentially the most relevant testimony as to the meaning of the operating agreement the waterfall provision, the intent of the party. And just like Judge Haberfeld the lawyer is a great witness having to do with it. And Bidsal made the decision to allow for that up until this last pull the rug out moment.

All right. Page 4 of their brief they say, "Judge Haberfeld" at line 7, "Judge Haberfeld decided LeGrand was actually representing CLA and Bidsal instead of GVC." I'm not sure the judge went that far. He in fairness noted, because it was pretty apparent given this way of doing business that LeGrand exercised, he really is representing both these guys. He's dealing with them individually. He did the operating agreement. It took six months, eight drafts.

And so the opposition in their supplemental brief says, "well you know Judge Haberfeld thought that these guys were sort of jointly represented" is contradicted by the plain language of the GVC operating agreement. That seems to be an argument standing for the proposition that the judge

was wrong. We agree with the judge. We agree with Judge Haberfeld.

There was in fairness sort of a, you know, mutual representation of these guys together. You know you can represent as a lawyer, and I know you said I will not get into based upon your direction where there's a conflict of interest. Like you said that's not your province. You're not going to get into conflict of interest, even though of course despite you saying that a large part of the opposition brief gets back into it after you said not to.

THE COURT: I didn't say not to get into whether there's a conflict of interest. One issue is whether that conflict is somehow waived. And the other issue is whether if as Mr. LeGrand testified briefly in April I think he's reluctant to, at that time at least was reluctant to testify because of some potential issue with the bar whether I could compel him to do that anyway.

MR. BARE: Fair enough.

THE COURT: And --

MR. BARE: Fair enough. On that note if I could, you know, react or give a comment having to do with that note I would hope it would put you at ease to the extent we can. We want to. What we're asking for

is an order that he testify based upon either that a privilege didn't exist. I know it's all about waiver of privilege, so assuming a privilege exists it was waived because of all the things that we've talked about in the course of activity along the way with the same, with Bidsal same lawyers and all that.

So that's the order we're asking for is that he be compelled, ordered to testify as you find there's a waiver of privilege. It's at issue, it's fair and any other reason that comes up relevant to what comes up here. And we know that, you know, just like if somebody is a witness and they assert the 5th Amendment we don't know what's going to happen when LeGrand then responds to the order to testify.

We know most likely, you don't want to get into and rightly so, the RPCs or does he have bar problems or any of that. But we think it's clear that you can issue an order that he testify. We think he will testify if you issue that order because you know what, the relevant part of his testimony is what was the parties intent when they entered into this operating agreement having again to do with the buy/sell and ultimately the waterfall.

My guess is he'd be comfortable. I don't know. But my guess is he'd be comfortable enough to

say, "okay there's been a waiver. I can now testify." We'll see what happens. We can't control, neither can you. We can certainly get an order that he testify. And we hope that he then does testify with the waiver of privilege.

THE COURT: I mean that was one of the points we had back in April. If there's an issue as to whether he can testify to communications that one party thinks is privileged, a ruling from me for instance that the privilege is waived essentially gives Mr. LeGrand cover on that issue. Okay. I don't know if cover is the right word.

MR. BARE: It's a good word.

THE COURT: Okay. I can't provide him any cover on the issue of a conflict of interest. So --

MR. BARE: Understood.

THE COURT: Even if --

MR. BARE: We're not asking you to.

THE COURT: Even if the waiver of the privilege, what I asked for because one of the discussions we had back in April was the issue of whether the conflict of interest, and I basically said then I think although I haven't looked back at it that after he said, "look the potential of our complaint out there I'm not going to testify." I can't help him with that. I can't help

either party with that unless there's some authority out there that says I can compel him to testify when he has a concern about whether there's a conflict of interest. And if there is any such authority, hey provide it to me. Now there hasn't been any because I'm pretty sure there isn't any. And so that was one of the issues that we, that I wanted briefed.

And I assume since in neither of your two briefs was that issue really addressed that there isn't any law out there that says I can compel him, I can provide him with the cover necessary to protect him from any bar complaint for a violation of the rules on conflict of interest.

MR. BARE: Right other than the JAMS authority that you have which I'm sure you're aware of, we agree with that. We're just again looking for an order that we think is right on point with the any privilege that existed being waived because of the course of conduct, action and what you have you.

Getting back to this idea of Judge Haberfeld and, you know, Mr. Bidsal's position that maybe he was wrong when he talked about this joint representation because it's contradicted by the operating agreement, you know, the operating agreement says whatever it does say. The question is not the

operating agreement. The question is what happened in the real world. What happened in the Bidsal Golshani district court case was he was deposed, LeGrand. What really happened in arbitration one was he testified.

So, you know, the operating agreement of course is binding in so many ways. We know that from arbitration courses, that's the first thing you look at. But in this sense having to do with the attorney/client privilege it's what really happened, was it waived or not waived and, you know, despite what maybe some construct in an operating agreement might say. We agree with the judge that there was in some ways fairly some joint representation going on here.

The opposing brief on page 4 line 27 talks about at the end talks about how LeGrand didn't give any advice on the consequences to the terms of the operating agreement to Bidsal, I imagine you know the position might be taken that that's also to Golshani. That flies in the face of common sense and all the evidence.

You really mean to tell me that when LeGrand is having multiple phone conversations that he said sometimes is two and three times a day over six months, independent you know sometimes with Bidsal, all the time with Bidsal initially for the first month and

a week. And all along the way that he's not telling either party how the agreement would work or how the buy/sell provision, we have some evidence actually of that, of what LeGrand, in the e-mails and what have you. So he did give advice to them. He can't remember exactly again what their positions were other than what's in already these disclosed records. But again LeGrand can offer what was his view as to the intent of the parties.

Page six of their brief I'm not going to cover every page. But page six the two head notes there, "Green Valley Commerce was not a party to the first arbitration. Green Valley Commerce was not a party in the Mission Square litigation." So what? Not relevant. It's not relevant based upon what was disclosed. I mean if counsel for Green Valley Commerce is to be a witness and the two managers, the only two managers of Green Valley Commerce are in legal activities and they decide to disclose at that point guess what they're doing? This is not a unilateral disclosure, this is a mutual disclosure. Once it's disclosed, it's disclosed.

It would be like these guys coming in here now and saying we're all in an elevator and we talked all about confidential information to someone else in

the elevator. And now that that person wants to talk about it, it's not disclosed. It's pretty simple. When something that's otherwise privileged is disclosed to a third party, it's disclosed and it can be used. It doesn't matter whether Green Valley Commerce is in the first arbitration or in the Mission Square as a named party.

The manager Bidsal, again what's the commonality all three of these things Sean Bidsal, same lawyers. So what else can I say on that. It's what was disclosed by lawyers representing Bidsal on issues having to do with what, with Green Valley Commerce and the operating agreement, same issue. It doesn't matter whether they're a party or not.

Page eight of their brief they talk about Wardley, the case Wardley that I brought up. This goes to what I just said line 27 page 8 they say, "in the present matter Wardley is inapplicable because Green Valley Commerce never participated in any of the prior litigation." Really? Okay by as a named party certainly that's true. But it's only two members and the lawyers representing Bidsal actively participated, it's the same parties basically. And it's not at their privity with Green Valley. How could they be in more privity it's only two managers and all the same

lawyers.

What was disclosed with those lawyers and with Mr. Bidsal, if he chooses to disclose things and allows LeGrand to testify about purportedly all this confidential information, they're now stuck with it when they request him as a witness in this arbitration and pull the rug at the last minute.

I'm going to skip a couple of things I was going to say from the brief. I do want to cover some of the specific items we provided by bate stamp reference in such in our supplemental brief. Just a couple more things actually from their brief that I think are important on behalf of my client. Page 10 line 17 of the opposition supplemental brief they say, "while the transcript does discuss communications between LeGrand and the members of the company, of course Bidsal Golshani, in reference to the formation of GVC and completing the operating agreement it does not ever reference or discuss any communications between Bidsal and LeGrand regarding the meaning of any specific language of the operating agreement or regarding what Bidsal's intent was."

Even if that's true which it's really not practically speaking, so what? That doesn't matter. What matters is based upon all these conversations and

dealings we know LeGrand had with Bidsal which Golshani always gets to know about. Let's stay in the privilege lane, LeGrand knows what the parties intent was. We would hope, respectfully, that just like Judge Haberfeld you would respect that's a really great witness to help you to the extent you need help. He's a relevant witness that knows the intent of the parties.

They go on on page 13 line 18 to say, "well Green Valley Commerce was not present at the first arbitration to object." Really? The two managers, the only two managers were there. Bidsal could have objected, same lawyers for Bidsal were there. Are you really trying to tell us, are they trying to sell that because Green Valley Commerce wasn't a named party in the first arbitration that if the lawyers for Bidsal, the only other 50 percent manager of Green Valley Commerce, decides they're going to waive privilege all over the place that now in a different case no, no you can't. That prior disclosure, that prior waiver, that doesn't matter any more. The law never would work that way. Once it's disclosed, it's disclosed.

And then I think actually there's something on page 15 it's my last reference that I

think I can say it best right after where the opposition says this is not their burden essentially. But it is their burden if, you know, the law is pretty clear if you assert a privilege it's your burden. But on page 15, line 3 the parties asserting the privilege has the burden, they do say that. After saying that, they don't.

But anyway of relevance to this item I'd like to cover they say at line 5, "Bidsal has already established that any communications which Bidsal does not believe exists between himself as a representative of the company and LeGrand as the company's attorney about the meaning of the language to be using --

COURT REPORTER: Please slow down.

MR. BARE: My apologize to you. I will.

THE COURT: Why don't you read that again.

MR. BARE: It was a long one. So I'm trying to speed myself up. I apologize. "Bidsal has already established that any communications which Bidsal does not believe exists between himself as a representative of the company and LeGrand as the company's attorney about the meaning of the language to be used in the operating agreement would be privileged as a matter of law under NRS 49.095. The communications if they occurred were not intended to be disclosed to any third

party." That line right there is everything. That's it. I could probably just stop. I don't want to.

I need to cover some specific references. Really the communications with LeGrand giving a deposition in Bidsal versus Golshani with LeGrand testifying in front of Judge Haberfeld were not intended to be disclosed to any third party. What about Judge Haberfeld? He's the same type of third party that this brief says in reference to you Judge Wall you don't get to hear because you're a third party. Haberfeld is a third party, same exact situation you're in. What about everybody? What about the court reporters? What about everybody privy to the transcripts?

THE COURT: What privileged communications between Mr. Bidsal as a manager member of Green Valley Commerce and Mr. LeGrand, what privileged communications between those two Mr. Bidsal in his role as a manager member of Green Valley Commerce and Mr. LeGrand, what communications specifically that would be privileged were disclosed to Judge Haberfeld? Because what I saw is or even in the deposition in that case what I saw was I don't remember communications. I don't have any specific recollection as to what was said. So what privileged communications were disclosed

specifically?

MR. BARE: Well I'm going to cover some them in the specific references that I have that could be arguably privileged. It does go to that issue again we think.

THE COURT: Now or later?

MR. BARE: Well I'm getting to it next.

THE COURT: All right.

MR. BARE: I'm getting to it next. I'll try to move as quickly as I can. It's just like there is a lot to this one.

THE COURT: I'm not asking you to move quickly. I asked a question. If you tell me "I'm going to answer it later," okay that's fine.

MR. BARE: I'd like to answer it partially now if I could please.

THE COURT: Sure.

MR. BARE: Okay. It stands, it's clear from the evidence, it's common sense but it's also evidence if you look at all these e-mails that were disclosed there's a number of e-mails just between LeGrand and Bidsal that Mr. Golshani is not privy to especially for the first month-and-a-half or so when LeGrand is dealing only with Bidsal having to do with the creation of the operating agreement with Green Valley.

Those e-mails, a position could have been taken that they're privileged. It's the same position that's being taken now. The position taken now is, "wait a second anything that Bidsal and LeGrand talked about is privileged." Well you disclosed tons of e-mails as between only LeGrand and Bidsal about the substance of the Green Valley Commerce operating agreement, the buy/sell provision, how the waterfall was supposed to work. That's a disclosure in and of itself that we know about because we have the e-mails disclosed. But in addition to that --

THE COURT: Were they exhibits before Judge Haberfeld or were they just disclosed during the litigation?

MR. BARE: In some cases I think both. I mean as I understand it the deposition was read into evidence with Judge Haberfeld as I understand it. I mean Mr. Lewin and Mr. Garfinkel could weigh in on that.

THE COURT: I'm talking about the e-mails. There's a fundamental difference between an attorney disclosing to the parties during the course of discovery information because they're each manager members of Green Valley Commerce. And so any privileged information can be shared between those

members. There's a difference between that and being disclosed to a third party.

MR. LEWIN: Your Honor, would it be helpful for me to shed some light on this issue?

THE COURT: I have no idea if it would be helpful.

MR. LEWIN: The entirety of Mr. LeGrand's file was disclosed during the deposition and marked by the court reporter. They're in Exhibits 196. I think it's 196, 197, 198. The exhibits that were marked in the arbitration were, are exhibits in our case but only portions of them have been admitted so far. There are some of those e-mails that were marked in the arbitration number one that have not yet been admitted into evidence in this case because it depends on what happens with Mr. LeGrand.

They were marked, all of the exhibits were marked and admitted into evidence in arbitration number one. Those exhibits were designated in it's, in our operation as 196, 197, 19 if that helps.

THE COURT: I don't want to cut to the end of the mystery before I read the rest of it. Is the point here going to be, "hey here's an e-mail, here's two e-mails from Mr. Bidsal to Mr. LeGrand during the time when the operating agreement was being negotiated that

became exhibits and were disclosed and therefore there's a waiver of the privilege? Is that going to be the argument today? That's kind of why we're not arguing it back in June. And so that -- because I specifically remembered Mr. Gerrard saying, "look if you're going to point to specific things in the thousands of pages you've added, give us notice if that's where we're going today." I just see us being in the same rabbit hole we were in on June 25th and I really want to avoid that.

MR. BARE: Well there's no rabbit hole because I did in the supplemental brief disclose key, I put in there key bate stamp reference points to things I want to cover now.

THE COURT: All right let's go.

MR. BARE: To show that, so I'll skip over another part of that response and get right to the meat and potatoes of it. I'm sorry this is taking so long. I was asked to analyze the situation and there's probably, unfortunately quite a few moving parts. We're talking about a district court case, a prior arbitration, a whole budge of activities, that happened to waive the privilege. So here we go.

I'm referring now to only items that were specifically now disclosed in our supplemental brief by

reference either page number or bates number. Exhibit A to our brief, to our initial brief in this, regarding this argument of course was the notice of deposition of David LeGrand. I've already covered with you last time the full extent of what LeGrand did to comply with it these hours on a Sunday and all that.

The only thing I want to call up on that this time is on page 3, paragraph 2 of that exhibit. That's the only thing I really want to talk about. It's an interesting paragraph that is if you look at the certificate of service of that notice of deposition of LeGrand it is respectfully received by Mr. Shapiro who's on the call here. Of course he's in the capacity of representing Mr. Bidsal at that time.

Page 3, paragraph 2 you can see it there talks about, look it uses a word privilege twice in that paragraph essentially that paragraph to summarize it is, "if you're going to assert a privilege Mr. Shapiro on behalf of Mr. Bidsal respectfully, then go ahead and do it." And that paragraph specifically says right in the beginning paragraph 3 early on privilege if you're going to assert it please assert it. Privilege be asserted. No privilege was asserted.

THE COURT: You're talking about Exhibit A the deposition notice? Exhibit A the first page is --

MR. BARE: Page 3 paragraph 2 I believe is what it is.

THE COURT: Hold on. Okay here's Exhibit A page 3 is right here.

MR. BARE: Page 3 of the exhibit.

THE COURT: Here's the exhibit, page 1, page 2, page 3.

MR. BARE: Could you scroll just a little bit more please?

THE COURT: Subpoena duces tecum to David LeGrand there we go.

MR. BARE: Okay. Please let's see if you could scroll a little bit more. On my Ipad it comes up different. I don't know why.

MR. LEWIN: I think you just passed it right there. It's paragraph number two. I think that's where he's talking about.

MR. BARE: That's what it is paragraph 2, for some reason my Ipad says this is page 3.

THE COURT: Page 3 of the subpoena.

MR. BARE: That's what it is. I apologize for that.

THE COURT: It says, "and to the extent you," that means Mr. LeGrand right, "decline to produce any document upon any claim of privilege, any claim of

privilege, please state about particularity, the privilege claim," and so this is to Mr. LeGrand.

MR. BARE: It's to Mr. LeGrand. It's a certificate of service to Mr. Shapiro in regard to representing Bidsal in this matter. So I don't think it's a stretch to say that Mr. Shapiro knows that if there's a privilege to be asserted on behalf of Mr. Bidsal certainly give Mr. LeGrand that information and he'll assert it.

THE COURT: There's no privilege.

MR. BARE: Well that's the --

THE COURT: Hold on. There's no privilege to have LeGrand disclose documents to the other manager member; right?

MR. BARE: I agree. And that's why I said, you know, there's a lot to it. You know that's why I said this, you know, sort of editorial comment that we all made to the extent a privilege applied, you know, they asserted a privilege here. I mean that's what's going on. You let me go first I appreciate it, but it's their burden. They're asserting there's some kind of a privilege. And again, we've editorialized. We've made the comment along the way to the extent there's a privilege it's been waived.

THE COURT: There's no waiver of the privilege

by allowing the lawyer to disclose his file or documents to another manager member SPELSPEL.

MR. BARE: That's true. I agree with that 100 percent. But practically speaking where is it then going to be used? Are these e-mails that are privileged apparently or maybe they're not privileged but now they're being asserted to be privileged. Are they, where are they going to be used? And where were they used? That's the situation they were used in, disclosed in either in a deposition where LeGrand testified or in the arbitration with Judge Haberfeld that's what we're talking about here.

THE COURT: Okay.

MR. BARE: Okay. Now I know I've taken some time and I appreciate --

MR. Garfinkel: Excuse me Mr. Bare, one second. Let me speak to that and it is important it sounds like because of the questioning. Just so you know the entire record before Judge Haberfeld with all of the exhibits, the transcripts, everything was to be part of the Court record in front of Judge Kishner. But for the motion to, from the arbitrator's award and the counter motion to vacate literally she had three volumes of documents. And I believe, your Honor, all of that is also part of the record before the Supreme

Court.

THE COURT: Okay.

MR. BARE: All right. I'm going to try to take just really not, not, certainly not 45 minutes but certainly 15 or 20. I want to get to something now that it occurs to me might even be the meat and potatoes having to do with the line of questioning that we had so far today respectfully judge that you've provided to me and to us.

I want to go through and I'll skip some but I want to go through the specific bate stamped or otherwise specifically referenced items in our supplemental brief and tell you why they're relevant. Hopefully that will give you better insight with all of this.

I want to start with Exhibit B which is the 16.1 second supplemental disclosure in the, in the district court case. That's the one again that Mr. LeGrand took 5, 6 hours on a Sunday to provide documents. It's 600 pages of items disclosed having to do with Green Valley Commerce and it's operating agreement mainly.

I want to turn your attention please, everybody's attention to Exhibit B bate stamped DL0002. And this is an e-mail from Mr. LeGrand to Mr. Bidsal

only, okay. And I think you're going to see, I'm going to cover some of these, it's going to show you what was really going on here. This is an e-mail June 17th 2011 again LeGrand to Bidsal only. The relevant part of this e-mail DL0002, LeGrand says to Bidsal, Golshani doesn't know at the time this is going on, "I did not have Ben's last name." So he doesn't know Ben's last name. "I had to do a lot of work to make this operating agreement work but I crammed a square peg into this one. Do you want a binding arbitration?"

But it says this, "call me over the weekend." So that is evidence that we know that LeGrand is speaking on the phone with Mr. Bidsal on the weekends even at this point in time. Take a look at how Mr. Golshani is still referencing Ben. We know that they're talking over the weekend. Keep that date in mind, June 17th 2011. Now DL00022 again here we go, this is another e-mail from Mr. LeGrand to only Bidsal and this is reflective of what's going on. How could it be more clear. Look at this e-mail June 18th, "I still need Ben's last name." He's still Ben blank, 00031, e-mail June 23rd again LeGrand only to Bidsal, "I never got Ben's last name."

Pretty good evidence that LeGrand is not talking with Golshani. He doesn't know his last name.

He's talking only with Bidsal, DL00032, June 27th now another e-mail from LeGrand to Bidsal. What's the subject of this e-mail, the operating agreement. Sean, okay, first name basis that's fine. Sean talks about redline and clean revised of what? The Green Valley Commerce operating agreement. But what else does it again say? "I never got Ben's last name."

So Ben Golshani the guy putting in the 70 percent is still Ben blank. He doesn't even know his last name yet. And what is in, if you look at DL00059 and again I'm trying to move quickly I know you have to find these, or if you care to, DL00059, what do we have there? We have the most I think relevant document respectfully judge that you have to now wrap your mind around given what's happened in this whole story. We have Exhibit B, the waterfall provision. There it is.

It's something that Mr. Bidsal is working with Mr. LeGrand on at DL 00059 the waterfall provision Green Valley Commerce. And interesting look at what happens at DL00085. There's a redline version of Exhibit B the waterfall provision a redline version. We all know makes sense I can make argument that I think I can make reasonable conclusions from, redline, LeGrand is working only with Bidsal not working with Golshani yet, that we can see.

Redline version of Exhibit B the waterfall provision the same one Mr. Lewin now wants to ask LeGrand questions about. Take a look at DL000085 this redline version. How is Ben referred to there even in the redline version? The guy with the 70 percent, the guy with 2.8 million in. He's Ben blank three times. He's still been blank.

Lastly let's go on to see the rest of this little story DL00109. Again exactly what we want to ask about in this arbitration. What do you see at DL00109 Exhibit B another generation of it Ben Golshani, well he's Ben blank still. So let's add this up.

June 17th, this e-mail referenced is July 22nd, so from June 17th to July 22nd I think that's a month and a week, while the operating agreement that you're asked to make a ruling on having to do with the waterfall provision, Exhibit B the waterfall provision it's appearing in all the e-mails that are disclosed where LeGrand is dealing only with Bidsal. It's a month and a week and Ben is still Ben blank.

We want to ask LeGrand about that. Again fairness under Wardley, fairness is an element to this disclosure issue and waiver issue. Look at please DL00137 it's another e-mail this time it's from Bidsal

to LeGrand. So again they're dealing with each other without Golshani involved this time it's initiated by Bidsal. What does he ask the lawyer? "Any news from American Nevada?" Wow, what does that tell us? American Nevada is the entity that had the two foreclosure properties, the foreclosure properties that ultimately became the only asset really of Green Valley Commerce.

So we have evidence here that Bidsal is having these communications with LeGrand about you know American Nevada, the properties in question, you know. That's advice in order to answer that Mr. LeGrand would have to give him advice. So they're talking to each other. We know for sure common that LeGrand is giving, he's talking to Bidsal on the phone. He's giving him advice. If he doesn't know it, I mean what's something that all lawyers almost always do? They create bills and they bill for their work. Excuse me.

DL00197, it's just one, I could skip the others. I gave notice of referencing them now but DL00197 is an invoice from LeGrand. All you need to do is look at that thing. "TC", what does that mean? Telephone call probably. Probably means telephone call. So he's having telephone calls with Bidsal. Look we understand LeGrand can't remember all these

telephone calls. So what? But what he does know is the intent of the parties based upon all the dealings of the telephone calls. And that's the subject that we want to get into with them in this arbitration. We have a right to do it. It's fair.

And if it wasn't privileged and, you know, they say it was privileged, we know where it's been used and as my two contemporary lawyers Mr. Lewin and Garfinkel can help me out since they were in the trenches on it before my involvement, all this stuff was disclosed all over the place in the arbitration with Judge Haberfeld, in the district court case, in front of Judge Kishner. In the supreme court Bidsal filed an appeal when Kishner confirmed the arbitration award Bidsal filed an appeal in the Nevada Supreme Court. Guess what was all over that? All this stuff.

It's been as disclosed as it possibly can and used by the same party Bidsal, with the same lawyers as it possibly could have been up to this point. Probably that's why they did request LeGrand as a witness in this arbitration, which they did do, and then changed their mind at the last minute in front of you and caused all this.

All right. I'm going to skip over a few things I wanted to cover with the specific references

that was the reason for the supplemental brief to provide them. So just a few more DL00259, now this is an e-mail to both. We now know that certainly LeGrand is dealing with Bidsal and Golshani. And at 00259 we have an e-mail on September 16th to both and he says, "I made some minor edits to schedule B." To what? To schedule B. And he talks about this idea of it has to do with the disparity of the capital investment with Golshani putting in 70 percent. Okay.

I'm going to skip over that a couple of things. I'll skip over just to try to finish up. Okay. Last one of references in Exhibit B will be DL0035 one at least the last one I'll mention here, 00351. This is a December 10th 2011 e-mail. Now we're back to LeGrand e-mailing Bidsal which is fine because the parties agreed to that procedure.

THE COURT: What was the page number I'm sorry?

MR. BARE: DL00351 I believe, 351.

THE COURT: Okay.

MR. BARE: The December 10th 2011 LeGrand to Bidsal. "Sean, did you ever finish revisions? Ben really wants you to get this finished." Okay. And so by that point then we're getting towards where the agreement is ultimately consummated. Well, actually, the agreement what seems to be backdated to me because

it says it was effective as of June 15th 2011, here we are December of 2011 still dealing with things.

In any event I did add it up and what I wanted to mention in this line of argument is on the issue of how many drafts of this Green Valley Commerce operating agreement and how much time and how much dealings, this goes to the idea of can LeGrand, is it fair to say as I said before, can he formulate an opinion as to the intent of the parties? Of course he can. There's eight drafts that I found in here, eight. And it goes on from June through December that's six months, sometimes two or three times a day.

You know it couldn't be more strong and clear that LeGrand just like Judge Haberfeld said is a great witness on the intent of the parties here. All right. I gave just a few more specific references from other exhibits. If I could have just a point of order minute, I want to see what it is I can skip. Is that okay? Can I just have a moment?

THE COURT: Sure.

MR. BARE: Okay. I want to do this. In all due respect Mr. Shapiro, Exhibit C which is the deposition of David LeGrand in the district court case where he gave 145 pages of testimony by the way. Page 91 of the deposition is what I'd like to reference. And this is

Mr. Shapiro I believe asking questions of LeGrand. And I think this tells a bit of a story as to whether there was a waiver, you know, an intention to have LeGrand talk about his understanding of the parties intent or you know the lawyer can only give what his interpretation would be.

So let's see what happens in this colloquy on page 91 Exhibit C of the deposition of David LeGrand. All right. I'm going to go into my Ipad which I'm not the best at but here it is it looks like page 91, line 9, "Question" and I believe this is from Mr. Shapiro,

"Question: Okay it seems that you are aware that the arbitration and the lawsuit so the arbitration and the lawsuit both kind of center around this language in section four of the operating agreement. Is that accurate?"

LeGrand line 13, "Answer: Yes."

Shapiro line 14, "did you have any discussions with Mr. Garfinkel about section four of the operating agreement and how it should be interpreted or how you interpreted it?"

LeGrand: "Yes especially when he looked at the draft of the letter that I prepared to go to you. And you know he asked basically the same question

he asked me today, is this your interpretation? My answer was yes."

I'll stop there. Mr. Shapiro elicited that testimony. There's no privilege asserted. I mean he's asking him, LeGrand testified and confirmed that there was this conveyance of interpretation as to the intent certainly of Bidsal, Bidsal and Golshani. And you know when LeGrand is meeting with Mr. Garfinkel counsel who is of course for Mr. Golshani.

So I mean I think that is important to mention. I will represent to you and I won't necessarily need to have it called up, I was going to mention page 48 of that same depo, you don't need to pull it up, line 15. Likewise LeGrand talks about subjective perception, excuse me, subjective perspective of the intent of the parties and what's going on here along the way. It's pretty much all over this case.

I'll go to the last exhibit, well I've got two more exhibits actually, sorry. Exhibit E, Exhibit E is volume two of the arbitration with Judge Haberfeld. This is on May 9th of 2018, present is Mr. Lewin and Mr. Shapiro for, Shapiro is for Bidsal obviously. And I want to go to this page 296. Let me find that here. I'm not finding it for some reason.

I'm not pulling it up. Thank you for pulling that up page 296. I think this says it all really.

And for some reason my Ipad is giving me some difficulty here. That's what I'm trying to pull this up given my level of ability. But 296, thank you for that, line 8 if I could please just read that one paragraph. This is LeGrand, I think this is a good a good thing to look at because it talks about what LeGrand was doing and what he can now provide by way of the intent of the parties.

Line 8, "well let me say I want to try to be expressly clear about this," LeGrand says. "Ben and Sean tended to deal at strategic levels more than tactical. And getting focused on tactical it was, I have client that's we go line by line through documents. And I have other clients that kind of just go for the highlights. So when you say their intent, yes in general, was trying to create that which the two of them were agreeing to in the direction that I was being given at the time. And I don't recall any objection from Sean," of course that's Bidsal, "to this approach. Ben was pushing for this approach. I had never done this style before so this was, you know, took some thought. Obviously, it took a lot of time."

You know I think that's it for that one.

And thank you for pulling it up again, Judge. That says it better probably than I can as to what was happening all along with this. And it certainly demonstrates that LeGrand has a good grasp of what the intent of the parties would be having to do with now Exhibit B the waterfall provision especially given that it's now in play.

All right the last thing is Exhibit F. Your contemporary arbitrator, your contemporary judge Judge Haberfeld Exhibit F is the final award from Judge Haberfeld. You know I went through the AAA arbitration training. I'm now certified as an arbitrator by AAA. I don't think I could ever write a more detailed and better order than this one Exhibit F. It looks like Judge Haberfeld, I can't imagine anybody ever being more specifically and detailed and terrific at writing the orders but we have it.

If you look at Exhibit F Judge Haberfeld's order there's things in there that I think are highly relevant and important and I want to cover three paragraphs. First one is paragraph 11 which appears on page 6. This is the one where I want to bring this again. I've talked about it and argued it enough but the importance of the LeGrand testimony is clearly spelled out here in this paragraph 11 on page six

according to Judge Haberfeld.

He says, "in a dispute between litigating partners or other parties the testimony of third party witnesses becomes important. This is especially so when the third party witness is unbiased and the drafting lawyer was jointly representing the contracting parties in connection with the preparation of the underlying contract in suit. David LeGrand was that lawyer. And the substance of his testimony is essentially the same as and thus corroborates," it goes on from there. The point of that is we think, respectfully, just like Judge Haberfeld, you know to the extent the law allows we think it's real clear the law not only allows but mandates that when he, LeGrand be ordered to testify here as there's to the extent there's a privileged it's waived.

The importance of the testimony because LeGrand happens to remember the intent and has opinions about the intent of the parties which is the ultimate issue having to do with the waterfall provision. Paragraph 12 of Haberfeld's decision I want to bring up because you can see it confirms the reading into evidence of the LeGrand deposition. And you can see that the judge talks about how that was important to the intent issue in there. I'll leave it at that.

And then paragraph 14 of Judge Haberfeld's decision. How could it be more clear as to the importance respectfully to an arbitrator as to LeGrand's testimony on intent of the parties. Look at 14. This is what Judge Haberfeld felt regarding it with no objection, with disclosure, no privilege assertion. 14, "when directed to that specific intent provision of section 4.2 during hearing Mr. LeGrand was asked and answered as follows: 'And does that, does that language reflect your then understanding of what the intent of this provision was?

Answer: Yes.

And that was your understanding of Mr., of what Mr. Golshani and Mr. Bidsal had wanted you to put in?

Yes.

And was it your understanding that they had both, that was what they both had agreed to; right?

Yes.'"

And it goes on from there. I'll stop with that. I just want to say that, you know, the judge, Judge Haberfeld clearly felt again that LeGrand's understanding of what the parties intended this is another piece of evidence that is important, relevant and should at least be asked for or ordered and we'll

see what LeGrand does when he appears for his testimony. I think he'll testify. But God only knows.

The point is he should, we think should be ordered to do so. I'm going to end with this last little argument and I did skip over the offer of proof. And I'll skip over the law part in our initial brief. I know you'll look at all the law. I was going to make an impassioned Wardley legal argument it's in our brief.

The subject issue here, you know, what's at issue? I said it before. What's the subject matter of this arbitration where Mr. Bidsal filed the demand for arbitration? This arbitration Sean Bidsal versus CLA Properties which again is Mr. Golshani, the subject matter at issue really is a necessary component of the buy/sell provision itself, waterfall provision Exhibit B to the operating agreement all because of this disparity of income where or I'm sorry investment where, you know, Ben put in 2.8 million versus 1.2 some million.

And I'll certainly respond to any further questions that you have. But, you know, it seems clear, our position of course, abundantly clear that because of the course of history of things this is no unilateral waiver to the extent there even is a

privilege. It's a waiver that happens under the law because of the course of disclosure, because now it's been put at issue. And again fairness, I said I wouldn't really go through the legal part of it because I know you'll read it, but I mean the supreme court does talk about to allow the privilege to protect against disclosure of information when somebody put it as a subject matter which it clearly is here would be manifestly unfair and that's Wardley.

So in this arbitration Mr. Bidsal by, you know, apparently offering a contrary interpretation to Exhibit B the waterfall provision, he's put these communications that he's had with Mr. LeGrand at issue. And so, but he's waived it all along the way. And it's fair. We ask you for that order.

THE COURT: Are you saying that Wardley at issue language means that if Mr. Bidsal puts a contrary interpretation of the operating agreement at issue that he has therefore waived attorney/client privilege as to that issue? That's not how I read Wardley.

MR. BARE: Okay. What I am saying is that the subject matter is specific here. It's, you know, the subject matter with Judge Haberfeld was the buy/sell provision who gets to own the property. That was decided in Golshani's favor. So now in this

arbitration initiated by Bidsal as far as I can see it, and again you know I have to defer in some ways to Mr. Garfinkel, Mr. Lewin they know the ultimate other issues having nothing to do with waiver or privilege better than me. It seems like the issue put in the subject matter or the issue or issue put in to play is the interpretation, how Exhibit B is supposed to work.

So I am saying that if you put that in issue in light of all the prior activity where you've acquiesced in having the attorney give tons of testimony about the operating agreement, the buy/sell provision, the dutch auction and he dealt with as I've shown you now Mr. Bidsal for quite a period of time having to do with Exhibit B and redlines and changes and what have you and talked to him on the weekend and everything else. The fairness aspect comes into play as I've said.

Yeah he's put it in issue. Mr. Bidsal has put the interpretation, the intent of the parties, how Exhibit B the waterfall provision is supposed to work. All of that is at issue.

THE COURT: I don't see Wardley as an at issue waiver being triggered any time the, a contrary interpretation of a contractual provision is at issue.

MR. BARE: I would agree with you.

THE COURT: Wardley says at issue waiver occurs when the holder of the privilege pleads the claim or defense in such a way that eventually he will be forced to draw upon the privileged communication at trial in order to prevail. It goes on to say citing, "when the party has the burden of proof on an issue and can only meet that burden of proof by introducing evidence of a privileged nature then it's a waiver." That I agree with. That's not the same as saying, "hey since he's put this provision of the operating agreement at issue he's waived attorney/client privilege on that issue."

Otherwise in every contract case where a provision of the contract is at issue we would, we would constitute that a waiver of attorney/client privilege.

MR. BARE: Understood. What I'd say to you though is I think you have to look at the chronology of events that got us to the point and really the active participation by Bidsal through counsel and having LeGrand testify at a deposition and prior arbitration. Again the same thing that they now want to stop him from talking about the intent of the parties having to do with the buy/sell and obviously laid it as materially as it can the waterfall provision.

I mean the Wardley court talks about the

attorney/client privilege being intended as a shield not a sword. And what Bidsal is doing is he's filed this demand for arbitration and he's trying to use this as a sword. It's great to use all this and allow it all to be disclosed and used up to this point now we don't want to hear what LeGrand has to say about the waterfall and to give notice again of LeGrand as a witness here in your arbitration.

So they're trying, what they're guilty of is they're trying to use it as a sword. They're not allowed to do that. They can only use it as a shield. They had a chance to use it as a shield when the district court case was going on and the deposition notice came out or potentially when the first arbitration happened to use it as a shield, the privilege. Now they're using it as a sword. They allowed for it to happen. Now they're pulling out their sword which is prohibited by Wardley.

THE COURT: Okay. Let me before I turn it over to Mr. Gerrard or Mr. Shapiro, let me back track a little bit on where I was an hour and 15 minutes ago. I don't want an offer of proof that contains privileged information. Okay. So I'm going to back track on that a little bit and lay this out and ask it in a very specific way.

My understanding is that in the deposition in the Mission Square case which was ultimately used in the arbitration by Judge Haberfeld that Mr. LeGrand testified and I'm paraphrasing that he had no present recollection other than what was in the documents that made up his file, that he was drawing inferences from what he'd written in the past. That he remembered events in generativities not specifics because of the passage of time, that he did not testify that he had communications with either Mr. Golshani or Mr. Bidsal, the operating agreement. And he couldn't recall specific conversations beyond the documents.

And so he was going to basically use the documents to create inferences about what people told him. Okay. So I guess my question is and maybe it's just a yes/no question, do we have a reason to believe that his testimony in 2021 will be different than what he testified to in 2018?

MR. BARE: Not in relation to his ability to independently recollect say what he talked to Mr. Bidsal over the weekend on or whatever he talked to anybody on.

THE COURT: Okay.

MR. BARE: He would have to use all the e-mails, all the disclosed, I mean he was asked to disclosed

everything. So either he disclosed everything or he held something back. We don't think he held anything back. He was asked to disclose in fairness to both parties including to Mr. Golshani, he was asked to disclose everything. So we think we have everything by way of communication evidence and all the communication with Bidsal that occurred. We think we have all that.

Like I said we would agree that he doesn't, he wouldn't testify any differently now. But in a general sense you did say you were going to back track a little bit on the offer of proof, what I would say to you I'm sure Mr. Lewin will ask Mr. LeGrand questions relevant to the design of the waterfall exhibit, Exhibit B to the operating agreement, in order to return the, you know, the disparity of investment 70/30. I'm sure, Mr. -- I mean I know other things he's going to ask. I've talked to Mr. Lewin and I have my notes in front of me.

In a very general sense he's going to ask LeGrand about the design of the waterfall exhibit just like LeGrand was asked all about the buy/sell provision. And that's where this, you know, shield sword comes into play.

THE COURT: Okay.

MR. BARE: It's part and parcel of the same

deal.

THE COURT: Okay. Mr. Gerrard?

MR. GERRARD: Thank you, your Honor. Let's start where you just left off. Your Honor just read from Wardley. He read what's at issue. If you go a little further in that same decision about two more paragraphs after the one that you were reading which starts at, gosh what is this, it's in the middle of page 1197. It starts, "an additional primary criticism of cases," do you see where I'm reading?

THE COURT: Yup.

MR. GERRARD: Okay. So right after that there's a sentence that talks about this fundamental fairness that Mr. Bare has been talking about for, you know, probably a good 15 minutes of his hour and 40 minutes that he's spent to discuss this. And what, and what the Wardley decision says is quote, "fairness should not simply dictate that because pleadings raise issues implicating a privileged communication, that privilege regarding those issues is waived. Rather fairness should dictate that before litigants raise issues that will compel the litigants to necessarily rely upon privileged information at the trial to defend those issues the privilege as it relates only to those issues can be waived. Allocations of burden of pleading could

not be the basis for depriving privilege holders of their privilege."

This is directly contrary to what you just heard Mr. Bare argue. In their world because there is conceivably an issue in this trial that could be discussed by an attorney that had a privileged communication, that means that the at issue doctrine applies and there's a general waiver of anything that could ever come up.

THE COURT: That was the substance of my question.

MR. GERRARD: Exactly. Let's start at where this is supposed to be. This issue is very simple and straight forward and it doesn't take an hour and 40 minutes to decide or to argue. Your Honor asked four questions. Let me go back to those questions to start.

You asked first who has the authority in this case to waive the attorney/client privilege for a Green Valley Commerce when there's two members and two managers that are deadlocked. You heard Mr. Bare when he was running through our supplemental briefs say he agreed with our position that it would have required both managers to have ever consented to waive. So that issue is off the table. That issue has been answered. We argued it could only be waived by both managers

consenting to waive it. They've agreed to that.

So we'll move and they've also agreed that that never occurred. That there was never any decision made by both Mr. Bidsal and Mr. Golshani that they would agree to waive Green Valley Commerce's privilege. So that issue is now resolved.

Issue number two that you asked was has there been a waiver of the attorney/client privilege that protects communications between Mr. LeGrand and his client or representatives of those clients. And we have outlined in both of our briefs that no there has nerve been a waiver. That's where, your Honor, target, is trying to target the argument so that we wouldn't spend an hour and 40 minutes going through it asked an hour ago. Where are the specific conversations, the specific communications between Mr. Bidsal and Mr. LeGrand that have ever been disclosed to a third party?

And you asked a question and Mr. Bare said he would answer it later. And it still has not been answered. All that he did is show you a series of e-mails. E-mails in which the formation of the operating agreement was discussed and drafts of the operating agreement were disseminated.

None of those e-mails contained any privileged communication between Mr. Bidsal and Mr.

LeGrand. That's the whole point here which obviously and for some reason they don't seem to quite grasp. The rules are clear. The rules say at NRS 49.045 which defines a client and NRS 49.055 that defines a confidential. Those rules make it clear that a client includes a representative of the client.

Mr. Bidsal as a manager was a representative of Green Valley Commerce and a representative of Mr. LeGrand's client. Mr. Bidsal under NRS 49.105 as a representative of the client can claim the privilege on behalf of the company. His communications with the company's lawyers are privileged under NRS 49.105 if they were confidential. Confidential means they were not intended to be disclosed to third parties at the time the communications were made.

Mr. Bare argues well, you know, five, six years after the fact, you know because somebody raised the communication that that means at the time of communications were made they were not intended to be confidential. It's ridiculous. That's not what the rule says. It doesn't say anything remotely close to that. It's at the time the communication was made it has to be intended to confidential.

Mr. Bidsal said it in the declaration that

is attached to our supplemental brief that he intended these to be confidential. That has never been refuted in any way, shape or form which means that he has the right to claim that his communications with the company attorney as a representative of the company are confidential and privileged under NRS 49.105.

The only way for those communications, for that privilege to have been waived in the absence of an agreement between Mr. Bidsal and Mr. Golshani to waive it would be if Mr. Bidsal allowed those communications to be testified about to a third party or disclosed to a third party without him raising the privilege. That has never happened.

Mr. Bare was asked specifically over and over to identify where any communication between Mr. Bidsal and Mr. LeGrand was ever testified about. And we walked through every exhibit that he identified. Your Honor, gave them an additional three weeks to go back through all of their exhibits and identify any conversation, any communication to a third party that would support a waiver argument.

THE COURT: Can I interrupt you for a second?

MR. GERRARD: Please.

THE COURT: What about the testimony of Mr. LeGrand regarding satisfying the intent of the parties

which appeared to be without objection?

MR. GERRARD: Are you talking about his deposition testimony?

THE COURT: Yeah.

MR. GERRARD: Okay. So the deposition testimony that they pointed out was on page 91 of the transcript. That was the only reference that they gave supposedly this waiver. And this is a question that was asked --

THE COURT: Let me pull it up. Hold on. Was it 91 if I remember right?

MR. GERRARD: 91.

THE COURT: Okay.

MR. GERRARD: So here we are on page 91 and it says starting at line 9.

"Question: Okay it seems that you're aware that the arbitration and the lawsuit both kind of center around this language in section 4 of the operating agreement; is that accurate?

Answer: Yes.

Question: Do you have any discussions with who with Mr. Garfinkel, about section four of the operating agreement and how it should be interpreted or how you interpreted it?"

That is not disclosing a communication between Mr. Bidsal and Mr. LeGrand. That is somebody

that is asking Mr. LeGrand if he gave his interpretation of the agreement to Mr. Garfinkel.

THE COURT: And I probably should say I'm looking more at page 48 which I have up on the screen.

MR. GERRARD: All right. Let me go to page 48. I've got to get mine up here. Okay so here on page 48 says, he's asked about line 1. "In other words when you send a draft to Mr. Bidsal would you then talk to him about the draft?"

He said, "well sometimes. Again we had a bunch things going on at one time. So Sean and I had a lot of other things he was engaged with as well during this time that I had no part of as far as I know. So I don't want to characterize, but it was a little harder to get Sean's attention because of the sheer volume of what Sean was dealing with and what we were dealing with. You can see in some of the communication I'm kind of waiting on Sean. Ben had less day-to-day involvement. I think Ben was a little more focused on what he wanted to see."

So again do you see any communication disclosed there, any confidential communication between Mr. Bidsal and Mr. LeGrand? Of course not. Down at the bottom of that same page starting at line 21, "so with respect to the operating agreement the draft if

there was something he didn't want in there, would he tell you?

Yes.

Same with Mr. Golshani?

Correct."

Is there any testimony anywhere on this page or anywhere in this transcript this is the only page they identify where Mr. LeGrand is asked to divulge the contents a confidential communication between himself and Mr. Bidsal? It never --

THE COURT: I'm on 49 now.

MR. GERRARD: Okay. It never happens. On page 49 in Exhibit 13 you mentioned, "we discussed that you would want to be able to name a price to get bought or by at the offer price. And again that is something that both Mr. Bidsal and Golshani agreed to correct?" So this is a question that's being asked not Mr. LeGrand's testimony.

THE COURT: I'm down a couple lines like line 13.

MR. GERRARD: Okay.

"Did Mr. Bidsal express to you that he did not want to go in that direction?

I don't recall such a direction from Mr. Bidsal."

So again he's still not disclosing any communications that he had, the contents of any confidential communications with Mr. Bidsal. It's just not there. Remember what we're talking about here. They want specifically to call Mr. LeGrand to testify about what the special allocation language of Exhibit B means. They keep calling it a waterfall. But it's special allocation provision. And it's in Exhibit B. And that's what they want to ask him.

They want to ask Mr. LeGrand what Mr. LeGrand thinks that it means. Well Mr. LeGrand's opinion of what it mines it completely irrelevant unless he gained that understanding from a specific conversation with Mr. Bidsal. And he already stated he has no recollection of any conversations with Mr. Bidsal.

So we're right back where we started. You asked for specific, you know, disclosure of specific communications. Because guess what, that's what Wardley requires. Wardley says specifically that, "the party seeking an advantage in litigation by revealing part of a privilege communication, the party shall be deemed to have waived the entire attorney/client privilege as it relates to subject matter of that which was partially disclosed."

Mr. Bare has tried to paint a picture for an hour-and-a-half before he went to legal arguments. The picture he tries to paint is there was some sort of broad brush agreement or waiver through nonaction by Mr. Bidsal of a privilege. But that's not the way that the privilege waivers work. Privilege waivers under Wardley and under federal case law are specific and targeted to the specific communication you're claiming that the waiver was for.

It doesn't waive for every communication that whatever happened between an attorney and the client. That's, there's no case law that says that, none. And they haven't cited any. That's what Mr. Bare spent an hour-and-a-half trying to convince your Honor you could do in fairness.

Well what Wardley says is if my client Mr. Bidsal put, revealed part of a privilege communication to be used in this litigation that the remainder of that communication there would be a waiver for but only as to the exact communication that was partially disclosed. End of discussion.

They can't even point to a specific communication where the waiver ever happened. There's not one single bit of testimony in all the transcripts that they attached or in any e-mail where Mr. LeGrand

says, "this is what Sean and I discussed" and then he gives a privileged communication. There's none. It's not there at all anywhere.

And that is specifically what would be required to waive the privilege. And they've already admitted that the client hasn't waived the privilege because that would require both of the consents of both of the managers. In the absence of them showing you a specific communication where my client consented to the waiver by not raising the privilege, the conversation is over.

And that's the problem that we've had from the beginning. We've been asking from the beginning what communications exists. My client doesn't think there are any. He doesn't remember having any conversations with Mr. LeGrand where the meaning of the language of the operating agreement was discussed with him. He does not recall that ever happening.

And quite interestingly Mr. Bare again tried to paint this chronological picture but he left out the most important thing. The operating agreement when it was executed, it was executed after all of the conversations or communications that were evidenced in any of the e-mails that he identified. It happened in December long after all these e-mails.

And what did the operating agreement include at the time it was signed? It included a statement that was put into place by Mr. LeGrand himself at Article 8 section 1 that specifically stated and I quote, "the members have been advised by the law firm that a conflict of interest would exist among the members of the company because the law firm is representing the company and not any individual members." That's the first thing it says.

The second thing it says subpart A, subpart D says, "the law firm has not given any advise or made any representations to the members with respect to the consequences of this agreement." Well that is directly contrary to what they're trying to argue now. And Mr. Golshani signed that agreement. You cannot now say that there were representations that were made where the consequences of the agreement were discussed between Mr. LeGrand and Mr. Bidsal or him when because he's estopped from making that argument.

There's a clear estoppel argument you cannot make a contrary statement now to what is actually in the agreement that he signed consenting to it. That's exactly what's going on. But yet they still cannot point to any specific conversation where there was any specific waiver. And they can't identify

what exactly was waived. They can't identify any conversation where there was a waiver. Let's get back to what this is all about.

What this is about is very simple. If they want to ask Mr. LeGrand, "what do you think that this operating agreement language means?" It's completely irrelevant because Mr. LeGrand is not a party to the agreement. And his intent is meaningless.

If he testifies, "I discussed what the parties intent was by this language," that would be relevant but it would also be privileged. That privilege has never been waived. When they first tried to bring it up, we raised the privilege. It had never been brought up before. It was never brought up before Judge Haberfeld. It was never brought up in the deposition. It was brought up before your Honor where they wanted to ask him specifically not his opinion about what he thinks the language means, but what he thinks the parties intended with this language. That is privileged. That, there's no privilege waiver for.

And so what they really want is to substitute your Honor's determination of what this language means based upon what the parties have actually testified that their intent was and to substitute a third party's belief about what that

language means who's not a party to the contract. That's legally irrelevant once again unless it's based upon his communications with the parties. And it's also inadmissible as evidence. Under Nevada rules of evidence he has to have personal knowledge to be able to testify about what the intent of the parties was. There was only one place that personal knowledge could come from, communications with the parties. And that's privileged.

So let's get to the other two topics that your Honor asked to be briefed. Topic number three was does the arbitrator have the authority to compel Mr. LeGrand to testify especially when he stated his intention not to testify due to his concerns about violating the attorney/client privilege or the Nevada rules of professional conduct. Well I think the answer to that is a resounding, no.

Your Honor, there's been no authority they've provided to your Honor. They're the ones that are asking that he be compelled to testify. They've provided no authority in support of any, you know, your Honor being able to compel him to testify. And we get to the final issue, an issue that they didn't even address in their brief even though it was clearly one of the issues your Honor identified for the briefing.

And that is have the parties waived any conflict of interest with respect to Mr. LeGrand. And obviously they have not.

And these are very serious issues. You know I, we briefed them, but let me walk through it in three or four quick minutes. The rules of professional conduct apply to Mr. LeGrand without question. Rule --

MR. BARE: I am going to object to this respectfully, because as I took it, and I thought, and if I had it wrong I had it wrong. I want to make the objection because I thought we had it right. Judge at the last convening of this arbitration you said that you don't want to talk about rules of professional conduct, not jurisdiction, I stayed away from that. I could give a lot of expert opinion on rules OF professional conduct. I intentionally stayed away from it.

THE COURT: Here's what I think about the rules of professional conduct in any potential conflict. As I said before it's not for me to find that there is a conflict of interest. Okay. That's not my authority. It is the Bar's authority. There's no waiver that I've seen of a conflict of interest such that I could say look I don't need to deal with conflict of interest and the rules of professional conduct because Mr. Bidsal,

Mr. Golshani, Green Valley Commerce has waived it. I don't see anything like that.

So the only reason I asked either in April or June about waiving a challenge to Mr. LeGrand's possible conflict of interest is if somewhere that was, that was done then I wouldn't have to deal with the issue because there had already been a waiver of the issue. That hasn't occurred. I can't as I said before provide Mr. LeGrand cover for what some might see as a pretty obvious conflict of interest.

So I, the fact that that issue A, isn't mine to ultimately resolve and B hasn't been waived so that I don't even have to consider it, those things aren't there. So to an extent you're both correct. As I said before I can't compel, put it this way there are two separate issues, okay. If there was no attorney/client privilege issue and it was just a conflict of interest issue and Mr. LeGrand said, "look I'm not sure I want to do this because I think I have a conflict of interest." He made some comments like that during his testimony before about at some point he didn't know if this could become adversarial or something like that.

Let's just say the only issue was potential conflict of interest, okay, if that's all

there was and he said, "look I'm not sure I want to testify because there's a possible conflict of interest and I could get in trouble with the Bar," I can't compel him to testify. I can't say to him, "look I'm the arbitrator in this case and I don't really care whether you think you have a concern about violating the rules of professional conduct. I'm going to compel you to testify." That's what I was talking about in April.

If there was some stipulation, some express waiver of the conflict of interest issue then I could say, "look it's not an issue. You've got cover because there's a stipulation. There's a waiver." That's the whole reason I was asking for it back in April. That isn't there.

I can't protect him from any conflict of interest. I have no idea since April whether he's decided, "hey I don't have a conflict of interest. I don't, the rules of professional conduct don't scare me I'm going to testify anyway." I have no idea. What I was concerned about in April, what I was still concerned about throughout up to today is there are two, in my mind, discreet issues.

The second one is a potential conflict of interest for Mr. LeGrand. There's been no evidence to

me that that conflict of interest has been waived. There is no, I can't help him with that. Okay. There's no law that says even if he has doubts about whether he has a conflict and doesn't want to testify that I can force him to. I wasn't aware of any. I didn't think there was back in April. I gave everybody a chance to see if there was. Like me, you probably found nothing.

So that's where we stand on the two separate issues. That's where I stand on the two separate issues. So I'm not sure Mr. Gerrard if I need to have a recitation other than what's in the brief about how the rules of professional conduct apply. That's a long-winded --

MR. GERRARD: That's fair enough. I appreciate that. Obviously it was an issue you asked us to brief. We did brief it. They did not brief it. And you at the last hearing said they would not be allowed to make any additional arguments that were not included in their first brief. That's the ruling of the, of your Honor. And so obviously they've never addressed it. And we'll stand on what we've submitted to your Honor because we think there's a very clear, a very stark, conflict of interest by the evidence that we've submitted that Mr. Golshani retained Mr. LeGrand to

represent him individually and even gave him the letters that were, that were being sent by Mr. Bidsal when he was, when there was this exercise of the buy/sell provisions that happened and asked for him to comment on those to Mr. Golshani about Mr. Golshani's rights taking one side against the other.

So I won't go any further than that because it's quite obvious and quite apparent. But I raised it when they wanted to call Mr. LeGrand as a witness because I wanted there to be no mistake that we believe that there is a very serious conflict and we will not waive that conflict and that that could place Mr. LeGrand in jeopardy on his license. So your Honor, you know --

THE COURT: Let me stop you with something right there and add on to what I said before. Okay. Issue number one attorney/client privilege is not in my mind an issue of whether Mr. LeGrand can testify at all. It's an issue of whether he can testify regarding information that might be privileged.

MR. GERRARD: Sure.

THE COURT: Issue number two is there a conflict of interest is probably an issue for him about whether he can testify at all. So that's part of the different way I see these discreet issues.

MR. GERRARD: And I agree with that. And as to issue about whether he can testify at all related to the privilege issue only, there is a big problem from that. The problem is Mr. Golshani has already testified he has no personal knowledge or recollection of these events other than what is in the documents. So the point is and I thought we made this in both our original brief and in our supplemental brief, if the only reason they're calling Mr. LeGrand to testify is for him to give his opinion about what he thinks the agreement means, that's inappropriate. Because number one he hasn't been disclosed as an expert. Number two his opinion about what the agreement means is completely irrelevant unless it's based upon his communications which are themselves privileged.

So if your Honor says he can not testify about the privileged communications, then there's nothing left for him to testify about.

THE COURT: Right.

MR. GERRARD: And that's the point. Your Honor, unless you have any questions, you know, look I could go on for an hour hour and 40 minutes as well. But there's nothing, this is not a complicated issue. It's very straight forward. Either there is a privilege or there isn't. And there clearly is. They've never

refuted that the privilege exists. And they never refuted that GVC has never waived that privilege. The only possible waiver could be the arguments about at issue or there was my client divulged a portion of a privileged communication to benefit himself. And they have not established either of those things under Wardley.

And as a result the answer to the question that your Honor asked about whether or not there's there is a privilege, yes, and has it been waived, no, makes for a pretty easy decision I think by the Court. Unless you have other questions I will leave it with that.

COURT REPORTER: Your Honor, this is the court reporter. We've been going for two hours. I'd like to have a break.

THE COURT: Off the record.

(Recess)

THE COURT: Okay we have all counsel present. We're back on the record. Judge Bare I'll turn it back over to you. I don't know if someone else on your team was going to address final argument?

MR. BARE: Thank you Judge Wall. I promise to

be quick. I know Mr. Gerrard didn't like the hour and 40 minutes. I wanted to be comprehensive. I appreciate the opportunity to do that. Mr. Gerrard indicated that Mr. Bidsal intended these communications with Mr. LeGrand to be confidential. And I think that speaks to the whole situation that we have here. I mean how could they be confidential, really, if two, if the lawyer according to the operating agreement even isn't representing them individually, if it's a joint as Judge Haberfeld said jointly. That's interesting that Bidsal is saying all this was intended to be confidential.

That just didn't make a lot of sense in formulating this 50/50 Green Valley, you know, business. But let's assume we can believe Mr. Bidsal intended these to be confidential. I mean, again they disclose all the e-mails, all the communications. That's what the subpoena asks for. That's what was delivered as far as our understanding was for Mr. LeGrand, again with Mr. Shapiro receiving the service of the request. So I think you have that.

Just a couple more points, Mr. Gerrard said and I wrote it down, that LeGrand's intent is meaningless. That's what he said. Judge Haberfeld said something altogether different. In the dispute

between litigating partners and other parties the testimony of the third party witness becomes important. This is especially so when the third party witness is unbiased and a drafting lawyer. David LeGrand was that lawyer. Your contemporary arbitrator would disagree with Mr. Gerrard's assertion that LeGrand's testimony is meaningless. In fact, it is the polar opposite to that of course.

Mr. Gerrard talked about the idea of what he said words that we're not intending to ask LeGrand what he thinks about the language in what I call the waterfall provision Exhibit B. In fact we do. Of course we do. Just like it happened this whole time. Because just like Judge Haberfeld felt LeGrand is a vital and essential witness having to do, he happens to know that. Like I've said, a lot of lawyers I think all of us actually if you dealt with the one off some years ago you might not be able to provide insight as to what when you drafted something and designed something, when you drafted the waterfall Exhibit B, you know, how you designed it, why you designed it, what your opinion is as to how it's supposed to operate.

Given that it was six months, eight drafts and all these inputs and all these discussions with

Bidsal that have been disclosed to us in these e-mails, of course LeGrand is a vital witness. And, you know, what else can I say on that.

The last thing I'll say is I thought it was interesting when you put up page 48 and Mr. Gerrard stopped right before the passage where Mr. LeGrand said what? Mr. LeGrand on page 48 where Mr. Gerrard stopped said words about relating his subjective perspective, subjective perspective. That's really the heart of this whole thing is in this demand for arbitration.

Mr. Bidsal after the course of history apparently disagrees that's why this has been demanded, disagrees with how or wants to present a disagreeable position with how the waterfall is supposed to work now that Mr. Golshani gets to only Green Valley Commerce. We want to ask, Mr. Lewin is going to do it of course, a gentleman who it's been my pleasure to get to know through this, Mr. Lewin is going to ask again how it was designed from LeGrand's perspective. And that would be relevant of course in fairness to what the parties intended. And at the end of the day that's the decision that you want to make.

So I think it's all there. It's, this has been disclosed. It's been utilized. We got hit over the head, you know, with a sword. And that's not what

this is supposed to be. They could have shielded, they didn't. Now they're pulling out a sword and trying to kill us with it as to the most relevant witness of all that we think is in that category and so did Judge Haberfeld. And we hope you do too. Thanks.

THE COURT: Okay. I appreciate it, obviously I will issue a detailed order on this. But I think it makes sense to tell you where I'm going to go so that we can reach the rest of our scheduling issues now since I have everyone here.

Back in April when Mr. LeGrand was going to testify and Mr. Gerrard and Mr. Shapiro objected on behalf of Mr. Bidsal, there were certain discreet issues that I asked to be briefed. Issue one was essentially with respect to attorney/client privilege, who has the authority to waive it for Green Valley. We have agreement that Green Valley Commerce holds the privilege, that there was a requirement since they were both 50/50 that each would have to expressly waive it, that one couldn't waive it for the other or for Green Valley Commerce. So the privilege is held by Green Valley Commerce.

With respect to communications between David LeGrand and Sean Bidsal as a member or manager of Green Valley Commerce I asked for a briefing as to

whether that has been waived with respect to discreet issues we have which is the intent of the parties regarding the allocation provision in Exhibit B of the operating agreement. I have reviewed everything that has been presented, all of the briefs, it is my determination that there is not an express waiver. There's not an implied waiver. There's not a waiver by conduct in the prior proceedings.

Respondents have suggested that there's an at issue waiver under Wardley. I sort of communicated already that I don't believe that respondent's take on the Wardley case is correct. I don't think it's as easy as saying since the operating agreement and the intent of the parties has been placed at issue that waives attorney/client privilege under Wardley because Wardley as I pointed out, as Mr. Gerrard pointed out is much more specific than that.

Wardley says that an at issue waiver occurs when the holder of the privilege needs the claim or defense in such a way that eventually he or she will be forced to draw upon the privileged communication at trial in order to prevail. That's not where we're at. The Nevada Supreme Court went onto quote, excuse me the Harvard law review to say, "when the party asserting the privilege bears the burden of proof on an issue and

can meet that burden only by introducing evidence of a privileged nature waiver is clearly warranted." That's not the circumstance we have.

Wardley talks about fairness. The fairness is rooted in one party using a portion of a privileged communication to either prosecute or defend a case and claiming privilege for the rest of it. And fairness dictates that that can't be allowed. That it can't be in that circumstance used as a sword and a shield.

I don't see a waiver by those e-mails. I don't see a waiver in the testimony of Mr. LeGrand previously. And part of it is based upon the fact that if he doesn't recall conversations with Mr. Bidsal, he doesn't recall the specifics of any of those conversations, I don't see how unless his testimony is going to change and it doesn't sound fundamentally like anybody thinks it is, that he's going to say suddenly now I remember conversations.

I'm going off of his sworn testimony before as an officer of the Court really and I'm relying on that. So the issue of whether there has been a waiver of the attorney/client privilege or communications between Mr. Bidsal as a manager member of Green Valley Commerce and Mr. LeGrand it's my

understanding that there has not been a waiver of that privilege. That privilege has not been waived. And that Wardley wouldn't apply for me to find that there is an at issue implied waiver.

Conflict of interest issue I've already sort of discussed. I don't find that there has been any waiver of conflict of interest especially since it needs to be done in writing under the rules of professional conduct. Nor do I find that I could compel Mr. LeGrand to testify even if he had reservations of whether there would be a conflict of interest.

So the written order will be somewhat more robust than what I have just laid out. But it's important I think that you know what that order is going to say as a bottom line. I don't know whether and I don't think it was entirely known at the end of April whether, whether there's going to be any additional testimony. I know that Mr. Lewin referenced the fact that he may want to recall Mr. Golshani but I thought it was in relation to what Mr. LeGrand might testify to.

I agree with Mr. Gerrard that Mr. LeGrand's testimony about what the intent of the parties was regarding the allocation provision would be

relevant. But it's based upon his communications in part with Mr. Bidsal, those are privileged. And so I'm not sure what else Mr. LeGrand could testify to that would be relevant in our proceeding. So I don't know if you want to still calm Mr. LeGrand. I don't know if you have any other witnesses. I seem to recall there was a health problem about another witness back in April. I don't remember his name.

MR. LEWIN: Mandevich, Henry Mandevich.

THE COURT: Henry Mandevich right. He had a health issues on the last day or the day before. I don't know substantively what there is left to present at the arbitration hearing or whether we want to schedule it for, whether you want it for final arguments, whether you want it live or Zoom. For purposes of discussing those housekeeping matters I don't know if we need to keep the court reporter here if she's got somewhere to go. But let me start with Mr. Lewin.

MR. LEWIN: Your Honor I'd like, I think what I need to do is digest what your order is going to be. There is some, there are some documents and issues having to do with other things having to do with Mr. LeGrand's testimony other than having to do with privileged communications that I'm assuming that you're

talking about oral communications because he has already produced all the e-mails. Those e-mails have been disclosed I think by both parties, both Mr. Bidsal and CLA in connection with this arbitration. So I think I need to regroup with Mr. Garfinkel and discuss what we, you know, need to do with those perhaps enter into a stipulation see if we can stipulate to the admissibility. Some of those e-mails have to do with the issue having to do with drafting and it's focusing in on Mr. Gerrard's testimony, his argument here today about estoppel in the operating agreement.

The operating, if we're going to address the issue of drafting which I have raised before that I believe is covered by Judge Haberfeld's determination already but the operating agreement does say that the agreement was drafted by Mr. LeGrand. Taking up Mr. Gerrard's estoppel argument if he's going to raise that, if he's saying that Mr. Golshani is estopped to dispute the issues having to do with Mr. LeGrand who he represented and so forth, I think the same paint brush covers the issue of drafting.

So the issue is that if one of the issues having to do with Mr. LeGrand's testimony had to do with the sequence of the, some of the sequence of the eight operating agreements and how they came about. If

that's going to be, continue to be an issue, he may still, that maybe an issue for him to testify.

I personally don't see how it's a conflict of interest for Mr. LeGrand to come in and testify about a fact one way or another, that doesn't raise a conflict. It maybe a conflict in drafting the agreement. Just coming in to testify under oath I don't see that raises a conflict. The issue on privilege is something else you've ruled on. I'd like to regroup and figure out what we need to do.

THE COURT: Do we know if Mr. LeGrand would testify?

MR. LEWIN: I did ask him yesterday I told him we were having a hearing today. I think he will be willing to testify. I think he wanted to see what your order was going to say. So, and so I can't, it was yes but, we just don't know.

THE COURT: Okay.

MR. LEWIN: I think that's the next step also.

THE COURT: So are you saying for scheduling purposes you need to see my order first?

MR. LEWIN: I can sort of see what your order is coming out. The question I was raising is whether there is going to be additional testimony whether that would be Mr. Golshani, Mr. Bidsal, Mr. Golshani, Mr.

Bidsal or Mr. LeGrand. I don't know. I would say we can schedule something. I think all that testimony would be rather short. Maybe we can enter into some agreements with Mr. Gerrard and Mr. Shapiro. We can schedule something, get something on calendar. So that we don't, so we're not, we're not going off months and months away. I would like to suggest we do schedule.

THE COURT: Okay. So you're saying if I schedule a day down the road, here's the thing, this order is not going to come out today. I have an arbitration hearing tomorrow. I've got a mediation on Monday. It's not going to come out until probably sometime next week. So I don't necessarily, I mean are you saying we can schedule a full day down the road today and if that involves a little bit of testimony and then final argument great. If it involves just final argument, great. Can we do that?

MR. LEWIN: That's correct. Whether we can get everything done in one day, I can't say. I have to think that through in terms of what we want to offer. I don't have a lot more to offer, something to offer.

THE COURT: Hold on. Mr. Garfinkel.

MR. Garfinkel: Do you think, how much time do you think we need to kind of sort of digest this? Maybe what we can do is schedule another call with the

arbitrator in a week or two and then try and come up with a, with a schedule after we give it some thought. How does that work? Judge does that work for your schedule? Schedule something in a week or two we can come back to you and say this is what we want to do. Does that make sense?

THE COURT: I want to here from Mr. Gerrard.

MR. GERRARD: Judge, we want to get this over with. At the conclusion of the last day of the arbitration Mr. Lewin represented that Mr. LeGrand was his last witness. And you specifically asked him if there would be any other witnesses and they said "no". So the suggestion that now, you know, that they might want to put on two or three more witnesses when they have already represented they were done other than Mr. LeGrand I think is inappropriate.

And I want to get a date certain if possible right now today while everybody is here when we can finish this arbitration not wait for another two weeks and then try to schedule with your Honor and then at that point, you know, let's just schedule it. Let's get it done. My client has been waiting for, you know, already four months because of this issue that they raised that they wanted when your Honor could have decided it on the day of the arbitration. Here we are

four months later when we finally get a decision.

THE COURT: I will say that on April 27th my notes show that Mr. Lewin talked about calling witnesses after Mr. LeGrand's testimony like maybe Mr. Bidsal and Mr. Golshani.

MR. GERRARD: If that's your recollection, if that's what Mr. Lewin says I'm fine with that. My recollection was we asked him right then on that last date if you had any more witnesses and you asked about Mr. Mandevich he said he's not going to testify. You asked about anybody else and my recollection was that he said this was his last witness.

MR. SHAPIRO: Your Honor I can pull up the transcript.

MR. LEWIN: The issue is that's exactly what I did say. I said depending on what happened to Mr. LeGrand, Mr. Bidsal, Mr. Golshani. And I'm still not sure. As I said I have to digest your ruling but I'm still not sure whether that ruling will prohibit Mr. LeGrand from testifying on any issue. There maybe issues that do not have to do with any privilege communications that he might be able to testify to.

I also want to point out that this delay, this delay, if they had raised this issue at the time by way of a motion in limine when they designated Mr.

LeGrand and we designated Mr. LeGrand we would have covered this before the arbitration started. This delay is not caused by us.

THE COURT: And I'm not attributing fault. Can we --

MR. SHAPIRO: Can I make one short argument?

THE COURT: Yes.

MR. SHAPIRO: Thank you.

MR. GERRARD: Can we let the court reporter go?

THE COURT: I don't know.

MR. LEWIN: I'm fine with the court reporter leaving. I'll let Mr. Shapiro make this point.

MR. SHAPIRO: The point is this your Honor we were supposed to be done in April. There was a continuance. We've rested our case and now Mr. Golshani and his counsel had four months to go through with a fine tooth comb the transcript and try and recreate the case. That's a huge disadvantage. We need to end this in fairness. And they shouldn't be allowed to call any new witnesses beyond Mr. Bidsal or Golshani or if they decide to call Mr. LeGrand but that's it.

It should be limited to the issues of Mr. LeGrand's testimony otherwise they get four months to pour through and reanalyze their case and try to

present a new case because they didn't like how the first case went. In fairness we do need to get this wrapped up. The other concern we have is just the length of time that has now elapsed since the testimony was given. It's going to be more and more delays. It's just going to create more problems to try and come to recall testimony and to give a good decision. And so we strenuously want to get this over sooner than later.

THE COURT: Okay. All right. Since we just have housekeeping left any objection to releasing the court reporter?

MR. LEWIN: No.

MR. GERRARD: No, your Honor.

THE COURT: You're free to log off.

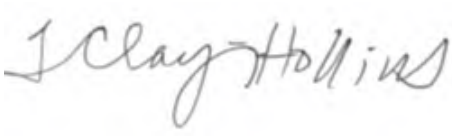
(Proceedings concluded at 3:42 p.m.)

JAMS

SHAWN BIDSAL, AN INDIVIDUAL,
CLAIMANT/COUNTER RESPONDENT,
VS.
CLA PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
RESPONDENT/COUNTER CLAIMANT.

NO. 17026

I, TECKLA CLAY, CSR NO. 13125, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 98 COMPRISE A FULL, TRUE AND CORRECT REMOTE TRANSCRIPT OF PROCEEDINGS TAKEN IN THE ABOVE ENTITLED CAUSE ON AUGUST 5th, 2021 DATED THIS 30TH DAY OF AUGUST, 2021.



TECKLA CLAY, CSR NO. 13125

[& - affectionately]

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EXHIBIT 271

APPENDIX (PX)007224

JAMS

BEFORE HONORABLE DAVID T. WALL (Ret.), ARBITRATOR

* * * * * * * *

SHAWN BIDSAL, an individual,
Claimant/Counter-Respondent,
vs.) JAMS Ref No. 1260005736
CLA PROPERTIES, LLC, a California limited liability company,
Respondent/Counterclaimant.

TRANSCRIPT OF PROCEEDINGS

ARBITRATION

CLOSING ARGUMENTS, PAGES 1381 - 1593

Taken on Wednesday, September 29, 2021

By a Certified Court Reporter

At 9:02 a.m.

Via Zoom Videoconference Link

Reported by: Dawn Bratcher Gustin, CCR 253, RPR, CRR

Job No. 46511

APPEARANCES:
(All participants appearing remotely via Zoom)

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BENJAMIN GOLSHANI
SPENCER LEWIN, Law Offices of Rodney T. Lewin

I N D E X

P R O C E E D I N G S

THE ARBITRATOR: Let's go on the record.

Appearances for the record on behalf of Claimant.

MR. GERRARD: Doug Gerarrd and Jim Shapiro on behalf of Shawn Bidsal. Mr. Bidsal is also present.

THE ARBITRATOR: Okay. I'm getting a fair amount of feedback on your audio there, Jim. I don't know why.

MR. SHAPIRO: The reason is because we're using Doug's -- Doug, can you mute yours?

THE ARBITRATOR: You guys are in the same room?

MR. SHAPIRO: Yeah.

THE ARBITRATOR: Yeah, that's the problem.

MR. SHAPIRO: It's gone now.

So I'm going to stay muted. Doug is going to be the one who is going to speak most of the time, although I will be addressing the exhibits. And so I will speak for that and then keep mine muted. We shouldn't have too much of a feedback issue.

THE ARBITRATOR: Okay. So we are still doing appearances. And Mr. Bidsal is here as well; right?

MR. SHAPIRO: Yes, Mr. Gerrard, Mr. Shapiro, Mr. Bidsal.

THE ARBITRATOR: And on behalf of Respondent

CLA Properties.

MR. LEWIN: Rodney Lewin and Louis Garfinkel on behalf of CLA, and Mr. Golshani is also present.

THE ARBITRATOR: And Spencer Lewin?

MR. LEWIN: Spencer Lewin is attending as my assistant.

THE ARBITRATOR: Okay. So we had a discussion off the record, partially off the record, regarding Respondent's position as set forth in their September 27th, 2021, letter regarding Exhibit 200.

Mr. Shapiro, do you wish to respond?

Now your audio is off altogether. You are muted somehow.

MR. SHAPIRO: There we go. Can you hear me?

THE ARBITRATOR: All right. Yes, now I can.

MR. SHAPIRO: So our position is just what we set forth in the letter, which is when Doug and I started looking into this and talking to Shawn, all three of us had the same exhibit. It was an exhibit that was introduced after arbitration had already started. So it wasn't something that was exchanged in advance, and we just had the two pages.

I don't know that we necessarily have a huge objection to the first page coming in. It's just that according to our record, that's all that the three of us

had, and because it was consistent, that was our position, is that's what came in.

THE ARBITRATOR: Well, it sure seems like all three pages were handed out at some point during the testimony. Mr. Gerety, he obviously had it, I think all three pages, during his testimony. The record seems to establish that.

I don't really see a whole lot of prejudice. So I'm going to allow Exhibit 200 as substituted, Mr. Lewin, to be the operative Exhibit 200 for purposes of the record. All right?

And which -- you've attached it, but there were some erratas that were attached. Which email -- why don't you just do a new email, a new upload to Jim's access with the substituted Exhibit 200.

MR. LEWIN: Very well.

THE ARBITRATOR: All right. As to Exhibit 88.

MR. LEWIN: Yes, Your Honor.

Look, I've read the opposition. The point that was made both during the hearing and up to now is that the Country Club -- and the evidence is that the Country Club operating agreement and the Green Valley operating agreement were signed at the same time, that Exhibit B -- Exhibits A and B are the same, and it's only offered not to litigate any issues with respect to

Country Club, but it's offered to show what the understanding of Exhibit B is because Mr. -- in one of his emails that was introduced by Mr. Bidsal, Exhibit 36, he responds to a question that Mr. Golshani makes concerning -- which ostensibly appears to be concerning Country Club, but the response that he has having to do with what's -- that, you know, what -- how distributions are going to be made is relevant. It's an admission with respect to the interpretation of Exhibit B.

So what we're offering Exhibit 88 for is not to litigate anything having to do with Country Club; it's to show that -- what Mr. Bidsal's understanding of Exhibit B was.

THE ARBITRATOR: I get that, but, I mean, I had intentionally not admitted evidence regarding what took place with Country Club. Whether -- whether there's properties within Country Club that are similar to the arrangements in -- in Green Valley Commerce, you know, the interpretation of the operating agreement for my purposes in Green Valley Commerce is specific to Green Valley Commerce. You know, whether we're -- whether we're talking about Exhibit B to the operating agreement or the formula, it's all specific to the way business was done under Green Valley Commerce in terms of, you know, separate properties and parceling them out and how

they're treated and the cost segregation and all of that.

So I'm not going to expand this arbitration to take evidence on whether Country Club was treated the same way or business was operated in the same manner as it might affect the intent of the parties in interpreting the operating agreement because I don't think it's relevant.

As I said previously, I know Exhibit 36, I think, is in, but I'm not inclined to change the ruling on Exhibit 88.

Mr. Shapiro, I don't know if you want to add anything to that. I sort of jumped in, but I thought I'd just give you my inclination.

MR. SHAPIRO: Your Honor, your inclination is correct, and we agree with it.

THE ARBITRATOR: Okay. So Exhibit 200 will be substituted and is in. Exhibit 88, I am not going to reconsider the decision not to admit it that took place during the -- I don't know, April hearing? I forget.

Okay. That's on the record in the transcript. So I wouldn't be inclined to write a separate order on that.

Other than that, it's -- it's closing arguments. I begin with counsel on behalf of Bidsal. I

know we have a counterclaim, and I think we had discussed whether there would be an additional argument regarding the counterclaim as a sort of a surrebuttal. I think I had said previously that that would be appropriate.

I got to tell you, you know me well enough by now that some of this is going to be sort of interactive where I'm going to jump in with questions because I think it's germane to my consideration of the issues. If somebody has an objection to that, that's fine, lodge it now, and we will -- and I won't do it that way. But that's my inclination.

Hold on. One more thing.

I don't specifically recall -- I'm looking now -- I don't specifically recall if the arbitration provision or any agreement has a time period for an award. I don't think it did. I just wanted to kind of let you guys know that it's probably going to take me a couple weeks to put this together. I can't tell you that I'm going to have it within seven days or ten days given other things I have going on and the fact that it's going to be pretty detailed. So I might need 30 days to get this.

MR. GARFINKEL: Your Honor, this is Louis Garfinkel. And Doug and Jim, you can correct me, Rod, I

thought it was 30 days.

THE ARBITRATOR: I don't know. I don't remember. And I don't have it in my original notes.

MR. GARFINKEL: I believe it's 30 days, Your Honor. And --

THE ARBITRATOR: Think it's in the arbitrat- -- in the operating agreement?

MR. GARFINKEL: Yeah, I believe it's 30 days.

MR. GERRARD: Yeah, I don't recall there being anything, Your Honor, in the operating agreement, but 30 days is fine with us.

THE ARBITRATOR: Okay.

MR. GARFINKEL: I do believe that because the issue came up in the appeal about Judge Haberfeld's -- Judge Haberfeld's --

THE ARBITRATOR: Yeah, that one was, like, eight months; right?

MR. GARFINKEL: Yeah. I mean, the point is -- stipulated to it, Judge, but regardless, it became an issue in the last arbitration, and so that's why I say I believed it was 30 days.

THE ARBITRATOR: All right.

MR. GERRARD: It is 30 days. Jim just confirmed that.

MR. LEWIN: I'm looking -- I'm looking at

the operating agreement, 30 days --

MALE VOICE: -- in 14.1 of the --

THE COURT REPORTER: I don't know who's talking.

THE ARBITRATOR: Okay. One at a time for the court reporter, please.

All right. So the operating agreement says 30 days. Thirty days should be enough for me. If it isn't, I guess I can send an email out before the 30 days expires asking for a stipulation for an additional 15 days or something like that. But it's not going to -- it's not going to be eight months. It's not going to be eight months.

Okay. That being done, Mr. Gerrard, I'm going to turn it over to you. And, you know, obviously I have read everything that's been submitted.

MR. GERRARD: Thank you, Your Honor.

Before I begin, I just want to thank you for all of your time spent on this matter. I know we're paying you for that time, but you've been very attentive, and it's been obvious from your questions and comments that you understand what's going on.

I will say, however, that this closing is going to be longer than I originally anticipated it would be because of the long delay from the time that this

arbitration started. I -- when I went back and read through the transcript, I realized that there were many things that I did not remember anymore because it had been, you know, more than three months since we started. And so we're going to err on the side of caution and make sure that we cover all the evidence. Let me see if I can share screen here so I can do this.

Okay. So Your Honor, I told you in my opening that what this case is about is primarily the interpretation of two provisions of an operating agreement, that being Exhibit B to the operating agreement and the buy/sell language that's in Section 4 of the operating agreement.

And I told you at the beginning that as you listened to the evidence, you would see that this operating agreement presents a simple concept. That concept is that all income is to be split 50/50 between the members and that at some point in the future when the property is sold, each member is to get their original cash contribution back, and all the appreciation from the property is to be split 50/50.

That's the simple concept. Split all income 50/50, each member gets their money back eventually when there's a sale, and all appreciation to be split 50/50.

Interestingly enough, the formula in the

buy/sell language works exactly the same way. The appreciation under the formula is to be split 50/50 with the selling party getting their original money back. What CLA is arguing in this case is that Bidsal should not get his 50 percent share of the appreciation from the sales of Buildings C, B, and E.

CLA wants to take advantage of Mr. Bidsal. What Mr. Bidsal has argued from the beginning is that the actions he took were taken to protect CLA by paying back its share of capital associated with each sale, even though the language of the operating agreement did not require that step to be taken by Mr. Bidsal. Mr. Bidsal, as you've seen from the evidence, was never taking advantage of CLA. That's the fundamental crux of this case.

When the arbitrator interprets the absolutely ambiguous language of the operating agreement, is it going to be interpreted to carry out the fundamental intent of the agreement on a reasonable basis, or is it going to be interpreted in a manner that allows CLA to take advantage of Mr. Bidsal, because that's what this arbitration is about.

So I just talked to you about what the simple business model is. And remember, as we go through all the evidence, you are going to see that all of it,

including the way that the operating agreement was set up and the way that the parties acted, intent -- shows the intent that at all times all income is to be split 50/50. Not just rents, but all income. And eventually each member would get their -- their return of their capital.

What Mr. Golshani wants is to change the agreement. Mr. Golshani, as I mentioned, does not want Mr. Bidsal to get his share of the appreciation from these three different sales, and this entire case is about Mr. Goshani -- not Goshani, I'm sorry, but Golshani -- attempting to use the ambiguities that exist in the operating agreement to take advantage of Mr. Bidsal.

So from the beginning this was about Mr. Golshani wanting to participate in a real estate investment to benefit by Mr. Bidsal's experience. Mr. Bidsal had extensive experience in acquiring and managing income-producing properties, and Mr. Golshani did not have that experience and wished to participate. And the plan from the beginning was to acquire secured debt, to convert the debt into fee simple title to the underlying property or the collateral, and to manage that company to generate income. Period. Exclamation point. The original intent was not to sell the

property. It was to generate rents.

Now, throughout this presentation, Your Honor, I have given you the references for all the things I'm going to tell you that are either to the exhibits and where in those exhibits this information is provided, and also I have made reference to the transcript of the proceedings. Usually you'll see that in a parenthetical with just numbers.

So from the beginning, the idea was to set up a new entity to own and operate the property -- not sell it, but own and operate. And that is shown very clearly in Exhibit 5. On the very first page of Exhibit 5, which is the operating agreement, there is a reference to the business of the company. And when you look at that reference to the business of the company, nowhere in that reference does the words "selling property" appear.

It says, quote:

"The business of the company shall mean acquisition of secured debt, conversion of such debt in a fee simple title by foreclosure, purchase, or otherwise, and operation and management of real estate."

Nothing in the business of the company set forth in the operating agreement says anything about selling

property as a part of the business of the company.

Now, this is going to become important because it goes into why the language of the operating agreement was set up the way that it was, why Exhibit A -- Exhibit B language is the way that it is, why the language in the formula for the buy/sell is the way that it is.

Now, in this simple business model, as I said, the equity was going to be split 50/50. Why? Why was it going to be 50/50? Because the parties agreed that they had equal risk in this venture.

It's fascinating to have listened to the evidence and the questions from Mr. Lewin where he attempts repeatedly throughout the course of the arbitration to talk about they have a disproportionate interest. There was no disproportionate interest. Just because Mr. Golshani put up more cash, does not mean that they had a disproportionate interest. It was only through Mr. Bidsal's experience that they got this opportunity, and it was only through Mr. Bidsal's management that it turned into what it did. And there was no question that they had equal risk. That's why they agreed that it was a 50/50 membership. Not 70/30. There's no disproportionate risk. The parties agreed what the risk was.

So this is manifested very clearly in Exhibit A

to the operating agreement, which very clearly says that all income, loss -- I'm sorry -- income, gain, loss, deduction, or credit is to be allocated 50/50 to each member. Now, it is subject, of course, to some special allocation language or preferred allocation language that is in Exhibit B, but we have to remember what a preferred allocation is. We'll talk more about that later, but a preferred allocation is an exception to the general rule under the tax code.

So under the simple business model, what was the fundamental things that mattered? First, that each member would share equally in any appreciation of the company's property. That is a fundamental precept of this concept that they put together in this operating agreement manifested both by Exhibit A and Exhibit B to the operating agreement and by the formula; and secondly, that upon the sale of all the property or an exercise of the buy/sell provision, that each member would get their initial cash contribution returned and get its 50 percent of any appreciation.

We talked about the language in Section 5.1 which is -- you know, the numbering is really screwy because this agreement was very poorly drafted -- but we're talking about, of course, Exhibit A to the operating agreement, and here is where we see the actual

language. Well, in Section 5.1, remember there's some important words. The words are "distributive share." Each member's distributive share of income, gain, loss, deduction, or credit is to be determined as follows, meaning what your distributions would be.

And then we go to 5.1.1 that refers you to 5.1.1.1, and in that section is where we see this language that says that all items of income, gain, loss, deduction, or credit are to be allocated among the members in accordance to the -- in proportion to their percentage interest, which is the 50/50 interest, subject, of course, to the preferred allocation schedule.

Now, both Mr. Gerety and Mr. Wilcox testified that the words income, gain, loss, deduction, or credit cover everything that this company had, including depreciation. Depreciation is a deduction. So depreciation is also supposed to be split 50/50, as we'll cover later.

So in this operating agreement, we have an Exhibit B. And Exhibit B is set up rather strangely because it has different language at the top of Exhibit B, as Your Honor remembers, and then some other language at the bottom of Exhibit B.

At the top of Exhibit B, the language is very

different from what is on the bottom, but this -- at the top it has this language:

"Cash distributions from capital transactions" -- doesn't say here what that is -- "shall be distributed per the following method between the members of the LLC."

And then it goes on in another sentence. In that sentence, new sentence:

"Upon any refinancing event and upon the sale of company asset," singular, "cash is distributed according to a step-down allocation.

So here, at least at this point in the language, we see two different concepts. First of all, we're talking about cash distributed from capital transactions is going to be under this preferred allocation schedule, and then it talks about a refinancing event or the sale of the company's asset.

Now, under Mr. Bidsal's interpretation of this language, as you already well know, the capital would only be returned if there was a sale of all the company's assets or a cashout refinancing. And that's consistent with this second sentence of the first paragraph. There was no reason that that sentence would even be in the operating agreement unless that was the

case.

Now we go to the bottom. At the bottom of the Exhibit B, there's two paragraphs. The first of those two says:

"Cash distributions of something called profits from operations shall be allocated and distributed 50 percent to Bidsal and 50 percent to CLA."

Right after that, we have a paragraph that talks about what profits from operations means. And that is this language. It says:

"It's the express intent of the parties that cash distributions of profits refers" -- to what? -- "to distributions generated from operations resulting in ordinary income" -- and now he makes a contrast -- "in contrast to cash distributions arising from capital transactions or nonrecurring events such as the sale of all or a substantial portion of the company's assets or cash out financing."

Again, we'll have a little grammar lesson later on in this presentation to talk about that language, but, again, just as it was in the first paragraph, there is a description of what the capital transactions or the nonrecurring events would be, a sale of all or a

substantial portion of the company's assets or cash-out financing.

Okay. So Mr. Golshani's position is that this -- these words, "cash distributions of profits," refers solely to rents received through operations, and, interestingly, the only -- that only rents are divided 50/50 and everything else, interest and gains from sales, are supposed to be allocated and distributed 70/30. This came from Mr. Gerety. Mr. Gerety made the argument that the express intent language in the last paragraph of Exhibit B must mean that if something is not a capital transaction as that is defined in the tax code, then -- then it must be -- in other words, it's one way or the other. It's either ordinary income from rents or it's everything else, which falls under his tax definition of a capital transaction.

And of course, as I pointed out here, he doesn't use a definition from the operating agreement for that. He uses the definition of what a capital transaction is for purposes of the Internal Revenue Code.

Mr. Golshani's position is also that the plan was always for the company to buy the note, get the underlying property, and then sell the buildings to turn a profit.

Now, this is really important, Your Honor, and I hope that you picked up on it. The reason that we made such a big issue out of what the intent was -- and as we walk through the evidence you'll see this -- the parties vis-a-vis whether they were planning to sell the property or not from the outset is that if they had no intent from the outset to sell the property, then the language of Exhibit B and the language of the formula makes sense.

If -- because at the time that all these things were being done, as we'll see later, the company only owned one asset at the beginning when these things were -- this language was first formulated, and that was a note. And then later when the operating agreement was actually signed, it just owned some parcels of real property, but still, by that point in time, there was no intent to sell.

But the point is at the time that this language of Exhibit B and the language of the formula were drafted -- were put together and formulated and put into the drafts of the operating agreement, at those points in time, the company only owned one asset.

And so to sell that one asset would be a sale of everything that the company had and would result easily in a repayment of each party's capital and

certainly would meet the -- the description of Exhibit B for what would trigger the special allocation language.

So we made a point throughout the arbitration, and I'm sure Your Honor saw it, showing what was going on because these -- the language of these two provisions is hopelessly ambiguous. But by seeing what was going on, it's easier to understand what it was that the parties were trying to do and what this language was intended to do.

In response to that, you saw a huge effort by Mr. Golshani through his testimony to say no, no, no, the plan was not ever to simply manage the property and collect rents. The plan was always from the beginning to sell these properties; to subdivide it, to create more value, and then sell it. And I have listed here all the many times that he said that, all the different pages of the transcript where he makes this argument.

Well, it's really important that you keep this in mind because, as I'll point out in a minute, they can't have it both ways. If the plan was always to subdivide and increase the value of the individual buildings and then realize that value through selling the buildings, then that -- that's the argument we've heard from Mr. Golshani as to why everything should be at a 70/30 split.

Now, here's Mr. Bidsal's position: That the members planned to own and operate the property and were to equally share all the profits and share equally all the appreciation and receive a return of all their cash contributions -- when? -- only upon a sale of all the assets or a cash-out refinancing.

What is the evidence that we've seen that supports Mr. Bidsal's position? Well, the operating agreement in Exhibit A that talks about all income gain and deductions are to be allocated 50/50, perfectly consistent with what Mr. Bidsal has testified what was supposed to happen.

On September 16th, when Exhibit B language was first added, the company owned the only single asset, which was the note. And the first time that we ever see this Exhibit B language being added in the drafts is in Exhibit 91, which was on September 16. And it makes perfect sense if all that there was was one asset, and you read this as if their company only had one asset, then Exhibit B makes perfect sense.

Next, even after the property was acquired on September 22nd and subdivided on October 7th, there was no attempt to market or sell the buildings until nearly a year later in August of 2012.

Next, Golshani received all of the tax returns,

and all of the tax returns show a 50/50 allocation of all gain from every sale, and he never objected to any of those until 2016.

Next, Mr. Golshani received all the distribution schedules at the time of each sale which gave a breakdown of how the distributions were calculated, and he received the distribution checks, and he never objected to the 50/50 allocations or the distributions until after the sales had all been completed, the year after they had all been completed.

Next, we have all the tax returns. The tax returns, each and every one of them, show an allocation 50/50 of all of the gain, which is completely consistent with what Mr. Bidsal is saying was the intent, but it's inconsistent with Mr. Golshani's position.

We have the testimony of Mr. Main. Jim Main was the accountant. He reviewed the documents and reviewed the operating agreement, and he allocated things -- all of the gain from every sale 50/50 on the company's tax returns, which were all provided to, again, Mr. Golshani.

We have the testimony of Mr. Wilcox, who is an expert on how this language is to be interpreted, and he likewise said the only way that you can reasonably interpret this language is the way that Mr. -- the way

that Mr. Bidsal did interpret it, which is that the special allocation language was never triggered unless there was a sale of all -- or substantially all the assets.

Finally, and I think this is most important of all, you have the language of the buy/sell formula itself, which is designed to give each member back 50 percent of appreciation plus what the original cash contribution measured at the date the property was acquired. Think about that for a minute, Your Honor.

If the formula gives back the capital contribution measured at the date the property was acquired, it does not contemplate sales of individual buildings, because if it did, why would it say that you are going to get your cash contribution back the way it was originally? Because if there was a sale of all or substantially all the assets, it would make sense, but otherwise it doesn't make sense. If your plan was, from the beginning, to sell each building individually or to sell some of them -- sell the property off piecemeal, this language makes no sense.

Now, perhaps one of the most interesting things that came out of this arbitration is that Mr. Golshani's position actually supports Mr. Bidsal. And this is extremely important. And this came directly from their

expert as well as from Mr. Wilcox. Look, Your Honor, if the company was in the business of buying a secured note, converting it to fee title, and then operating the property to collect rents, it explains why Exhibit B is set up to only return cash contributions when all the property is sold. Because the business of the company is not to sell property; it's to generate rental income. And so it makes perfect sense that if they reached the point where they decided now we're going to liquidate the property, that's the point where they would generate a return of capital to all the members.

However, if you accept CLA and Gerety's argument that the intent was always to subdivide and sell off the buildings, if that was the business plan of this company as they've so vociferously argued, then that means that the buildings became the inventory of the business, and the sale of each building would have resulted in ordinary income, which under Exhibit B is unequivocally supposed to be split 50/50.

So they can't have it both ways. Either the plan was to sell the -- was just to collect rents and then if -- once they've sold everything, then there would be a return of capital, or if the plan was to sell -- was to subdivide and sell off the buildings, then under the very express language of Exhibit B, those

would be cash distributions of profits from operations, which have to be split 50/50.

So there is no way for them to win this argument, because one way it's split 50/50 and the special allocation language was never triggered, unless there's a sale of all the assets, and the other way, it would never be triggered.

Now, let's talk about the buy/sell formula and why it's ambiguous and why this Court has to listen to parol evidence in order to interpret it. This is the formula: It's fair market value minus cost of purchase times .5, meaning take each member's half, and then add back in the capital contribution of the offering member measured at the time of the purchasing the property minus prorated liabilities.

The term "fair market value," even though Your Honor doesn't have to decide it, is ambiguous because it specifically refers to Section 4.2 of the operating agreement when you look at the definition. And Section 4.2 describes the price the offering member thinks is the fair market value of what? Not of the company, of the remaining member's interest. It's a value of an interest. So if you dispute that value, then there's a provision in 4.2 for you to obtain an MAI appraisal of the underlying property owned by the company.

This appraisal procedure in 4.2 is for -- to appraise the value of the property owned by the company. So what does the term "fair market value" actually refer to? At the beginning of 4.2, it says it's the value of a membership interest, but in the body of 4.2, it tells you to determine that by getting a value of the assets that are owned by the company. So, of course, it creates an ambiguity.

The term "COP" is ambiguous because it means -- by definition in Section 4.1, it means cost of purchase as, quote, "it specified" -- and that's the way it appears, the language -- "as it specified in the escrow closing statement at the time of the purchase of each property owned by the company."

So the only way under this agreement that you get COP is to look at an escrow closing statement for a purchase price of property owned by the company. Obviously there is no escrow closing statement from the time of the purchase of any property other than the Greenway property, and all of the members admitted that, and this is their -- the reference to their testimony.

So of course that creates an ambiguity because that couldn't have been what the parties intended, is that the cost of purchase would only refer to some property that was purchased later on. There is only one

escrow statement, and that's for the purchase of a note that the date -- the date -- I'm sorry. There's only one -- only an escrow statement from the purchase of the note that the date this language was proposed, and the only thing that came after that was the Greenway escrow statement.

The term "capital contribution" is ambiguous because it always stays fixed as the contribution at the time of purchasing the property, and because, other than Greenway, the company never purchased any property. So according to the language of the operating agreement, the capital contribution number would have to be what it was on the date that the Greenway property was purchased. The formula does not contemplate sales of individual properties, as we mentioned earlier, and it certainly does not contemplate a 1031 exchange.

So after highlighting those issues, Your Honor, I'm going to now run through -- and this will be quicker, but I'm going to run through the summary of the evidence that we've seen because those ambiguities create a situation where Your Honor has to interpret that language in a reasonable manner by looking at, obviously, the parol evidence that exists. So let's start at the beginning.

There was a deed of trust note. It was

executed by Green Valley Commerce Center, LLC, who was the borrower originally that owned this property for 8- -- for a little over $8 million. That note was secured by a deed of trust and by a separate assignment of leases and rents.

In the assignment of rents, paragraph 1, the rents are assigned from the borrower to the lender, and that's an absolute assignment. But then the lender assigns back a license for the borrower to receive and hold the rents, and the borrower is allowed to hold the rents for the lender until or unless a default occurs, and even when a default occurs, the borrower is still holding the rents for the lender.

However, under that assignment, there is no credit that will be given for rents until the, quote, "money collected is actually received by the lender." So there's no credit against the loan until the money is received by the lender under the express terms of the assignment, and, most importantly, no credit will ever be given for any rents that are received, quote, "after foreclosure or other transfer of the trust property."

Well, obviously we know in this case what happened. In 2010, Mr. Golshani indicated a desire to take advantage of Mr. Bidsal's experience and wanted to get involved in these real estate projects. What was

Mr. Golshani's experience up to that point in time? He had managed only one condo project in the early 1990s prior to deals that he entered into with Mr. Bidsal. That was his only management experience. And he had ceased all real estate activities in 1992. So it had been nearly 20 years since Mr. Golshani had had any experience with real estate, and his real estate experience was extremely limited. He had never done anything like what it was that Mr. Bidsal showed him how to do.

And so at the end of 2010 and early 2011, Mr. Bidsal and Golshani looked at several opportunities for investing together. In early 2011, Mr. Bidsal decided he wanted to bid on the Green Valley Commerce note, and he qualified his company, Real Estate -- Real Equities, LLC, to bid through auction.com by providing evidence of full proof of funds to auction.com. That's uncontroverted in the record.

There is zero evidence for Mr. Golshani's claim that his credit card was ever used to qualify for bidding. He said it, but under the best evidence rule, he did not ever provide any actual evidence. I mean, if it was really done, he would have documents that would show that his credit card was transmitted to be used in the -- his -- his proof of funds was what was used to

purchase this property, but it simply isn't true, and they provided no evidence of it.

Then on May 19th of 2011, Real Equities was the successful bidder at the auction, and it entered into a purchase agreement, which is Exhibit 1, to purchase the note. It is true that Mr. Golshani attended the auction with Mr. Bidsal. It is true that they discussed what the bids were going to be as it went on, but it was not Mr. Golshani that was bidding. It was Mr. Bidsal that was bidding. And Mr. Bidsal told Mr. Golshani that if he wanted to participate, he would have to put up 70 percent of the money for a 50 percent interest in a new company that would own the note.

Immediately thereafter, just like as you can see about seven days later, Mr. Golshani -- I'm sorry -- Mr. Bidsal filed articles of organization with the Secretary of State of Nevada and set up Green Valley Commerce, LLC, which I just refer to as GVC. There was no operating agreement at that time, and Mr. Bidsal obviously was shown as the sole managing member.

On May 31st, Mr. Bidsal, through Real Equities, LLC, assigns his rights to purchase the note to the new company. And on June 3rd, the two parties put up their money for the purchase of this note. Mr. Golshani put up $2,834,250 for a 50 percent interest, and Mr. Bidsal

put up $1,215,000. But what else did Mr. Bidsal contribute? Why is it that there is a 50 percent interest for each instead of 70/30? Well, it's because Mr. Bidsal also contributed the opportunity to purchase this note, his expertise in having found the opportunity, and his management services.

On June 17th, the deed of trust for the underlying note was assigned to Green Valley Commerce. Now, between June and September of 2011, drafts of an operating agreement for GVC were circulated between David LeGrand, who was the attorney for the company, Mr. Bidsal, and Mr. Golshani.

On September 16th, which is an important date, Mr. LeGrand sent changes to the proposed Exhibit B to the operating agreement in response to Mr. Golshani's questions. This is the first draft of the operating agreement that included this express intent language that we see at the very bottom of Exhibit B. As of the date of this draft of the operating agreement, the buy/sell language still did not have the formula in it that we're dealing with in this case.

So we can draw a line in the sand. As of September 16th, this -- this is -- there's -- this is the first time we have the full Exhibit B language, and we still don't have the formula. And what did the company

own as of that date? One asset. A note. And if you look at this language with that in mind --

THE ARBITRATOR: Hold on. Hold on. Your audio -- or you froze for a couple minutes after you said the first version.

MR. GERRARD: Oh, okay.

What I said, Your Honor, is this Exhibit B is the first -- I'm sorry. This September 16th draft of the operating agreement is the first draft that included the express intent language in Exhibit B. So it's the first one that has all the language that we have in Exhibit B. And it's all -- but as of that date, the formula that we have now in the buy/sell agreement was not there.

THE ARBITRATOR: Okay.

MR. GERRARD: So if you draw a line in the sand as of this date, we can see that as of this date, GVC held only one asset, a note. And if you read the language of Exhibit B in the context of and with the perspective of the company only owns one asset, a note, then the language that we have in Exhibit B, at the very beginning of Exhibit B that talks about the sale of company asset, singular, it makes perfect sense.

Now, on September 22nd we have an email from Mr. Golshani to Mr. Bidsal that is the first place that the buy/sell language ever shows up, and that's Exhibit

67. And this shows exactly who it is that came up with the buy/sell language. It wasn't Mr. Bidsal, and it wasn't Mr. LeGrand. It was Mr. Golshani.

On September 22nd, a lot of things happened in this company. That's the date that the deed in lieu of foreclosure agreement between GVC, the new entity, and the former borrower, American Nevada, was entered into. The deed in lieu agreement is very important.

In Section 2.2A, it makes it clear that the liens, meaning the deed of trust lien that was held by GVC, was not going to be released through this deed in lieu agreement. The liens were not being converted into title in the property as we were -- Mr. Lewin repeatedly argued. This document is very clear in saying that those liens would survive the closing of the deed in lieu of foreclosure.

Section 2.10 of that agreement talks about a transfer of $295,000 and change in collected rents. When's the transfer supposed to take place? At the closing.

Section 2.11 talks about a transfer of $74,000 and change in security deposits. These are very specific terms in the agreement. And we have an escrow closing statement from that date that reflects an actual transfer of the 295,000 and change in rents -- that's

what it says right on the escrow closing statement -- and 74,000 and change in security deposits. Well, the escrow closing statement, what does it not show? It does not reflect any purchase price for property. All it has -- all it shows is the money that was being transferred through the deed in lieu of transaction.

Now, there was also -- there was on the same day a grant, bargain, sale deed that was recorded. As in any escrow, the escrow company never releases the money until after they record. We have a grant, bargain, sale deed that was recorded, and on that date what did Green Valley own after the recordation? They owned one parcel of real property comprised of eight buildings and a second parcel comprised of a parking lot.

And on that same date as a part of the closing of the transaction, Green Valley Commerce issued to the borrower a Form 1099-C, which is a cancellation of debt, for $3,994,582, which included $311,265 in interest. What does that mean? It means that when these rents were received after the recordation of the deed, they could not have been applied to a debt which no longer existed.

We heard all kinds of argument that starts with Mr. Gerety, because his job was to try to find offsets,

that somehow these rents that were collected should have been characterized as a return of capital because it was really a payment of interest, but that's not possible under the documents. The documents clearly say what it is, which is rents, and the rents weren't received until after the debt had been forgiven. So of course it was not applied as a payment against the debt, nor could it have been under the assignment of rents agreement or under the deed in lieu of foreclosure agreement. Both of them are very clear in stating just the opposite of what Mr. Golshani's position is.

So the next thing that happens is October 7th of 2011, there's a record of survey that is reported. That record of survey resulted in a subdivision of the two parcels into nine legal parcels for tax purposes. And the reason this was done was explained by Mr. Bidsal in his testimony.

He said the reason he did this was to permit the company to take advantage of accelerated depreciation -- not because they had a plan to sell the properties at the time, but because he was trying to accelerate depreciation. And at this date, there's no evidence of any intention to sell any of the property. We hear Mr. Golshani saying that was his plan, but there was nothing that supports it, not a single email, not a

single document discussing this with a broker, no listing agreements. There's nothing.

Now we move forward to November. November 29th and 30th, in those two dates, Mr. Golshani and Mr. LeGrand discussed and inserted the final buy/sell language which included the formula into the draft operating agreement. Remember we first saw this formula back in September as it had been transmitted by Mr. Golshani. Now it gets inserted into the draft operating agreement. And as of this date when the formula gets inserted, what did the company hold? Nine separate legal parcels. And according to all the testimony, other than Mr. Golshani's claim, there was no intent to sell any of the property at this time.

But as I pointed out at the bottom right here with those references, Mr. Golshani maintained throughout the arbitration that the plan was always from the beginning to subdivide and sell, and that's important because they can't have it both ways, as we talked about earlier.

So then we see that the operating agreement is finally signed on December 10th, and the parties understood it would be effective as of June of 2011. Now, Mr. Golshani admitted that he read the operating agreement in its entirety before he signed it and that

he could have told Mr. Bidsal he was inaccurate if he had any issues with it.

From 2011 when the property was first acquired in September to mid-2012, American Nevada Company -- I think it's actually corporation -- but they had been managing the property before, and they managed -- continued to manage the property after GVC took title until Mr. Bidsal took over management in mid-2012.

American Nevada prepared the accounting records including the 2011 general ledger that Mr. Lewin and Mr. Gerety tried to seize on to say that somehow the rents should be characterized as interest because somebody booked it that way on a 2011 general ledger that was not even prepared by Mr. Bidsal.

In March of 2012, a declaration of CC&Rs was recorded for GVC, which created covenants and rules for all the buildings which were now numbered A, B, C, D, E, F, G, H, and a common area of parking lot. And these CC&Rs were important because they give rights to the owners of each of these individual parcels, which at the time was all owned by GVC. But if they were sold off, it gives third parties rights to use the common areas and that parking lot. And ultimately they are required to pay money associated with the maintenance.

The next thing of importance is in June of

2012, the 2011 tax return was filed, and it was received by CLA, and it reflects $169,225 in rents and $311,265 in interest, all of which was allocated 50/50 and distributed 50/50 to each member. If Mr. Golshani thought that the interest, as he calls it, was supposed to be 70/30, why didn't he say anything? This was, of course, a notice to CLA of this distribution.

And it's important to note that even though Mr. Gerety went back as far as he could to find anything that he could seize upon to produce the amount of money that was supposed to be paid to Mr. Bidsal for his interest, that the statute of limitations ran on any effort to recover this in June of 2018. There's a six-year statute of limitations under NRS 11.190(1)(b) because this is based upon a contract, the operating agreement.

The way that allocations and distributions are supposed to be made are governed by the operating agreement, and if Mr. Golshani thought it was done wrong, he was on notice of it because he received the tax return. He had six years to do something about it, and he never did. So that's a red herring where they're trying to recover something they never would have any legal right to recover.

So now we move forward to August of 2012. On

August 13th is the first date that we see any effort to sell any of the properties. This is when marketing materials were sent from Mr. Jeff Chain to Mr. Bidsal to advertise the buildings for sale. This is Exhibit 50. There is no evidence of any effort to sell these properties that's shown by any documents prior to this date. Now, Mr. Bidsal said it was shortly before this when a decision was made by the members that they wanted to sell pieces of the property.

And, again, the reason this is important is taking into context what the company owed at the time that this Exhibit B language was created so that we can interpret it around the ambiguities that were there.

The next thing that happens is in September of 2012, there is a sale of Building C for $1,025,000. The net sales proceeds of 898,000 and change, which also included a $75,000 note from the buyer, is what was generated from this sale.

It wasn't until the following year, remember September 2012 to March of 2013, that the -- that we knew what was going to be left over from the sale because they had put it up for a 1031 exchange with an accommodator, and the Greenway property was purchased using the sale proceeds for $790,000 with closing costs, $803,726.

It was at this time in March of 2013 when Mr. Bidsal and Mr. Golshani first discussed the individual sales would not trigger the preferred allocation waterfall of Exhibit B, and they agreed at this time to divide the excess proceeds from any individual sales by paying back the tax cost allocation associated with each property on a 70/30 basis and then dividing the appreciation 50/50, consistent with what the intent of the operating agreement was from day one because, of course, the operating agreement does not contemplate selling off these properties one at a time.

And this is -- the reference is in the record where Mr. Bidsal testified about those discussions. And consistent with that, in March of 2013 right after those discussions, Mr. Bidsal sent a distribution breakdown to Mr. Golshani showing how the distributions of the remainder from the sale of Building C after the 1031 exchange was going to be made and showing that the remaining cost basis of Building C was being distributed on a 70/30 basis. And Mr. Golshani accepted the distribution breakdown and the check without any objection.

In March of 2013 is when we have the cost segregation study that was completed, and that's Exhibit 18. And it segregated out the allocable amount of the

original basis between all of the eight parcels and the parking lot. And I asked Mr. Golshani several times in his direct examination and in his cross-examination if he had any problems with the cost segregation study, and he said, no, that that's the way that it had been carried on their tax returns, and he had no objections with it. So --

(Interruption from Zoom audio difficulties.)

THE COURT REPORTER: I'm sorry, I lost your audio.

MR. GERRARD: So on the one hand, they say no -- so on the one hand, Mr. Golshani testified repeatedly they have no issue with the cost segregation study. That was his testimony. But Mr. Lewin tried to elicit testimony multiple times that there's a difference between the original amount paid for the property, which if you look back at -- at the original escrow closing statement, which was Exhibit Number 3, that showed that the total price paid was $4,048,939. So there's a difference between that and this total number of $3,967,000. But this is the way that the numbers were carried forward on the company's books throughout the duration of its existence, and Mr. Golshani said he had no problems with that.

So in September of 2013, the 2012 tax return is filed, and it's received by CLA. He admitted receiving it. It reflected income of 338,000 and change, which was all allocated 50/50.

Now we skip forward for a year to September of 2014 when the 2013 tax return was filed and, again, received by CLA. It reflects $115,000 in rents and $110,000 in gain from the sale of Building C after the 1031 exchange had been completed and after they had collected more money on the $75,000 note. That $110,000 was very clearly divided 50/50 on the tax returns.

Now, it's interesting that -- well, I'll skip that for now.

Then we move forward to November of 2014. This is when the sale of Building E took place for $850,000 with net proceeds that is shown there of 797-, and the distribution breakdown, again, was provided to CLA which showed the cost basis of $427,000 plus the cost of the sale of 52,000, totaling 479-, was being distributed 70/30, but the gain on the sale of that building of 317,000 was being distributed 50/50.

Now, it's really interesting, and Your Honor, I'm sure, remembers this because you took pretty copious notes, but I asked very specifically to Mr. Golshani if he received all these distribution breakdowns from the

sale of all three buildings, and he admitted to receiving the breakdown from the sale of buildings, and he admitted receiving the distribution breakdown from the sale of Building B, but the transaction in the middle, this one, of B, he at first said, "Oh, I don't know if I got that. I don't know if I received that one."

Obviously he doesn't want to admit receiving it because it puts him on notice that there was distributions being made on a 50/50 basis of the gain -- not like that's going to help him because it was also reflected in the tax return, which he certainly did get. But it's very important that Your Honor remember that at the end of Mr. Golshani's examination when I cross-examined him after Mr. Lewin asked him questions, which happened two -- or, like, a month after this arbitration started, on pages 1242 and 43 of the transcript, Mr. Golshani admitted that he had received all three of the distribution breakdowns, not just the one for C and E.

So obviously the gain of 317- was distributed 50/50. Mr. -- CLA received two checks. They received one check for its 70 percent of the cost basis and a second check for 143,000 and change, which was its 50 percent of the gain. Again, why was he getting two

checks? If everything was supposed to go 70/30 as they have claimed until he received back all of the capital, why was he getting two distribution checks?

Obviously Mr. Golshani knew exactly what was going on because it had been discussed right after the sale of Building C what they were going to do. He just wants to change that now to take advantage of the situation. He received the distribution breakdown. He received the two checks. He cashed them without any objection.

Then we move to February of 2014. This is when the 2000- -- well, this date's wrong. Let's see. It's obviously wrong. It should be -- give me one second, here, Your Honor, because I obviously put a date in wrong.

Yeah, this should say February 27, 2015. It's out of order. But on February 27 of 2015 is when the 2014 tax return was filed and received by CLA. It reflects $198,000 rental income and $410,000 of gain, all of which was allocated 50/50, and the gain was distributed 50/50.

Now, this is really important. Mr. Gerety testified that when CLA received its tax returns and saw that the gain from every sale was allocated 50/50, quote:

"...it would have immediately known it didn't get the distributions that it was now claiming were due."

So their own expert has admitted that these tax returns put them on notice. And it's not just Mr. Gerety's testimony. Mr. Golshani said he had a personal accountant that could have explained the tax returns to him. He also admitted -- and this was really important -- that he reviewed his tax returns and his K-1s each year to determine how his capital account had gone up or down and, obviously, from that he saw how allocations were being made because it's right there on the K-1s.

So Mr. Golshani knew all along what was happening. Mr. Golshani also had the right to review the Green Valley Commerce records at any time by going to Mr. Bidsal's office and looking at them. But not only did he never take advantage of that at any time before this arbitration started, he never even went there after the arbitration. He's never once gone to Mr. Bidsal's office to look at the records.

Mr. Bidsal's actions have obviously been very and completely transparent throughout this entire history of this Green Valley Commerce company. He repeatedly discussed with Mr. Golshani what was being

done. He sent emails to Mr. Golshani describing what was being done. He sent distribution breakdowns to Mr. Golshani that Mr. Golshani approved from the sale of every building. He sent him the checks, two checks, from each transaction at which there was gain. He sent them tax returns each year that clearly reflected what was going on. It's impossible to believe that Mr. Golshani did not know what was going on.

Finally, in August 2015 was the sale of Building B for 617,000 and change generating net proceeds of 584,000. There was a distribution breakdown again provided to CLA, which they've admitted they received. It showed a cost basis of 284,000 being distributed 70/30 with the gain of 333,000 being distributed 50/50. And, again, CLA received two checks: One for the 70/30 distribution, one for the 50 percent of gain. Never objected. Never said there was any problems. Just cashed the checks without any objection.

Then we move to January of 2016. Here is where the first discussion arises about anything related to distributions. Mr. Bidsal sent an email to an assistant of Mr. Golshani's named Lita explaining the member's agreement that the cost basis, which he called the capital, from each sale was being distributed 70/30 and the profits distributed 50/50.

Now, this wasn't a complaint that had been received from Mr. Golshani, and it's important to remember that. Mr. Golshani says, "Oh, I was complaining in 2015 and 2016, at the beginning of 2016." There's nothing to support that. Nothing. This was one of Mr. Golshani's assistants asking for an explanation of what she was seeing. Obviously she hadn't been paying attention before or had some question.

Then Mr. Bidsal testified that he has a meeting in January or February where he, again, explained this to Mr. Golshani, we assume, because Lita must have discussed it with Mr. Golshani. But there is a meeting in January or February of 2016 where, again, Mr. Bidsal goes over what they had agreed to clear back in 2013 and 2012.

And on April 4th, the 2015 tax return was filed and received by CLA. And, again, this reflected $229,000 in rental income and 333,000 in gain, all of which was allocated 50/50 and the gain distributed 50/50. And, again, it was all sent to Mr. Golshani.

Now, to determine -- to determine if he was getting correct allocations and distributions, Mr. Golshani testified that he went by what was on his tax return. Now, I bolded this for a reason, Judge. If he really wants Your Honor to believe that he didn't

have any idea what was going on despite his testimony that every year he reviewed his K-1s and his tax returns and his testimony before that he received all of the distribution breakdowns and Mr. Golshani's -- I mean Mr. Bidsal's testimony about how they discussed this after the bill of sale -- sale of Building C, how they were going to make distributions, this testimony should put that issue to bed.

Mr. Golshani said that for his own determination of whether he was getting the correct allocations and distributions, that he went always by what was on his tax return. So he has admitted that all those tax returns he got for 2012, '13, '14, and now '15, which all show allocation of gain on a 50/50 basis, that he was reviewing them, that he knew what was going on, and that he was fine with it. Because the 2013 return shows the Building C gain allocated 50/50, the 2014 return shows the Building E gain allocated 50/50, and the 2015 return shows the Building B gain allocated 50/50. So Mr. Golshani has admitted that he was fine with what was going on.

Now, in April of 2016, April 22nd to be specific, is Mr. Golshani's first written complaint about the way that Mr. Bidsal was distributing too much money to himself. Mr. Golshani argued that any money in

excess of net profit from rent must be divided 70/30, and that's a quote from Exhibit 36.

Of course, he never complained about the distributions from Building C or Building E distributions. The only thing that he was talking about was Building B.

Now, in response to this, Mr. Bidsal sent an email to Mr. Golshani, and this is really important, and I -- because Exhibit 36 has multiple emails, I gave you the actual reference of the Bates label, Judge, of what -- which one of those it is.

But in this email, Mr. Bidsal explains to Mr. Golshani again how the distributions are being made equally to each member according to this agreement they have from way back in 2012. And then he -- he actually tells Mr. Golshani to refer to his notes, Mr. Golshani's notes, from their prior discussions about how distributions are being made, because they discussed it, and Mr. Golshani took notes, and Mr. Bidsal watched him take the notes. And so he said, "Go back and look. You'll see we talked about this way back at the time of the sale of Building C."

In late 2016 to early 2017, the relationship between Mr. Bidsal and Mr. Golshani became strained, and this was because of expenses related to operating the

properties. Mr. Bidsal was managing the properties, and he agreed to do that without taking any management fee or broker's fee for putting new tenants in place as a part of what he had contributed to the company; however, he never agreed that he would bear all the expenses associated with that. In other words, if you have to pay, for instance, outside accountants to prepare tax returns or you had to -- you know, you got expenses associated with the direct management, and he wanted those expenses to be reimbursed because he never agreed that he would cover all the expenses as a part of managing the property, and Mr. Golshani refused. And so that led to Mr. Bidsal making an offer to part ways with Mr. Golshani.

In March of 2017, the 2016 tax return was filed and received by CLA. Now, I did not include in the summary that the 2017, '18, and '19 tax returns were also sent because they don't really have anything to do with what Your Honor's deciding.

Now we get to the offers, Your Honor. In July of 2017, Mr. Bidsal made an offer to purchase Golshani's membership interest in GVC based upon a fair market value number of $5 million, and that's set forth in Exhibit 37. After Mr. Golshani's offer was sent also in July of 2017, Mr. Bidsal and Mr. Golshani had a meeting,

an in-person discussion, to discuss what each would receive if one bought out the other.

Remember, that Section 4.2 of the operating agreement states:

"The remaining member shall have 30 days within which to respond in writing to the offering member by either accepting the offering member's purchase offer," that's the first option, "or rejecting the purchase offer and making a counteroffer to purchase the interest of the offering member based upon the same fair market value formula according to the formula that's set forth after this."

Well, this is interesting. We know that Mr. Golshani did not accept the offering member's purchase offer so that he had to elect number 2. And if he elected number 2, number 2 is very specific in what happens. Number 1, it means that the original purchase offer is rejected. And, number 2, it means that a counteroffer is made. Both of those two things, a rejection and a counteroffer, have legal significance, and they also demonstrate how ambiguous this agreement actually is.

CLA's counteroffer was made on August 3rd, which meant that they had to close escrow according to the

operating agreement within 30 days, but the counteroffer has no purchase price. How can you close escrow when we don't even know what it is that they are offering to pay?

What is a counteroffer? Well, under the law, under the legal definition of a counteroffer, the definition is, quote:

"An offer that is a new offer that varies the terms of the original offer and that ordinarily rejects and terminates the original offer."

Well, we go back to the language of the operating agreement. It also says that it was going to be a rejection of the original offer in subpart 2, and it uses the term "counteroffer," which of course is a rejection and a termination of the original offer.

But what does that mean in terms of the language of Section 4 of the operating agreement? Well, what it means is that CLA's new offer technically made it the offering member under Section 4.1, which should have given Mr. Bidsal the right to object to that offer by asking for an appraisal.

Now, that's not before Your Honor today, but what it does is it demonstrates just how ambiguous this agreement is, because under the definitions in Section 4.1 of the operating agreement, technically Mr. Golshani

and CLA became an offering member by definition once they had rejected the original offer.

So Mr. Bidsal's response was to elect the option under Section 4.2 to get an appraisal. And there was a letter that was sent by Mr. Lewin on August 28, 2017, and that letter, again, states that CLA has the money to close, and he attached a bank statement, but it provided no payment. It provided no money. And as of this date, they never even stated what they thought the purchase price was going to be.

And on August 31st, Mr. Shapiro sends a letter back claiming the right to an appraisal. And then on September 2nd, 2017 -- this is a critical date because this is the date that they have admitted in their interrogatory responses was the last day for Mr. Golshani and CLA to complete the purchase under the terms of the agreement. The operating agreement says they have 30 days. This is the end of the 30 days.

So what happened on this date? Did they complete the purchase? Did they tender any payment of any kind? Did they even tell us what the amount of money was that they were planning to pay? None of those things happened.

So now let's look at a summary of a few of the key things we heard from some of the other witnesses.

From Jim Main, Jim Main said he prepared all the tax returns for Green Valley Commerce. He also testified that he relied upon the operating agreement to determine how to allocate the profits, losses, and gains from the sales and to determine what a capital transaction was. He testified -- well, before we leave that last one, this is kind of important, the last -- the last point there that you see on the screen.

Mr. Main is a -- an experienced accountant, and he interpreted this agreement, as you are going to see in a minute, in exactly the same way that Mr. Wilcox interpreted it and exactly the same way that Mr. Bidsal interpreted it, and he did that on his own. He allocated all gains on a 50/50 basis under the terms of the operating agreement.

He also gave some testimony that was important. And remember, Mr. Golshani testified that the reason he first questioned the amounts of distributions is because he saw on a K-1 that his capital account percentage was greater than 70 percent and that Mr. Bidsal's was less than 30 percent, and he could not understand how that could possibly happen.

And Mr. Main testified how that happens. He said changes in the capital account percentages is caused by a difference between cash available for

distribution and the accounting income, which are two different things. The accounting income takes into account depreciation. And so he very clearly testified that this -- changes in these capital account percentages was caused not by over-distributions, as has been claimed by Mr. Golshani, but by simple differences created by depreciation, changing the difference between cash available for distribution and between the accounting income.

Jim Main also testified that the gain from all sales was allocated 50/50 and that he did not handle the distributions. And he testified that all types of income were allocated 50/50 in consistent -- because on the tax returns consistently with Sections 4.1.1.1 and 4.1.2. He also testified that depreciation is a reduction of ordinary income; so it is an ordinary deduction. Depreciation being a deduction against rental income and rental income being the ordinary income, it gets allocated on the basis of the 50/50 percentage interest.

Mr. Main also testified that he read that last paragraph of Exhibit B, the "It is the express intent" language, to mean that unless there was a sale of all or substantially all of the Green Valley Commerce assets, everything was to be distributed on a 50/50 basis. So

this is again consistent with Mr. Wilcox's interpretation and Mr. Bidsal's interpretation.

Now, let's talk about a few of the keys that we heard from Mr. Wilcox's testimony. Mr. Wilcox, first of all, unlike the other two accountants that you heard from, he practices exclusively in income taxation for partnerships, LLCs, S corporations, and high net worth individuals. None of the other two accountants you heard from have that same experience. He testified that allocations and distributions of income is governed by the operative documents, in this case by the operating agreement, not by the tax code, which was inconsistent with what Mr. Gerety did.

He testified that the K-1 reports to the member that -- that member's share of the net income, it reports their distributions, and it shows the capital accounts. The K-1 would disclose how income and gain is being allocated, and the tax returns showed how distributions were being made.

He testified that under Internal Revenue Code Section 704(a) and (b) -- which are expressly referenced, as you remember, Your Honor, in Exhibit A to the operating agreement -- saying that the special allocations had to be made in accordance with Section 704(a) and (b) of the code. And he states that under

those sections, that allocations and distributions are to be made based upon what the operating agreement says as long as it has substantial economic effect.

You remember I asked Mr. Gerety, did these operating agreement provisions have substantial economic effect? He said, yes, that they did, and, as a result, he admitted that it should have been the language of the operating agreement that controlled how distributions and allocations were made, yet that's exactly contrary to what he did.

What Mr. Gerety did is he tried to use a tax code definition of capital transaction and substitute that for what the operating agreement defines a capital transaction as.

Mr. Wilcox also testified that the general rule for this company was to allocate everything 50/50 and that the preferred allocations are exceptions to the general rule that apply only in specifically denominated instances. He said that the special allocation language is triggered by, one, the refinancing event or the sale of a company asset, which is singular, meaning if the company sold its only asset, and he said that the term "capital transaction," as I mentioned, would not be defined by the tax code but by the operating agreement, which is the opposite of what Mr. Gerety did.

Now, let's have a little grammar lesson, because we heard from Mr. Lewin repeatedly -- he spent time asking each of the witnesses that interpreted this, especially Mr. Wilcox, if they knew what these things meant.

So the words "In contrast" -- this is from the last paragraph of the operating agreement in Exhibit B. The words:

"In contrast to cash distributions arising from capital transactions are nonrecurring events, such as a sale of all or a substantial portion of the company's assets or cash-out financing."

This phrase that I have put in italics is what we referred to as a modifying phrase. It modifies the nouns transactions, capital transactions, and events, nonrecurring events. In other words, it is describing what these two nouns -- a capital transaction and a nonrecurring event is. That's what we refer to as a modifier or a modifying phrase.

Mr. Wilcox actually testified to that in his testimony, that this was -- he considered this to be a modifier of the words "capital transactions" and "nonrecurring events." Mr. Lewin obviously disagrees with that, but that's the way that this sentence is structured.

Then, again, a modifier is a word, phrase, or a clause that describes something or makes its meaning more specific. Modifiers function as adjectives or adverbs. So obviously the words that were used to describe such as a sale to -- used to describe a capital transaction or a nonrecurring event was, quote:

"...such as a sale of all or a substantial portion of the company's assets or cash-out financing."

That language appears there for a reason. It's not just surplusage. It's there because it's consistent with what's in the first paragraph of Exhibit B and because it's consistent with the simple concept that this operating agreement was designed for, that capital would be returned when there was a sale of all the assets.

THE ARBITRATOR: Mr. Gerrard, let me interrupt for a second. Pick a spot where it makes sense to take about a five-minute break. How much more do you think you have?

MR. GERRARD: I would say 15 minutes.

THE ARBITRATOR: Okay. Let's take about a five-minute break now. We've been going about an hour and a half or so, not all of yours, but including the --

MR. GERRARD: Could I just finish this one

simple thought --

THE ARBITRATOR: Sure.

MR. GERRARD: -- right here? I'd just wanted to finish the grammar part.

THE ARBITRATOR: I'm pretty sure "grammar" is a-r, but go ahead.

MR. GERRARD: Oh, I know. I was doing this late last night.

So the next thing that we have to talk about is the word "or" that appears here. The word "or" is what we referred to as a coordinating conjunction. The word "or" appears between "capital transactions" and "nonrecurring events." A coordinating conjunction joins items that are of equal importance in a list. A conjunction, which is also called a connective, is a word such as and, because, but, for, if, and or and when. And conjunctions are used to connect phrases, clauses, sentences.

In this case, as I pointed out before, it's a coordinating conjunction, which is different from Mr. Lewin's interpretation where he says it's a disjunctive. The word "or" can be a disjunctive. The definition of a disjunctive is something expressing an alternative or opposition between the meanings of the words connected with the disjunctive conjunction "or."

But "or" is not always a disjunctive. As I pointed out, it can also be a connective.

And in this case, in this sentence, "capital transactions or nonrecurring events," the word "or" is not a disjunctive because it is not stating that a capital transaction is an alternative to or the opposite of a nonrecurring event. Instead, these two are equal items in a list of things which are contrast -- in contrast to cash distributions and profits.

Okay, Your Honor.

THE ARBITRATOR: All right. We'll take five minutes. And then we'll reconvene for the last 10 or 15 minutes of Mr. Gerrard's, and then we'll go into Mr. Lewin. All right?

MR. GERRARD: Thank you.

(A recess was taken from 10:32 a.m. to 10:39 a.m.)

THE ARBITRATOR: Mr. Gerrard, I'll let you go.

MR. GERRARD: Okay. Thank you.

So pick up where we were. We were going over the testimony of Mr. Wilcox.

So he also testified that none of the three sales triggered the special allocation language. The tax returns -- and Mr. Main, likewise, did not treat those sales as triggering the special allocation

language. He also testified that because the special allocation language was never triggered, the manner in which Bidsal made distributions of sale proceeds benefited CLA because, of course, he had no obligation to distribute any of the proceeds as a return of capital, but he chose to do that after consultation with Mr. Golshani because he thought that that was the only appropriate way to do it or fair way to do it since the idea was that as -- when -- when all the property was sold, there would be a return of capital. It was originally contemplated it would all be sold at once.

Mr. Wilcox also testified that the way that Mr. Bidsal distributed the sale proceeds was fair to Golshani, and it would have resulted in Mr. Golshani receiving, ultimately, all of his money back. And it also kept -- and this is important -- it kept both parties equally at risk in a 50/50 limited liability company. He testified the members agreed what each was providing to the company was worth 50 percent of the ownership and that the parties had agreed that they had equal risk and equal reward, and there was no disproportionate risk to Mr. Golshani because they had already agreed that the risk was 50/50 to each of them.

Mr. Wilcox also testified that it is -- was not reasonable to use the price of the -- of Greenway in the

defined term cost of -- the COP definition, cost of purchase definition, because it would not give Mr. Bidsal his 50 percent of the gain from the sale of Building C. It would be reasonable to use the basis of Building C as the COP number as that would give Mr. Bidsal his 50 percent of the gain from that building. And, again, he pointed out that this formula was not designed to take into account a 1031 exchange.

He also testified, just as we heard from Mr. Main, that the -- that depreciation is an element of ordinary income. It's part of the operating income, and it's to be allocated 50/50 to each member.

Mr. Gerety's position that depreciation is a capital event and had to be split 70/30, Mr. Wilcox said that's not supported by the operating agreement by his experience as an accountant or by the tax code.

Mr. Wilcox also testified that the changes in capital account percentages is a result of depreciation, which is a noncash item, a deduction to ordinary income, resulting in more distributable cash than net income. So, again, he said the same thing that Mr. Main said, that there was a reason that capital account percentages would change, and it's not from over-distributions.

So let's now talk about the issues Your Honor has to decide. The first issue you have to decide is

the tender issue. And I appreciate, Your Honor, as I go through, that you've already signaled what your thoughts were about tender, but I want to make sure that -- that you understand what our position is.

So the first issue is does CLA still have a right to purchase Mr. Bidsal's membership interest, which is a critical issue. And the second issue related to tender is is Mr. Bidsal still an owner of GVC and -- and if CLA has never performed its oblig- -- if CLA has never performed its obligation to pay the purchase price.

So Section 4.2 of the operating agreement is very clear in requiring a cash payment to be made within 30 days of the counteroffer. It's never been done. There's no question it's never been done. Not only has it never been done, but the first time we ever even heard what the number is of what they considered to be the purchase price was after their expert got involved in this arbitration. And not only was it never made, it was not even attempted.

Your Honor made reference to a stay that arose out of the other -- first arbitration and the confirmation. Well, that stay did nothing to prohibit a tender. It has nothing to do with -- with the -- with whether or not Mr. Golshani and CLA could put the money

up to perform. And it's very common when there is a dispute about a purchase price to pay the undisputed portion or to deposit it with the Court, but you have to make an attempt to perform, because under the law if you make no attempt to perform, then you lose your rights. And that's really the important thing. As I pointed out, Mr. Golshani never identified any purchase price at any time.

So here's the law in Nevada: It's the generally accepted rule that a promise to make a payment at a later date or upon -- or once a certain condition has been satisfied cannot constitute a valid tender. Well, what they've said here is "we couldn't make the payment because we didn't know what you would accept."

Well, that's not the law. The law is that they have to pay what they believe is the amount that's owed. And if they have done that, then they can argue that they have performed, even if the amount is wrong. But they've never done anything. Under the Perla Del Mar Avenue Trust case, which I've referenced here which is a controlling 2020 Nevada Supreme Court decision, the Court stated:

"In order to serve the same function as the production of money, a written offer of payment must communicate a present offer of timely

payment. The prospect that payment might occur at some point in the future is not sufficient for a court to conclude that there has been a tender."

Again, I repeat, the prospect that payment might occur at some point in the future is not sufficient for a court to conclude that there has been a tender. And this, of course, they cite to Am. Jur. on tender, which recognizes the general rule that an offer to pay without actual payment is not a valid tender.

Now, obviously we know Mr. Golshani has admitted he never opened an escrow, and he never made any payment. We know from Mr. Bidsal's testimony and from the facts that Mr. Bidsal never refused to perform if a purchase price had been paid. What he refused to do is to open a joint escrow because there was no agreement on a purchase price. But that did not prevent Mr. Golshani from opening an escrow or from making a deposit with the Court or making a payment in some fashion.

No attempt to pay the money or deposit within 30 days means under the operating agreement CLA failed to perform within the terms of the contract and forfeited its rights to purchase. And that's what the law is.

Now, the other concept that comes into play here is specific performance. If their argument is, as Your Honor alluded to, that they couldn't perform for some reason because Mr. Bidsal somehow prevented them from performing, then the law of specific performance comes into play. The law of specific performance says that specific performance sought by a purchaser of real property may be denied if the purchase price is not tendered when due.

So, again, it all goes back to the same thing, whether you want to say that it's just straight law tender where they had to actually perform within the time called for by the contract, they clearly did not do that. If their argument is Mr. Bidsal prevented it in some fashion, they still have to tender it, the amount that's due, that's the law, and they have not done it.

So CLA has asserted throughout this arbitration that the effective date of the sale was September 2nd, 2017, which was 30 days after the counteroffer was made. So I'm going to walk you, Your Honor, through what that means.

If you accept that they still have the right to purchase and that the sale was effective as of September 2nd, if that's true, then this is what Mr. Bidsal is entitled to: He's entitled to the purchase price of

$1,889,010.35, which is set forth in Schedule 5 of Exhibit 201, and I'm going to walk Your Honor through those schedules in a minute. He's also entitled to interest on that sum that should have been paid in September of 2017 at the statutory rate found in NRS 99.040, and that would amount right now to $495,800.

Here is the schedule that shows the calculation of the interest that's through the current date. And as Your Honor can see -- I can make it bigger, but what Mr. -- in this Schedule 6 of Exhibit 201, Mr. Wilcox used the date of September 2nd, 2017, and then he calculated through each change of the statutory rate and -- and in his schedule that is in evidence in Exhibit 201, it ends at December of 2020, and I asked him to run it for this demonstrative exhibit to now complete that by running it through September 30th or, essentially, the current date. And that's how you get to the $495,000 number.

Mr. Bidsal would also be entitled to management and broker's fees from September 2nd to the present in an amount that would be determined in a bifurcated proceeding that we bifurcated this until Your Honor decided this issue. Because if he no longer owned the property and yet he was managing it, then he would be entitled to be paid for his management because he's no

longer an owner; so he would have had no obligation to be managing it.

He would also be required to return the distributions that he had received after September 2nd of 2017 because he would no longer be an owner. That totals $395,835. I'll show you how we arrived at those numbers.

First of all, if we look at this first schedule, this is a schedule that shows all the distributions from the beginning of this company to the end, Your Honor, that went to each member. And you can see that Mr. Bidsal received distributions in 2018 of $175,000 and in 2019 of a hundred -- of $80,500. So if you -- if you add those two numbers to the amount of distributions he got after September 2nd of 2017, which are shown in Schedule 10 of Exhibit 201, which is the difference between $145,000, which is the total distributions he received in November -- can you see that?

So at the bottom of this schedule, you'll see that there's two distributions that Mr. Bidsal received in the year of 2017. The first was from February -- the first one was received in -- on February 9th of 2017, and the second on November 20th. So what Mr. Wilcox did is he said everything, of course, that was disbursed in

February was long before the sale date; so he would get all of that. So all we're talking about is the distribution amount from November, which Mr. Bidsal's share of that was 145,000.

So what he did is he took the number of days from February 9th to September 2nd and the number of days from September 2nd to the end of the year and used that to create a proration amount. And so he would have -- of the 145,000 that was distributed in November, he said he would have been entitled to 72 percent of that using the date up through September.

And so if you take -- if you take that into account, you take the difference between the amount that he was entitled to of 104,000 and subtract that from that 145,000 and then you add all those numbers together, then you come up with the 40,335, which is the prorated amount, the 175,000, the 180,500, and that gives you total distributions of 395,835 that occurred after September 2nd in 2017. So that's the amount that Mr. Bidsal would have to return if you used that September 2nd date as the effective date.

Mr. Bidsal would also be entitled to return of the taxes that he paid on the $395,000 because he paid that obviously in reliance upon the terms of the operating agreement, and that would be damages to him

because he's already paid them.

Now, if the Court determines that the sale can still close but uses a current effective date, meaning they never performed but for some reason -- which I can't fathom right now -- that the Court says that you are going to still allow them to perform even though they never tendered and they never specifically performed, then he would be entitled, again, to the purchase price of 1,889,000. He still would be entitled to the interest because the sale was supposed to have closed back in 2017. So he's lost the right of all that money to the current date.

He would also be entitled to keep the distributions that he's received up to the present time. So he would get to keep the 395,835 and -- but there would be no management fees or broker fees. So we wouldn't have to have any bifurcated, you know, portion of this arbitration. He would just keep the purchase price and the interest and keep the distributions he's already received, and that would be the end of it.

Now, we have to talk about what Your Honor has to decide, which is the application of the formula. So this is a very -- of course, the crux of the case and the most important thing. Here's the formula the Court is supposed to apply. Let's talk about the application

of it.

First, we know fair market value number is 590-. That's fixed. That's easy. But the COP part of that formula is defined as -- COP means cost of purchase as it's specified in the escrow closing statement at the time of purchase of each property owned by the company. Well, as we've already covered, there is no escrow closing statement from the time of a purchase of a property owned by this company except for Greenway. So what that language -- if you use what that language says, then the COP would be $803,726.18 because that's the cost of the Greenway property. If you use what's reasonable, then you would use $3,136,430.58. That comes from Exhibit 201, Schedule Number 3.

And here is that schedule. So what that schedule shows -- whoops. All right -- is that -- what Mr. Wilcox has done with this schedule is he's taken the original cost of all the buildings. You can see them all at the top.

THE ARBITRATOR: Right.

MR. GERRARD: And Greenway, he's just carried over the original basis or the attributable cost basis of Building C that was used to acquire Greenway. So that just carries forward the 399,193 that was formerly Building C.

And so he's got all of those numbers, and then he carries them down to the next line you can see, which is including now only the buildings that still exist; so taking out the buildings that have been sold and carrying down the cost of purchase of Greenway at the basis of Building C. And if you use those numbers -- so, again, using the cost of purchase from the original note as attributable -- attributed by the cost segregation study to each property and taking out the ones that have been sold, what's left is 3,136,430.

And so we, doing what we believe is reasonable instead of just applying the exact language of the formula, believe that that's the number that should be used. Of course, that's to the benefit of Mr. Golshani and CLA. That doesn't have any benefit at all to Mr. Bidsal. As you'll see, if we applied the actual language of the formula, it would highly favor Mr. Bidsal, but we have not done that because we don't think that's what the reasonable interpretation of the agreement is based upon what it was intended to do rather than what the awful draftsmanship left it be.

So then we go to the next part of the formula, which is the capital contribution. Of course that, according to the language of the agreement, says it's measured at the, quote, "time of purchasing the

property." Well, the only purchase of property that exists is the purchase of the Greenway property. That's the only property that was ever purchased by Green Valley Commerce.

If we use that date, then Mr. Bidsal's capital contribution on that date before he had received any return of money is 1,215,000. So if we use the formula based upon what it says, that's what he would get. What we believe is reasonable is to reduce that by the amounts that he received back from the sales of Buildings B and E. And that would -- and C, I'm sorry. And that would give you the number of $957,225. And we see that, of course, again in Schedule 4 to Exhibit 201.

Again, this is where Mr. Wilcox shows all the payments of capital that have been made on the first line or the first section. At the top is Mr. Bidsal; the bottom is CLA Properties. And you can see that he received payments of 28,581, 143,954, and 85,237 from the sale of those three buildings. So if you take that out of the 1,215,000, that gives you the number that we just indicated, which is 957,225.

THE ARBITRATOR: Can I interpose a question?

MR. GERRARD: Please.

THE ARBITRATOR: I have all those numbers, by the way, and I understand how he got to the numbers, and

I understand how Mr. Gerety got to his.

My question is on the effective date. If, for instance, hypothetically I said that the effective date is not September 2nd, 2017, and not today -- and this is mostly declaratory until and unless the Nevada Supreme Court issues a ruling on the appeal from Judge Kishner's order. So if I said the effect- -- you know, if I didn't use that September 2nd, 2017, as the effective date; he's still a member; he would be, under your theory, entitled to keep the distributions that he received in the latter part of '17 and then '18, '19, '20 and whatever beyond that, why would he -- why would he be able to recover interest if -- if it's his position that the -- that the transaction didn't -- the effective date of the transaction is not September 2nd, 2017?

MR. GERRARD: Well, because that's what the agreement requires. The operating agreement says that you have to make the payment in all cash within 30 days of the date that it was offered in August of 2017. And Mr. Bidsal has been deprived of the use of that money from that point on. You know, he's an investor in real estate. He can make a lot of money, as has been demonstrated through this entire proceeding. He knows how to take that money and to put it to use and to

significantly increase what it is that that money is into something else.

And if he's lost that opportunity because CLA has refused to perform, then of course he's entitled under the law to the money at the time that the contract says he's entitled to it, which is within 30 days of when the offer was made. And if he didn't get it, he's entitled, when he does it, to interest from that period to now.

THE ARBITRATOR: All right.

MR. GERRARD: That's basic contract law, and it's what is required by this contract. This contract says when that money has to be paid. So that's the reason why we believe he would still be entitled to interest.

THE ARBITRATOR: Unless Mr. Bidsal is the reason -- or unless Mr. Bidsal didn't perform so as to make the transaction close in September. For instance, if he had -- if he had accepted the counter, I get it, but -- all right.

MR. GERRARD: And just to take that to its next and logical conclusion, we have just walked through the specific performance case law --

THE ARBITRATOR: Right.

MR. GERRARD: -- as we have the tender case

law. And it's all unequivocally clear that Mr. Golshani and CLA, they don't have the right to sit back and say because we have a dispute over what the purchase price should be, that we have no obligation to pay whatever amount we believe is at least the undisputed amount, in other words, what we believe that number should be. That money had to be paid at the beginning, and Mr. Bidsal was entitled to it at that point in time. And that never happened, and that's the reason why he's entitled to interest, because it had to be paid under the contract at that time.

So if they want to -- in other words, you can't choose. You can't pick and choose. You can't say, well, we still have the right to purchase because you made an offer back in -- in August of -- or, I mean, July of 2017, and that gave us a purchase right that we still want to exercise now. You can't say we want to take those rights without performing the obligations that are associated with that right. So it's either you don't have the right anymore, or, if you do, you have to comply with those terms that were associated with it, meaning you had to make a payment at that time.

Mr. Bidsal never stopped them from opening escrow. He never stopped them from paying any money. He never told them ever that he wouldn't accept the

money. He just said he didn't know what they were offering because they never gave a purchase price, and they never put up any money.

THE ARBITRATOR: But doesn't the operating agreement allow for the arbitration of certain disputes, including, for instance, the purchase price under the formula, and no interest would accrue from that and in the normal course until the determination in the dispute resolution process would be concluded; right?

MR. GERRARD: Well, I don't think that's true. I mean, yes, there is a dispute resolution process, but that does not relieve you of the obligations under the contract. In other words, just because you might need the assistance of an arbitrator to decide, you know, what those terms are does not mean that those terms are, you know, suspended or something of that nature. You know, they -- and that's -- that's -- I guess it gets to the heart of this whole thing.

You could say, Judge -- and we have said that when you look at this entire proceeding, it's all about CLA trying to take advantage of the things that they liked about the operating agreement while trying to distance themselves from the obligations that come along with those rights. Remember, it's a contract. You don't get to say I have the right to purchase, but I'll

do it whenever I want. I'll do it whenever I get around to it. I'll do it whenever I decide what the purchase price is.

They didn't file this arbitration asking to know the purchase price; we did. They -- they could have at any time paid what the amount was that they believe was the purchase price, but they chose not to do that for obvious reasons. They didn't want to part with the money. But if you don't part with the money, the law says you have no specific performance rights, meaning it doesn't matter what Your Honor would say at that point about what the language means, because if you didn't at least make the tender or pay the purchase price that was undisputed, you've lost the rights.

THE ARBITRATOR: All right. All right. I get it.

MR. GERRARD: So back to the buy- --

THE ARBITRATOR: Do you have much more?

MR. GERRARD: So back to the buy/sell formula, the last element is minus prorated liabilities. If you go by what the contract says, there is a liability on the books for $68,998 that would have to be subtracted from the formula. If you go by what is reasonable, it should be zero because the evidence is undisputed that the deposit money that was received has at all times

been held. It's never been distributed; it's always been held.

So what we're dealing with -- and by the way, that $68,000 number, that's the current amount. You know, that's the current amount of deposits that are being held and the current liability.

So if the money has never been disbursed, from a practical perspective, there is no liability because we're holding the actual money. So it would have to be offset by an asset that's never been distributed.

So if you take that all into account, if we go by what the buy/sell formula says, it would be $5 million less the amount paid for Greenway of 803-, gives you 4.1 million. Take half of that, a little more than 2 million, add back in Mr. Bidsal's entire capital contribution of 1.2 million, subtract the liabilities, and if we follow the express language of the formula, we get a purchase price of $3,244,138. That's what the language says.

If you're being asked, Judge, to apply this formula and apply the language of the operating agreement to give CLA the right to purchase at what the agreement actually says, that's what they have to pay. If you're accepting that what it actually says and what they're trying to do is take advantage of Mr. Bidsal,

what is reasonable is not actually what this agreement says because it's full of ambiguities, meaning you can't pick and choose. You can't say, well, I want you to strictly enforce one part of this agreement that says I have the right to purchase while strictly enforcing the rest of it that talks about what the actual formula is and what it means.

But we're saying you should do what's reasonable, even though that's not in Mr. Bidsal's favor. What's reasonable, we've said, is the 5 million less the 1- -- less 3.1 million, which gives you the 1.8 million. Take half of that, it's 941,000. Add to that 957,000, which is the -- his share of the capital that had not been paid back. Don't subtract any liability, and it's 1,889,000. That's a huge difference. The difference between what's reasonable and what the contract says is over $1,300,000 that would be in Mr. Bidsal's favor.

We have never taken that position, even though that's what the contract says, because we're not trying to take advantage of Mr. Golshani and CLA like Mr. Golshani is trying to take advantage of Mr. Bidsal. And this number that I just gave you is in Schedule 5 of Exhibit 201.

Then we deal with the rents issue. Mr. Gerety

said, oh, we get to deduct from the COP or from the actual amount -- actually not the COP, but from the amount that's owed, money that he claims was over-distributed because of rents. Well, Mr. Golshani admitted in his testimony that rents are ordinary income to be distributed 50/50, which I thought was really interesting since, you know, their expert's trying to subtract that. Mr. Wilcox testified it doesn't matter. Even if it wasn't interest, it's still ordinary income. So no matter how you slice it, the way it turns out is the same.

The deed in lieu agreement results in all accrued principal and interest being forgiven before the rents were ever received. The rents were received after the grant, bargain, sale deed was recorded. And we've already seen the language of the assignment agreement that says it can't be applied as a payment against the loan because the loan had already been forgiven. The deed in lieu agreement characterizes it as rent, not a payment of interest. The deed in lieu escrow closing statement reflects it's a transfer of net rents. The only person that calls it something other than that is Mr. Gerety and Mr. Lewin, and they call it that because they are trying to create offsets.

Let's look at the depreciation issue. The

operating agreement very clearly in Exhibit A at Section 5.1.1.1 states that all income -- items of income, gain, loss, or credit are allocated 50/50. That includes depreciation, and depreciation is clearly an element of ordinary income, yet Mr. Gerety still tries to subtract for depreciation from what the amount is that would be due to Mr. Bidsal.

Let's talk about the problems with the Gerety opinion. First of all, and I can't overemphasize this, his assignment, he admitted, was to look for offsets to the purchase price that Mr. Golshani was going to have to pay to Mr. Bidsal, not to take into account the reasonable interpretation of what the parties intended from the beginning. No. His job, his description of his assignment, was to look for ways for Mr. Golshani to avoid his obligation to pay Mr. Bidsal.

He has no credibility since these issues were created specifically to avoid the payment obligation rather than to try to interpret the agreement in a manner that's reasonable between the parties. It was just ridiculous.

The problems with Mr. Gerety's opinion that Mr. Bidsal received 777,000 of excess distributions are as follows:

First, he included distributions from 2018 and

'19, which the Court hasn't made any decision on it yet. You know, when -- was that at a time when Mr. Bidsal was the owner still or not?

Second, he includes in this the rents received through the deed in lieu agreement as if they had to be split 70/30 when it's very apparent that they were always ordinary income, that they could not be applied as a credit against the debt because the debt had, A, disappeared because it had been forgiven at the time of the closing of the deed in lieu agreement and because they're received as rents, not as a payment against the loan.

Next, he tried to say that the depreciation should be split 70/30 rather than 50/50, and that's inconsistent with tax law. It's inconsistent with the operating agreement. And finally, he, of course, claimed that every sale of the property should have been split 70/30, but he's not using a definition from the operating agreement to discern what triggers the waterfall, meaning what is a capital transaction. What he used instead was the tax definition of a capital transaction.

Now, before we leave that, I, again, tell you what I told you at the beginning of this closing argument, which is you can't have it both ways. If the

business of this company was to manage real property and collect rents, income-producing properties and to hold until some point in the future you just sell everything off, if that was the business of this company, then that makes Exhibit B very understandable. It's no longer ambiguous if you view it from that perspective. And if you view it from that perspective, then the special allocation language was never triggered and Mr. Bidsal's agreement with Mr. Golshani about how to distribute money from single sales are clearly not contemplated by the operating agreement. There's a reasonable way to do it. He didn't have to do it that way, but he was doing it that way so that there would be a gradual return of the capital from the sale of buildings.

But the opposite of that, as I pointed out in the beginning, is also true, which is that if you treat this the way that they are now asking the Court to treat it, that this was always about flipping property, that you are going to get one property, you are going to subdivide it into smaller parcels and sell them off as inventory of the company, then those sales generated ordinary income and also had to be distributed 50/50 even under their interpretation.

Now, Mr. Gerety also gave an opinion about the amount that should be paid to Mr. Bidsal, and he said it

was 1,598,000. He said that's the purchase price. Well, the difference between what Mr. Wilcox came to and what Mr. Gerety came to as the purchase price under the formula is about $290,000. The primary difference is that Mr. Wilcox uses the rollover of the cost basis for Building C and Gerety uses the new purchase number for the Greenway property in an obvious attempt to not permit Mr. Bidsal to share in the appreciation from the sale of that property.

And if you use that literal reading, if you say, no, we have to use that number because the formula says that you have to look at purchase price from an escrow statement, well, you can't have it both ways. If you use that language, then that means that the whole COP is the number paid for Greenway because there is no escrow statement reflecting a purchase price for any remaining property.

So, again, it's obvious that Mr. Gerety was doing exactly what he was asked to do, which is to pick and choose the things that he liked and ignore the things that he doesn't like. And you can't have it both ways. You either use an express application of the defined term, which clearly benefits Mr. Golshani -- I mean Mr. Bidsal, and it would result in the number going up by about a million dollars, or you use, you know --

which would have -- which would have -- which would allow you to use the Greenway purchase price.

THE ARBITRATOR: Right. I understand.

MR. GERRARD: Gerety also adds the full price of the parking lot to the COP while Mr. Wilcox deducts the prorated share of the three buildings sold as they now all have an interest in that parking lot.

Well, Your Honor, I think that what you've seen from this run-through of the evidence and the facts is that there's two ways to interpret this language. One is to do what is reasonable based upon what the intent of the parties was, and the other is to -- to apply the language strictly the way that it appears in the agreement.

THE ARBITRATOR: And do you want to get out of share screen? Is that what you were trying to do?

MR. GERRARD: I'm always trying to do something that I'm unable to do.

THE ARBITRATOR: All right.

MR. GERRARD: And that's where we're at, Your Honor, is that, you know, you have that -- that's the stark difference between our position and Mr. Golshani's position. Mr. Golshani's position is I want to take advantage of Mr. Bidsal; I want to look for any sort of deduction I can come up with; I do not want you to apply

strictly the language of the formula; I only want you to apply the parts that I think you should apply.

Mr. Bidsal has said from the beginning, I don't think you can apply the formula or the operating agreement the way that it's written because it has too many ambiguities. It just doesn't make sense given what it is that was intended, but you can understand what was intended by looking at what was going on at the time that that language was drafted. And you get to choose between those two things, but you can't pick and choose. You can't pick part. You either apply the language completely, which clearly benefits my client, or you don't apply the language, and you come to a reasonable position, which means you can't pick and choose what to apply and not to apply, which is exactly what Mr. Golshani and Mr. Gerety and Mr. Lewin did.

Thank you, Your Honor.

THE ARBITRATOR: All right. Either Mr. Lewin or Mr. Garfinkel.

MR. LEWIN: It's going to be me, Your Honor.

THE ARBITRATOR: All right.

MR. LEWIN: Your Honor, first of all, I share what Mr. Gerrard has said. We appreciate your attention. I can tell from the arbitration hearing that you really were paying attention and you really did

understand what was being said.

I have a presentation that I have prepared, but I want to touch on a few -- just touch on a few -- in an outline basis a few of the things that Mr. Gerrard said just to sort of highlight a couple of ideas about that.

First of all, he repeatedly said that the agreement wasn't well-drafted, it was awful draftsmanship full of ambiguities and -- and we agree that the -- there is ambiguities in it. He also said -- and I think that's important because when he's trying to -- when he is -- when we're trying to interpret this agreement, you have to look at the entire -- what the agreement is, and it has drafting problems.

He also said, and I think this was interesting, that Mr. -- that the deal was that the income was to be shared 50/50 until there's a sale of all the property. I'm going to get into that in my presentation, but I just wanted you to think about that.

What that means for -- essentially, for each party, that their capital is tied up forever because there's no time limit on this LLC. And I suggest that that cannot possibly have been the agreement for reasons I'll go into later.

He also said that Mr. Bidsal and Mr. Golshani had equal risk. Well, I don't know how you would have

equal risk if Mr. Golshani is putting two thirds of his -- putting two or three times the money that Mr. Bidsal is. And that's -- that just seems to be elemental.

And I want to point out when we get to Exhibit B that while -- and I'm not going to get into how the actual final agreement was -- what was -- all the changes that were made and how that actually took place because that has already been decided in the first arbitration. But I want to point out that in this agreement, it's got a very curious position -- proposition. It's got a proposition that while the 50- -- that the LLC -- that the 50/50 allocation was changed from 70/30 to 50/50, but the loss allocation was not.

So somehow in this Exhibit B, Mr. -- even though Mr. Golshani and Mr. Bidsal are equal owners, this equal risk provision has Mr. Golshani sharing the losses 70 percent to 30 percent.

He talked about the -- the -- and, again, I'm going to go into this. He's talking about Mr. Main's testimony of tax returns, which I suggest is a red herring. He doesn't -- Mr. Bidsal does not want to distinguish between the tax allocations that were made for tax reporting purposes and the allocations of cash,

which Mr. Main said a couple of times is different than -- it's different than -- cash is different than tax allocations. It's totally two different animals.

Yes, allocations were made on the tax returns on a 50/50 basis, but under the priority return of the waterfall, the cash is allocated 70/30. Now, we're going to get into what constitutes a capital transaction or not, but that's -- that failure of Mr. Bidsal to recognize that is the underpin of their contesting and their analysis of how the cash gets distributed. They want to say because it's on the tax return, that means how the cash goes. That's not the way even Mr. Main said, Mr. Wilcox said, or Mr. Gerety.

They talked about the formula and talking about COP failing to recognize that the document says each property, but they -- the note by itself is property. And Mr. Wilcox agreed with that. So did Mr. Gerety. The note by itself is property. It may not be real property, but it's -- it is -- it's property. So if you wanted to go by a strict -- you know, if you take their position that you have to go by what property was owned at the time on September 16, the property that was owned was the note, and that's property.

This last -- I'm just trying to cover -- touch on these last -- the -- in the -- in the discussion on

Section 4.2, what Mr. Gerrard failed -- fails to point your attention to and what he failed to point the attention to and tried to avoid in the underlying arbitration and even in the appeal is the specific intent provision that -- that belies on -- on the bottom of paragraph 4.2, which sets forth no matter how this is -- what -- the intent of how that formula was to be applied on an offer to buy.

They want to relitigate the first arbitration. This issue of how that formula was intended to -- you know, how the -- the CLA's right to purchase and the right to tender are subsumed in the first arbitration. If they had -- if they had a claim that was unenforceable, that was the time to raise it. The fact that it wasn't raised and the fact that we have a judgment there is -- indicates -- that then gets -- that tender issue is gone.

He talks about the statute of limitations as going to the -- as going to the -- goes to the -- to the rent issue. He failed to acknowledge that what Mr. Wilcox said and what Mr. Gerety said, they both acknowledged that the part of the money that was allocated for times before the purchase of the note would be a return of capital.

And just on the issue of statute of

limitations, he only addressed the statute of limitations on the $300,000. We have an argument on the statute of limitations, but I just want to point out at the beginning that what we are doing in terms of deciding what -- deciding the purchase price now, that does not -- that -- the allocation of returns of capital are not subject to the return of -- it is not subject to the statute of limitations on -- that goes back to 2011.

Finally, before I get into my -- very interesting to see Mr. Gerrard's doubling down on this issue of interest, that if they -- if you decide that the -- that the date of sale is going to be other than September 2, 2017, that they are still entitled to interest because that's what the contract says. The contract demands he had to perform -- he had to perform and he had to close within 30 days.

Well, think about that. If, in fact, the performances -- CLA has the right to demand that Mr. Bidsal convey his membership interest on September 2 as well. And by doubling down on the fact that they get interest from that date is just a reflection of the fact that their position is that the contract requires that transaction to close on September 2nd; and, therefore, that's the date that CLA -- that -- the dates that CLA's purchase of membership interest should go back to.

And the issue, as I said -- and the -- and just to -- just to go back on the -- he cited the Perla case. You'll see that the Perla case says a tender's not -- no tender is required where it's clear it's not going to be accepted.

So with that, I just wanted to give a little bit of a -- some high points that I observed during Mr. Gerrard's speech.

MR. GARFINKEL: Your Honor, this is Louis Garfinkel. I'm looking at the screens, and it looks like there's -- some of them are frozen, and I don't see Rodney Lewin. Are you able to see Mr. Lewin? Or it might be on my end, or is it your -- or everyone is seeing the same thing?

THE ARBITRATOR: No, I've got it. I've got him.

MR. GARFINKEL: Okay.

THE ARBITRATOR: Are you on speaker view or gallery view?

MR. GARFINKEL: I'm on gallery view right now.

THE ARBITRATOR: Okay. I have him.

MR. GARFINKEL: Yeah, I -- it's kind of strange. I have everybody. Everyone seems -- I now have Mr. Lewin back, but it seems like everyone is frozen on mine except me. So I just wanted to make sure

there wasn't a problem. Thanks, Judge.

THE ARBITRATOR: All right.

MR. LEWIN: And so, Your Honor, as I said -- there's a number of issues that I am going to cover in my closing statement. First, I'd like to start by saying what this case is truly not about. It's not about Ben Golshani or CLA trying to take advantage of Mr. Bidsal. If anyone has taken advantage of anyone in this case, it's Mr. Bidsal who has taken money that he wasn't entitled to, and he has taken what Judge Haberfeld has -- has claimed are outcome determinative positions, not only in the first arbitration but in this one.

It's also not about Mr. Bidsal being a nice guy or Mr. -- the evidence shows that Mr. Bidsal has by -- by refusing to proceed with the transaction after the first arbitration, he has diminished the proceeds from owning Green Valley that CLA would otherwise be entitled to after it purchased his interest. And that has been -- I don't -- held by Judge Haberfeld or by Judge Kishner to be a breach of his agreement.

The evidence shows that Mr. -- at Mr. Bidsal's request, Mr. Golshani put up the entire deposit, 404,000, as well as 70 percent of the capital ahead of so much as even a draft of -- was not made, you know,

being prepared. Now, not only did he do that with respect to Green Valley, but he also did it with respect to another property purchased at the same auction, County Club. So between Green Valley and Country Club, Golshani had contributed almost $4 million all without the benefit of an operating agreement or any written agreement. And that's at page 1052, line 6, through 1053, line 30.

Although Mr. Golshani took all the risk and put up the lion's share of the monies, Mr. Bidsal delayed the process of preparing the operating agreement, and during that period, Golshani's name was not even on any official document, which put Mr. Golshani's investment at great risk. So who was being the nice guy here?

Oh. This gets -- it also -- here's how the case got started: On July 7, Mr. Bidsal was under no time pressure to make an offer and could have performed whatever analysis and due diligence he wanted. He initiated a buy/sell agreement, the buy/sell process under Section 4.2 of the CLA operating agreement. Although it was labeled an offer, CLA could not ignore it. As the recipient, CLA was under the gun to either accept the amount of the fair market value as stated in the letter or switch sides and buy again using the fair market value or demand an appraisal.

We're not going to relitigate the first arbitration here, but I just want to point out once again that Section 4.2 specifically says that -- that the only person with the right to demand an appraisal is the remaining member, in other words, that would be CLA if they decide that they don't think that the fair market value -- they don't accept the fair market value that was offered.

Mr. Bidsal thought Mr. Golshani's money was tied up in other projects and he had health problems. That was testified by Mr. Golshani at 1140- -- pages 1146 and 1147. He was not in a position to buy him out, and, therefore, he made a lowball offer under the buy/sell provisions. But instead of selling, CLA, as -- as entitled to do, offered to buy instead of sell with the calculated fair market value set by Mr. Bidsal.

On August 5, Mr. Bidsal set the motion in dispute -- set the dispute -- set the matter into dispute, refused to sell based on the fair market value that his letter had sent, and instead demanded an appraisal. CLA demanded that Mr. Bidsal proceed to close escrow within the 30 days required by the operating agreement, but --

THE COURT REPORTER: Are you reading, sir?

MR. LEWIN: Yes. I'll slow down.

THE ARBITRATOR: And I know all of this stuff; right? I mean, this is all -- this is kind of historical stuff that I obviously already know. I am not trying to foreclose your -- your ability to make a presentation, but we know -- I mean, I know this stuff.

MR. LEWIN: I understand, Your Honor.

THE ARBITRATOR: All right.

MR. LEWIN: But the point I'm making here is that at the time that Mr. Bidsal made his offer and at the time that CLA elected to buy instead of sell, there was no dispute as to -- there was really no dispute as to what the formula was. Mr. Bidsal would like Your Honor to believe he made the offer to buy CLA's membership interest without knowing exactly how much he would have to pay, and Mr. Bidsal simply said here's my computation of COP, and here's my contributed capital, and here's yours, and that if Mr. Golshani had any objection to the matter, it could have been raised back in 2017.

What happened is that Mr. Bidsal's contentions were not even raised by Mr. Bidsal until the second arbitration, and we end up addressing it in 2021 instead of 2017.

As I mentioned, both Judge Haberfeld and Judge Kishner found that Mr. Bidsal's contentions were, quote,

"outcome determinative," and I suggest that's the same outcome determinative positions they're taking in this arbitration.

So we know -- we know that there's three -- there's -- there are -- in addition to fair market value, there's three other elements: COP, capital contribution of the selling member, and outstanding liabilities. But even when Mr. Bidsal initiated this arbitration, he did not reveal what he calculated to be COP or his contributed capital, much less liabilities. We only found this out in the answers to interrogatories, and that was only after Your Honor ordered him to do so. That's in the supplemental answers that are Exhibit 164.

In fact, Mr. Bidsal has not proven his compliance with Article 2, Section 14.1 by -- in failing to require the -- required attempt to settle the dispute before issuing the arbitration. And the reason for that, I submit, is because his purpose is to delay. Once he -- so once -- so we -- CLA has a counterclaim and -- but -- and -- regarding improper distribution, and another element that was omitted during Mr. Gerrard's presentation, that when CLA elected to buy instead of sell, he was told not to make any more distributions -- that was Exhibit 38 -- and he did -- on a number different occasions, but he continued to do so

anyways.

The -- I don't quite understand this whole idea how -- the idea that Mr. Golshani is trying to take advantage of Mr. Bidsal and Mr. Bidsal is just being a nice guy because I do think there are issues concerning the -- what could have been a reasonable dispute about how to handle the COP could have been addressed in 2017. The only purpose I can see for that is to try to gain sympathy from Your Honor to try to show that Mr. Bidsal has the right to artificially create a frivolous interpretation of the agreement and try to say that he's being reasonable by -- he is -- he should be accommodated because he's being reasonable.

One of the -- one of the things that supports that theory is that how Mr. Bidsal just was -- he was a nice guy in allowing Mr. Golshani to participate in the purchase of the Green Valley note. That was false.

Jeff Chain, Bidsal's long-time broker, testified that he had identified that opportunity as well as many others for the parties, and Mr. Bidsal and Mr. Golshani drove up from Los Angeles and inspected hundreds of properties. Mr. Golshani also testified similarly. There's no dispute Mr. Golshani put up the nonrefundable deposit of $404,250, and, as Mr. Bidsal himself admitted, buying a note has -- has significant

risk. But many things that it -- could be -- take place: the seller's bankruptcy, the seller's refusal to turn over -- to make payments, the seller's refusal of funding foreclosures. It's any number of things that could cause the transaction not to proceed. And if any reason the transaction did not proceed, it was only Mr. Golshani's money that was at risk. That was testified by Mr. Bidsal at pages 64 to -- 694 and 695.

Now, Mr. Gerrard glossed over the fact that -- that -- how the property was actually acquired maybe wanting to create the impression that it was only Mr. Bidsal's control; it was Mr. Bidsal's opportunity. He was just letting Mr. Golshani in.

Mr. Chain testified that both Bidsal and Golshani had been working together at the auction deciding what to bid and when to bid. It contradicted Mr. Bidsal's testimony that the Green Valley opportunity was just his and that he was making all the decisions. That testimony was by Mr. Bidsal, but some of his other testimony was an out-and-out lie. And Mr. Chain's testimony can be found at pages 1059 and 1060 of the transcript.

The point -- the point being is if Mr. Bidsal is willing to lie on a little thing like this, then why should he be believed on the big stuff?

Now, the uncontradicted testimony was that before the Green Valley note was acquired, Mr. Bidsal and Mr. Golshani had reached an understanding about how they would work together. This -- this understanding was testified by Mr. Golshani at pages 1008 through 1011, 1014 through 1016, and 1018 through 1019 of the transcript.

The main points of this going-forward understanding were that they would form an entity to take title to any property or note that they would acquire. They would both be the managers. Bidsal would be the day-to-day manager doing the property management and accounting. The net rent and interest income as shown on their tax returns would be divided 50/50. The balance would be distributed 70/30 until the capital accounts were equalized. And with respect to Green Valley, they would work to acquire the note, try to reach an agreement with the borrower to exchange the note for title and -- and that's -- and, if not, simply foreclose on the note which was in default, after which they would subdivide it and sell some of the parcels that they would get -- so they could get some of their investment capital back.

Also, Mr. Bidsal would invest only -- originally 40 percent of the necessary money and receive

50 percent of the profits from the rents, but that -- and that 40 percent was later reduced to 30 percent.

And lastly, that there would be a way to disassociate by including in the agreement a provision that, for whatever reason, if we don't want -- and I'm going to quote Mr. Golshani there -- that, for whatever reason, if we don't want to be together or someone is not -- doesn't want to work in Las Vegas or whatever, there should be a way to separate without having to go to court. Famous last words, by the way.

Now, there was a discussion during the hearing as to whether or not there was an application of the statute of frauds and the superseding effect of the operating agreement. It must be remembered that the operating agreement was not signed until December 2011. And long before that, Mr. Golshani and CLA had worked together and bid and purchased properties. They purchased the Green Valley note, and they purchased the Country Club property.

So this understanding or oral agreement, even if superseded by the written agreement, is very relevant to explain the parties' understanding of the working relationship and interpreting the operating agreement and, in particular, the provisions of Exhibit B.

And I note that there's no integration clause

in this operating agreement. It -- I just want to point out it is beyond belief that these two gentlemen are going -- were going to put up millions of dollars, especially from Mr. Golshani, who said he was going to put up 70 percent of the money, without having an understanding about how this was going to take -- how this was going to operate in real time if the properties were acquired. And -- and that is -- and so I think that is -- this understanding is something that is very pertinent to this proceeding.

So what happens after that? LeGrand -- Mr. Bidsal hires Attorney David LeGrand to prepare an operating agreement for Green Valley and negotiate the deed in lieu foreclosure, and we know in September the property was acquired by that deed. But even before the conversion of the note into title, Green Valley had begun the process to subdivide in order to make partial sales.

Now, was there conversation that if they had an opportunity to sell all of the property or some of them? I would imagine that in the normal course of events, that took place. That's not unreasonable. By September -- and I want to point out that it's September 16, and that's Exhibit 91 that Mr. Gerrard pointed to -- the work to divide the Henderson property into nine

parcels had been finished. That's reflected in Exhibit 7, page 1394, which shows that the subdivision survey was completed by August 2, 2011.

Now, the operating agreement wasn't signed until December. So on October 29, LeGrand was still sending out drafts, as shown by Exhibit 6. Exhibit 6 at page -- and -- on Exhibit 6, what does that show? On page 1 -- on page -- pardon me, on page 2, it shows that LeGrand had sent a -- well, let's start over.

The first page of it on November -- on Exhibit 6 shows that on November 29, LeGrand sends out a draft, another draft of the operating agreement. On -- and by the way, that -- and on December 2nd, according to LeGrand's billing, he has a telephone conversation with Bidsal regarding Bidsal's, quote, "modification" end quote, to the draft operating agreement.

Why is that important? It's because they -- because their position is that it's all Ben's language that goes into this operating agreement. It's not true.

On December 10, LeGrand -- again on page 3 of Exhibit 6, LeGrand sends an email to Bidsal asking if Bidsal, quote, "ever finished the revisions," to which Bidsal replied on December 12 that the operating agreements, plural, are signed and -- are finished and signed. That's page 3.

In the final -- and I know that in the final operating agreement, which is Exhibit 5, percentage of ownership interest in Exhibit B has been changed from 70/30 in favor of Golshani to 50/50 as shown on Exhibit -- as shown on Exhibit 91 and 5.

So I'm not going to spend a lot of time about -- talking about who drafted the Section 4 given that Your Honor has earlier stated that, quote, "I don't think it's before me to determine who drafted the buy/sell provision or the formula." That's at transcript page 90. I would just point out that Judge Haberfeld ruled that Mr. Bidsal was the principal drafter. But -- and I know that Mr. Bidsal has appealed that decision, but until -- unless and until Judge Haberfeld's decision is reversed, and Judge Kishner as well, that Mr. Bidsal has no right to challenge the determination that he --

MR. GERRARD: Judge, I hate to interrupt. I don't like to interrupt somebody's closing, but I just have to say Mr. Lewin has repeatedly made reference to Judge Haberfeld. There's nothing in this record. There's no evidence other than the arbitrator's award that's a part of this record. Mr. Lewin was quoting language that's not in the arbitrator's award. He's making arguments about what's in the -- supposedly what

he thinks happened. I just want to point out that that's not in evidence. That's not --

THE ARBITRATOR: Well, the arb- -- Judge Haberfeld's award does reference who he thought was the drafter and why. Honestly, I mean, it's -- it's --

MR. GERRARD: I'm just point- -- I just don't want us to go down a path where there's references to what happened and supposedly in this other proceeding that isn't a part of any evidence in this case. And the only thing that's in this case is the arbitrator's award. And I can guarantee you that it doesn't say anything about a breach.

MR. LEWIN: There's also a judgment.

THE ARBITRATOR: Right. But it -- I get it. I understand it. I kind of have made my position known. You know, obviously Mr. LeGrand wasn't able to testify, you know, as potentially someone who drafted it, but -- all right. But we can move on. I understand.

MR. LEWIN: Okay. So -- but my point is until -- until that judgment -- that Judge Haberfeld's decision and Judge Kishner's decision is reversed, our position is that Bidsal has no right to challenge the determination that he was the principal drafter.

How many times can you raise the same contention? It was raised in number -- number --

arbitration number one, and it wasn't bought. Even if there was not a judgment in which Mr. Bidsal was determined to be the principal drafter, there's a recital in the operating agreement, Article 8, stating that, quote, "this agreement has been prepared by David G. LeGrand, as legal counsel for the company," unquote. That should be the end of this meritless contention, especially given the arguments that were made by Mr. Bidsal when we had the discussion about whether Mr. LeGrand was going to be permitted to testify where they -- they referred to the recitals in that article, it's Article 8, as being binding by the parties such as who LeGrand was representing and what advice he had given.

So it was -- so, in essence, it was Mr. Bidsal who made the last changes to the agreement. After Mr. LeGrand sent -- as I said, he was making modifications after Mr. LeGrand sent the November 29 draft. There would be no reason for LeGrand to ask Bidsal if he finished revisions unless Bidsal told him he was going to revise it. And Mr. Bidsal has admitted that Mr. -- he -- that both he and Mr. Golshani, quote, massaged the language of what ended up in Section 4. That's in the transcript at page 1081.

That Mr. Golshani may have been a stenographer

for both he and Mr. Bidsal does not mean he was the drafter. And finally, even were he, Mr. Golshani, the drafter, which he wasn't, a draftsmanship determination is merely one consideration out of many in contract interpretation. It is as stated in the case of Easton Bus. Opp. vs. Town Executive Suites, 126 Nev. 119 at 131, a, quote, "rule of last resort."

And to top it off, the real issues in this case revolve around Exhibit A and B and the -- and the -- and what -- and the parties and their experts have agreed to a variation from the strict language of the formula to take into account for the sales of three buildings and the returns of capital. There's no evidence whatsoever that Mr. Golshani drafted any part of Exhibits A and B.

THE ARBITRATOR: That's kind of the point, to me. The fact that everyone believes that you can't literally apply the formula and other parts of the operating agreement make it less important, to me, who the drafter was since both sides agree that there's ambiguity and that there's drafting issues. That was kind of my point all along. But all right.

MR. LEWIN: So going -- and now to -- now to go to the -- so what I think are the issues before you.

Mr. Gerrard has already admitted, and I agree, that fair market value is unconditionally determined at

$5 million.

The second element is COP. And we -- so you start with the operating agreement of what is defined as COP. It is defined in the agreement as, quote, "the cost of purchase as it specified in the escrow closing statement at the time of purchase of each property owned by the company." The word "it" is probably a typo. It should be "is" or the word "is" is omitted. Not the first time a word was omitted in this operating agreement.

Since it refers to the time of purchase of each property, it clearly anticipates that there was going to be more than one purchase. And there were two such purchases in this case. First, the initial purchase of the note, which I -- as I indicated the note is property. And since there's no definition of the word "property," it should be given -- literally described as being the purchase of a note. And that note was -- you know, was later converted to title.

The second purchase was the Greenway property. Now, the suggestion that the absence of a closing statement for obtaining a fee title to the Henderson property and conversional note is, in my opinion, just silly. There was a lot of time spent about this issue in the arbitration, and that assertion, even if it

was -- even if it was still being made by Bidsal's own position, which I think he is, it's belied by his positions. When looking at the definition of COP, it says "property owned by the company."

It's also before -- and it also bears noting that prior to the initiation of this arbitration, in Exhibit 111, which was a sort of -- a summary of sales and payments made by Bidsal -- sales of property and distributions made by Bidsal, Mr. Bidsal identified the -- as the, quote, "acquisition," end quote, cost of Green Valley as the cost of the note, $4,048,959. So the acquisition cost of Green Valley was never really in dispute until this arbitration when Mr. Bidsal is trying desperately to avoid -- to avoid the -- the outcome of some of his actions.

So what's missing in the definition of COP is any statement as to when the property is owned. And there's two possibilities: Either it was owned at the time of the offer or ever owned. If it was the latter, then there is a closing statement for the note. Both it and the EMR closing statement for Greenway would be included in the COP. If it would be interpreted as owned at the date of the offer, then the cost of the sold properties should be deducted and the cost of the purchased properties should be added to the original

COP. And that's essentially what has happened, although we have some disagreement.

Mr. Bidsal can hardly quarrel with his saying ever at the time that it was owed. This is the position that he took in his answers to -- his supplemental answer to Interrogatory Number 20 -- Number 2, which is marked as Exhibit 164. And those are the answers -- and that position was -- was Mr. Bidsal concealed when he failed to provide that information initially. And we only received that from -- we got an order from Your Honor.

Both Mr. Bidsal's supplemental answer and Mr. Wilcox's calculation of COP include the cost of the purchase of the note and the sub- -- and subtraction of the cost of the buildings ever owned, but sold, as well as reducing the initial capital contribution by the returns of capital in order to arrive at the claimed purchase price.

Now, the absurdity of the position that there is no -- there is no escrow closing statement or purchase price for the Henderson property is demonstrated by Mr. Bidsal's own testimony where he admitted that the cost of purchasing the Henderson property is the cost of the note.

Put up Document 22, would you please.

Well, I'll just quote the testimony. I had the testimony copied so you could read along, but I'll just quote it. These are -- this is a question-answer that I asked of Mr. Bidsal.

"Question: At the time the Green -- at the time Green Valley acquired title to the property, the cost of purchase of that property included the cost of the note, the payment to auction.com, and all other expenses incurred in connection with acquiring title to the property?

"Answer: Yes."

Then it's at page 718, line 3 through 14:

"Question: Well, what you just answered a minute ago, you said the cost of purchasing the property was all those costs that I just identified. Isn't that -- isn't that the cost of the COP?

"Arbitrator Wall: Is that a yes or a no?

"Mr. Lewin: Yes.

"Answer: No.

"Question by Mr. Lewin: Okay. And why not?

"Because we went through a process of allocating and assigning valuations to different parcels at a later date."

So what do we make of this? It's clear that Mr. Bidsal and his experts, by their testimony and their -- and this -- and the evidence that has been presented, have abandoned the notion that strict compliance with the language is appropriate, and they're taking the position agreed to by CLA that the proper methodology is to do -- both account for the sales and purchases of property and returned capital. I hope that this alone would be enough to prove once and for all that the suggestion that there's no value being assigned to Henderson because of a lack of a closing statement is and was just nonsense.

And I -- and I note is that in -- in connection with a deed of lieu -- in a deed of lieu, there would not necessarily be an escrow; so there wouldn't be a closing statement. Now, I pause and note that CLA was prepared to live with its initial belief that the COP was the cost of the note plus the cost of Greenway without any reduction, and Bidsal's capital contribution is for 1.2 million initially made without any reduction at all.

But I agree with Mr. Gerrard that is not reasonable, and since both experts and the parties have agreed strict compliance with the words is not to be used and that, rather, reductions not -- perhaps not

covered by the language of the formula were to be allowed on discuss- -- to likely discuss the points in which the parties don't agree.

Now -- so it's -- what is clear is that from the -- both Mr. Bidsal and Mr. Wilcox don't dispute the cost of the note forms the basis for the determination of COP but just believe that the cost segregation study numbers are what are to be used instead of the full purchase price for the cost of the note.

So we agree on this much. The starting point for the COP for the Henderson property was the cost of the note and that the allocated cost of the sold prop- -- parcels should be deducted just as we reach different -- but we just read different figures for the reasons I will discuss.

And with respect to using the cost segregation study, we have no problem with using that if the total of the individual parcels equal the cost of the note. But if you -- if you take the -- do the math, it's $81,767 short. I referred to that during the hearing as the missing 282,000.

What appeared -- so what is apparent is that when the cost segregation study was prepared, the allocated costs for the property of $87,767 [sic] was deducted. Both Mr. Bidsal and Wilcox used the basis set

forth in the cost segregation study with, as it says on the last page of that study, numbers supplied by Bidsal and that those numbers were $3,967,182.38 instead of no closing statement which is -- which was $4,048,949. That's a -- Mr. Gerrard pointed you to the Wilcox Schedule Number 3 which shows that.

However, while the cost segregation study is relevant to increasing the allowable depreciation expense that could be taken, it has really nothing to do with the cost of purchase. The cost of the purchase is the cost of the purchase. And the difference between the cost of the note and the starting amount before deductions for sold parcels is missing -- is one -- $81,767 short, and the reason for that has never been explained.

Now, Mr. Gerrard originally argued that in his opening statement, that the basis for the original nine parcels should be used on the cost segregation study because "for tax purposes" -- and I'm quoting -- "for tax purposes they applied essentially the original basis paid for the note." He just ignored the 81,767 and as did Mr. Wilcox. And no one has ever explained what happened to it. It just disappeared.

At page 413 at line 24, Mr. Wilcox testified that he took the original allocation of the purchase of

the note, applied that to the properties they subdivided; however, he, again, doesn't mention the 87- -- I'm just -- I'm just going to refer to that as the missing 81,000. He doesn't refer to the missing 81,000, and it's not mentioned anywhere in his schedules. He never accounts for it and never investigated it.

I asked him, quote -- I asked him on page 534:

"Did you ever find out why the cost of 4,048,000 was not actually used for the cost segregation study?

"I never looked into that -- into why they were off about 50,000.

"Question, it's actually about 82,000.

"Answer: Is it 82-? I never looked into it."

So -- and then I -- and then I later asked him on page 535 if he knew if the $82,000 was distributed:

"Question:" -- beginning at line 12, quote:

"Do you know whether that $82,000 was distributed?

"Answer: I saw no evidence of it being distributed."

Now, to be fair, I should note that Mr. Gerety --

THE ARBITRATOR: Do we need this screen up

still, or are you done with this page?

Yeah. Great. Thanks.

MR. LEWIN: We're done with it. We're done with it.

THE ARBITRATOR: All right.

MR. LEWIN: To be fair, I should note that Mr. Gerety accepted and used the same starting point as Mr. Wilcox. So his COP is also short $81,767. And besides -- starting at page 917, he testified, quote:

"In terms of determining COP, you used the amount that was set forth in the cost segregation study?

"Answer: For the buildings that were still in existence, yes, I did."

So -- so both accountants missed this discrepancy, but it can and should be rectified. There were three sales and one purchase that has to be accounted for. So in determining COP, the original cost of the note should be used subtracting the cost of the sold buildings and then increasing the cost of Greenway and adding in -- and the -- and in that way the missing 100 -- $81,767 gets accounted for.

Now I'd like to turn to Greenway. In 2000- -- in 2012, Green Valley sold Building C. To avoid paying taxes on the gain, Green Valley decided to do a 1031

exchange. The fact that for income tax purposes it was called an exchange doesn't make it an exchange. It's strictly a tax benefit which allowed the seller time to find another property and use the cash in the sale of one property to later buy a new property and avoiding tax on the gain from the sale of the first property by retaining as the tax basis for the new property the tax basis of the sold property.

But there was never a simultaneous transfer of the old for the new; so there never was a real exchange. What actually took place, there was a sale of buildings -- one parcel and the purchase of another. The two transactions did not take -- even take place in the same year much less the same time that it would be true of a real exchange.

So we believe that the COP for the cost of the -- for -- should have been reduced by the cost of the -- the sale -- the cost of -- let me start over.

Our position is that the COP for the cost of the nine parcels should be -- have been reduced by the cost of Building C and increased by the cost of Greenway.

Now, to avoid concluding the true cost of Greenway, which is far greater than the cost of Building C, Mr. Bidsal and Mr. Wilcox rely on the tax treatment

of the sale, not really what occurred, and included only the original cost of C as the cost of Greenway claiming the cost basis of the sold property fixes the cost basis of Greenway for COP purposes. That's at page 363.

The problem with this analysis is that, while the cost basis carried forward for tax purposes, it does not fix the COP. That the relationship of the income tax treatment with the cost of purchase as those words appear in the agreement is unwarranted -- unwarranted and perhaps best illustrated by this: If Greenway had been obtained 181 days or more after the transfer of Building C, the transaction would not have qualified for tax treatment, tax-free treatment. There is nothing in Section 4.2 of the agreement that hints that the determination of the cost of purchase is dependent on whether a new acquisition is made before or after 180 days beyond the date of Green Valley's transfer of the property.

To say that the sale of C and the purchase of Greenway was an exchange if the purchase would have been 180 days of the sale of C but not an exchange if it closed one day later makes no sense. It confuses the allowance of having to pay tax on being with a true exchange.

So I think we have to look at what the parties

were intending to accomplish when they agreed to the formula. I agree -- I agree that the formula demonstrates they were trying to allow a selling -- a selling member to get the benefit of -- of the gain in the property. They assumed that if one started with the seller's capital contribution and then added any excess of the value of the Green Valley property or its cost, that the gain would be one element but not the only element in determining the company value, thus the -- and thus the fair market value of the membership interest. But determining the fair market value must include, by necessity, the current value of the real property which Green Valley owns, not which it has already disposed of.

Each of the experts as well as Mr. Bidsal agreed. The profit is what Bidsal controlled when he made his offer to purchase CLA's interest and set the fair market value. He set the price and was in control of calculating the profit. Gerety, he included, or should have included, what the actual value of Greenway was when he set the fair market value at $5 million. He could have set it at $6 million or at 7 or 8. He could have guaranteed that he got every nickel and dime of gain that -- or profit out of -- out of Greenway. But the fact is he made a lowball offer and counted on CLA

not being able to buy.

What proof do we have of that? The answer is plenty. First, we have Mr. Bidsal's testimony concerning the prices he listed the Green Valley properties for sale -- for sale in 2017 before he made his offer. He had received broker evaluations for just the Henderson properties, that's the Nevada properties, for more than $6 million and received an offer for Greenway to be somewhere between one point -- which he had testified was somewhere between 1.5 and $1.8 million. This is at -- found in his transcript at 782, lines 1 through 16.

Second, and perhaps even more telling, Mr. Bidsal's refusal to sell his membership interest unless CLA paid him based on a $6.3 million fair market value as opposed to the $5 million that he had offered. That's found at -- testimony at page 1158, line 20, to 1159, line 9. This was not disputed.

So Mr. Bidsal knew what the value of the company was. He chose to try to take advantage of CLA. Now, who's the nice guy here? He controlled the fair market value, and instead he was gambling that Mr. Golshani, who he knew had health problems, would not exercise the election to buy instead of sell.

So what should be included as part of the COP