

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNITA SUE NELSON,
INDIVIDUALLY, AND IN HER
CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S.
NELSON NEVADA TRUST DATED
MAY 30, 2001,
Appellants/Cross-Respondents,
vs.
MATT KLABACKA AS
DISTRIBUTION TRUSTEE OF THE
ERIC L. NELSON NEVADA TRUST
DATED MAY 30, 2001; AND ERIC L.
NELSON,
Respondents/Cross-Appellant.
and
ERIC L. NELSON,
Respondent.

SUPREME COURT CASE NO.: 87234

District Court Case No. 2024-01537
Electronically Filed
Feb 13 2024 01:30 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO APPELLANT, LYNITA NELSON'S OPENING BRIEF

VOLUME 3

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S. Nelson Nevada Trust Dated May 30, 2001*

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on February 13, 2024, a copy of the **APPENDIX TO APPELLANT, LYNITA NELSON'S OPENING BRIEF VOLUME 3** was filed with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

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MICHAELSON LAW

/s/ Michelle Ekanger

An Employee of Michaelson Law

1 own it or manage, is that correct though, Mr. Luszeck?

2 MR. LUSZECK: Yeah, it does. And I thought I made that
3 clear in the underlying proceeding, Your Honor, is that ELN Trust does
4 not manage, and it's not a member of NBGS.

5 MR. KARACSONYI: they refused to tell us that at prelim.

6 MR. LUSZECK: -- it is a completely non-party that's being
7 kind of, you know, making an entrance at this 11th hour. So I apologize
8 if there was confusion there, but I thought that had been made clear in
9 the underlying pleadings.

10 THE COURT: Mr. Karacsonyi?

11 MR. KARACSONYI: Yeah. We wouldn't have brought the
12 motion if it was still in their Trust. We asked him. They tried to -- Eric
13 tried to hide it, hoping we wouldn't find it. What he did was he did a
14 transfer of Bella Kathryn to NBGS, said it was a party with identical
15 ownership. But then we noticed that at some point discovered that the
16 managers had been changed on the Secretary of State for the entity.

17 And then we asked him, we said, can you tell us if this is still
18 owned by the ELN Trust? I mean, that's the representation you made to
19 the county recorder when you, when you avoided the real property
20 transfer taxes, and they said, no, get lost. So we filed a motion and now
21 they want to basically turn their bad act into some kind of, you know,
22 turn this back around on us. Like, this is our fault that this is getting
23 delayed and this has caused all these problems.

24 What caused this problem, initially, is that you transferred
25 the property. If you wouldn't have transferred the property, if you

1 wouldn't have sold all the Band One properties, we wouldn't have dealt
2 with all these issues in the last month and spent an inordinate amount of
3 time dealing with these issues and could have focused on the task at
4 hand, which was going to trial.

5 But you probably were hoping, Eric was probably hoping,
6 that if he did all these things and he sold all these Band One properties
7 close enough to trial and did all these things, that, you know, he could
8 just get to trial and without any of this ever having to account for these
9 things, and ever having to answer to the Court; the problem was that
10 they transferred it.

11 For Mr. Luszeck to say that your decree of divorce made clear
12 that Bella Kathryn belonged to the ELN trust is ridiculous. The decree of
13 divorce has been vacated. If he wants to impose the property division in
14 the decree of divorce, we'll stipulate to that now. We wouldn't have had
15 to go through all of this. If that's still in effect, then please transfer all the
16 Band One monies and property and Russell Road and we can be done
17 with this.

18 There is no finding, we have no final judgment. I predicted
19 when you, when you issued that order for summary judgment, you gave
20 the oral clarification, we had filed a motion for you to make written
21 changes to it, saying to Your Honor, that I guarantee you that somebody
22 will misrepresent or say to you, put words in your mouth with this order,
23 even though you gave the oral clarification that you were just looking at
24 the transfers themselves without any testimony as to the purpose or
25 reason of them, and now that has come to pass.

1 They're trying to say that you have found, made a definitive
2 finding, which you already told them was not any definitive finding, was
3 just a statement about the mere transfer itself without any additional
4 evidence, now they're saying that you found that Russell Road belongs
5 to the ELN Trust; that's never what you found.

6 The key here is, we really -- we need to have some kind of
7 guarantees that the property is being held and can be -- and that there's
8 enough property to compensate Ms. Nelson at the end of this case, and
9 the only way to do that is to make sure that you have jurisdiction over all
10 the properties. Now this argument that, well, we're focusing on things
11 that happen post-trial, so none of that is relevant.

12 Absolutely it's relevant. We're not dealing with things that
13 happened post-trial that pertain to properties that weren't owned at the
14 time of divorce, we're dealing with things that have happened post-trial,
15 which by the way, the Supreme Court has said, because your decree was
16 vacated, there is no final judgment yet. So we're dealing with actions
17 that pertain to properties that were held on the date of divorce.

18 Those properties are exactly what you have to adjudicate.
19 And absolutely we're entitled to know where they are, and you have a
20 responsibility under the law to preserve the status quo and to make sure
21 that there's sufficient property to enforce your orders at the end of the
22 case; and that's the problem. He's been trying to avoid that. And now
23 that it's creating problems for everybody, now he wants to say, you
24 know what, just forget about it, gloss it over. Well, it doesn't work that
25 way.

1 The Court has to enforce the rules. The rules were there was
2 a JPI, the rules were that you have to preserve the property. And the
3 rule is that if somebody else claims an interest now in property, which is
4 subject to your adjudication, which is absolutely the case, because Bella
5 Kathryn is part of the property that was held on June 13th, 2013, June
6 6th, 2013, that they have to be made a party or else you cannot make an
7 order that affects them.

8 Let me give you an example. If he had transferred a
9 hundred percent, and we don't know what else he's transferred. I mean,
10 he says there's 7 million in the ELN Trust today. We don't know if that's
11 true. He even talked about that he needs to pay his children and do
12 other things, to transfer to the children. But if he had transferred
13 everything to the, to the NBGS, which may be the case, we don't know,
14 then you will have an order.

15 You will have a trial and make a decision adjudicating
16 property, and you'll have a third party saying -- coming in and saying
17 that you couldn't do that we claim an interest in that property and we'd
18 have to start this process all over again.

19 Then he complains and says, well, we're bringing the kids
20 into this. We didn't bring the kids into this. It's like earlier when you said
21 that Matt Klabacka is the next victim; the victim is sitting to my right.
22 You're not a victim, Eric, when you're the one that brought the kids into
23 this and transferred the assets to them; the victim is Lynita Nelson. You
24 could have waited; you could have waited one more year if you wanted
25 this trial to go forward as scheduled. You could have waited four more

1 months when you sold all the Band One properties, if you wanted this
2 trial to go forward as scheduled.

3 But instead, we were hoping to do it as quickly as possible,
4 as close to the trial as possible to create a problem for everybody and
5 hoping that we could do nothing about it. There is a standard for
6 reconsideration, and that goes to their arguments. But the , the fact of
7 the matter is there's a standard for reconsideration. They have to bring
8 up new evidence. We, in our opposition, literally cited the exact pages
9 where they made the exact same argument the first time around; and
10 what is the purpose of this?

11 Are we filing motions for reconsideration, making the exact
12 same arguments to ensure that we don't have time to prepare for trial, is
13 that what this is about; because that's what it feels like right now. It feels
14 like all of this has been done to prevent Ms. Nelson from having the
15 opportunity, and her attorneys from having the opportunity to prepare
16 the evidence to present her case. These arguments were all made, they
17 were all considered; nothing new about what he said.

18 In fact, he started out his presentation, by saying that five
19 years ago the Supreme Court entered an order. Well, you knew that
20 weeks ago when you make your decision on January 31st. So what is
21 new here that requires reconsideration? Nothing. It's all the same
22 arguments. It's been denied once, it should be denied again so that we
23 can move this case forward towards the finish line. Get all the property
24 under the control of the Court, that's supposed to be under the control of
25 the Court and make a final decision so these parties can move on with

1 their lives.

2 MR. NELSON: Your Honor, this is Eric Nelson. They make
3 an attack on me. I know my attorneys don't want me to talk, but I would
4 like to say a statement, please.

5 THE COURT: Absolutely.

6 MR. NELSON: Okay. I'm 63 years old. We had the virus; I
7 was very sick. The NBGS is my five children. They're not going to sell
8 the house, it's the family house. I am moving to my new wife's condo.
9 The cabin is my five children's and the grandchildren's cabin. That is the
10 NBGS, they're not going to sell it. If there's some reason that you want
11 to bring my children in they'll all come testifying, but I would prefer that
12 you wait until after the trial to bring in the NBGS.

13 My little girl and my son have been in counseling for ten
14 years, and if my little girl hurts herself over something like this, I cannot
15 discuss their mother with them in this divorce. I beg you, do not bring
16 my children into this, unless I have erred. The Supreme Court even said
17 that it was brought up on that last ruling on the JPI, Ms. Lynita sold
18 Palmyra, and that was part of it. And so anything that sold before the
19 4/16, let it go. And so that's when I started to account for every penny. I
20 didn't know I couldn't transfer anything, because nothing was under a
21 JPI, except for the Lindell property and the houses. And that was, I
22 thought normal course of business. Again, every penny can be
23 accounted for, all this can be at trial. Please do not postpone this trial for
24 Lynita and me. We have to get this over for our children and for you.

25 If I lose, I will pay. If I win, I will assist Lynita in other areas

1 so we can cut all the bull crap out for this interest and all that and get it
2 over with. I beg you, Your Honor, put NBG out. Afterwards, this is a
3 mental situation with children and you're there to protect them more
4 than Lynita, myself and more than any of these attorneys that sit in
5 there. Thank you, sir.

6 THE COURT: Thank you. Ms. Lynita, do you want to make a
7 statement?

8 MR. KARACSONYI: No, no. I'll make it on her behalf.

9 If he was worried about the children's welfare and well-
10 being, he wouldn't have put them squarely in the middle of this. What
11 came first? You weren't that concerned; you knew what was going to
12 happen.

13 THE COURT: Yeah. Those are issues as far as the kids. The
14 issue is getting to trial. That's the real issue on this, how do we get to
15 the trial in two weeks, is that what it is?

16 MR. KARACSONYI: Yeah. Your Honor, if --

17 THE COURT: So let's address discovery issues on that
18 because that's my concern. I want to get this trial done. You guys want
19 to get this trial done. I didn't --

20 MR. KARACSONYI: Well, let's talk about -- Your Honor, can
21 we talk about it?

22 THE COURT: Yeah.

23 MR. KARACSONYI: Because there's --

24 MR. LUSZECK: Well, hold on. Are we done with this motion
25 for reconsideration? I never got a chance to respond and reply, Your

1 Honor.

2 THE COURT: I'm sorry.

3 MR. LUSZECK: I don't know --

4 THE COURT: I'm sorry, Mr. Luszeck.

5 MR. LUSZECK: -- are you [indiscernible] on that issue now?

6 THE COURT: No. You can [indiscernible]. I'm just trying to

7 cut to the chase of discovery to see what the discovery of things were

8 before. But I didn't realize -- Mr. Luszeck, you can respond, of course.

9 MR. LUSZECK: Yeah. I'll keep it brief.

10 THE COURT: Yeah.

11 MR. LUSZECK: So I mean, the motion for reconsideration

12 standard, it's the exact same. We quoted the rules and the statutes

13 directly from the previous motion for reconsideration cited by Mr.

14 Karacsonyi. And sure it's new evidence, but it's also if this Court errs.

15 So what would the new evidence be in this case, Your

16 Honor? If this Court believed that NBGS was owned by the ELN Trust as

17 opposed to Eric and Lynita's kids, that's new evidence, number one. And

18 number two, I just stand back and I say, I think there was an error

19 because I think there's a lot of unintended consequences that are going

20 to happen if NBGS stays in as a party, so.

21 You know, Mr. Karacsonyi also said, we need to know where

22 all the assets are in the ELN Trust. Well, isn't that interesting? Because

23 we go back to, we don't know what assets Lynita has. We don't know

24 where the assets are. Where's the million dollars that the ELN Trust paid

25 over to -- or the 324, you know, plus all the rent that's collected. I mean,

1 it's the same thing here. They're refusing to provide source documents
2 or documents which are personal to her, but they're demanding that it
3 be provided for the ELN Trust. And once again, I just think that's
4 improper.

5 The way that this works in litigation, Your Honor, every case
6 that I've been at, they have to prove their case in chief first before they
7 start obtaining all this confidential and proprietary information. So if
8 they're able to do that, I can see they're entitled to all this information,
9 but not until then. You can't just give all this proprietary and confidential
10 information out now if she's unable to prove her case in chief.

11 So that's where I think this Court erred. I think there are
12 different arguments. Some of them are the same, but I think the Court
13 should still rule on them.

14 THE COURT: Thank you.

15 MR. LUSZECK: So that's all that I have with respect to the
16 motion for reconsideration on the January 31st order.

17 THE COURT: Thank you. All right. Let's cut to the --

18 MS. HAUSER: Your Honor.

19 THE COURT: Yes.

20 MS. HAUSER: Your Honor, we just have one final
21 comment --

22 THE COURT: Sure.

23 MS. HAUSER: -- with regards to the adjoining the LLC. Just
24 so the Court remembers, now that they've been served on February
25 24th, each and every document moving forward has to be served on

1 them. This is going to multiply the proceedings and the costs.

2 So we go to trial in two weeks, our exhibits, Lynita's exhibits,
3 everybody is now going to have to be served on a whole new party. The
4 calendar call in theory they should be -- I mean, every single document
5 moving forward now that they've been served, they have to be served
6 on. So you're going to cost these parties more money and it's just going
7 to multiply the proceedings.

8 THE COURT: Thank you, counsel.

9 Mr. Karacsonyi, I guess let's start with the elephant in the
10 room. Discovery, I guess that's an issue on that with this trial on that.
11 What are discovery issues that --

12 MR. KARACSONYI: Yeah. This is the elephant in the room,
13 Your Honor. There is no way that any of us can proceed with this trial as
14 scheduled. And that is just a fact. It's the circumstances. It's what's
15 happened. Their expert disclosure you set over our objection for Friday,
16 January 28th with an expert deposition deadline of March 4th. That
17 gave us 34 days, 32 days if you exclude the weekend after it was
18 produced to obtain documents from the expert and depose them and
19 follow up on any additional discovery which was necessary as a result of
20 the expert report.

21 We did send a notice of subpoena for Doug Winters. We
22 sent out the subpoena. We received documents March 1. We're
23 receiving documents tomorrow from Dan Gerety, which were due last
24 week. And we had the deposition of Lynita was scheduled for March 1st,
25 last week. Eric was scheduled for March 2nd. Matt Klabacka was

1 scheduled for March 3rd, which you're hearing a motion for protective
2 order, and Doug Winters was scheduled for March 4th.

3 Now Mr. Carman was sick and I'm not complaining about
4 that. It's just a fact of what happened. Mr. Luszeck had a conflict on
5 March 2nd. And we as a professional courtesy with each other, we've
6 been working well together. We moved Lynita to March 3rd and Eric to
7 March 4th, which was fine at that point because we could have still taken
8 their depositions, okay. And we agreed to move Mr. Winters to March
9 10th. That was all fine. We would have had the depositions. All
10 depositions would have been completed by March 10th subject to your
11 ruling today on Mr. Klabacka's deposition.

12 Now as Mr. Carman alluded to earlier, he noticed that the
13 new party the night before Lynita's deposition on March 3rd last week,
14 he noticed that that the new party had not been served with notices.
15 And called me and we decided to discuss it with the discovery
16 commissioner. All of us, all of us here today. And we called the
17 discovery commissioner and we had -- the discovery commissioner was
18 nice enough to give us a Zoom conference on last Thursday morning.
19 And he recommended basically that the depositions not go forward, but
20 that he would set a five day notice period for NBGS or for any future
21 deposition notices so we could attempt to try to get this trial to go
22 forward.

23 What the problem is, is that means now, right now, if we did
24 a deposition notice, the only time we could do a deposition, the first
25 available date would be Monday of next week, the week before the trial

1 when we're supposed to be preparing. Mr. Carman has provided me his
2 available dates for next week and he's available March 14th until 3:30
3 and March 18th outside of our pretrial conference with you. We have at
4 least three depositions to take, two that are full day, Eric and Lynita.
5 When would we get the transcripts for these depositions? How would
6 we possibly prepare? We go first the next week to meet our burden.
7 How would we possibly do that? There is no ability now for us to take
8 these depositions and to adequately prepare for trial.

9 As they pointed out, NBGS was served on February 24th.
10 They're not required to respond until March 17th. I'm sure they'll ask for
11 additional time. They obviously don't have even notice of the trial dates.
12 If we issued a new notice, they could get those as well. They're not
13 going to have a meaningful chance to participate. That's just a result of
14 the timing. And so they're going to -- any decision they'll probably
15 object to.

16 Meanwhile, we've had motions for reconsideration of the
17 order adding NBGS, reconsideration of the order regarding child
18 support, motions for protective orders of Nevada state title, which I'm
19 still waiting for a subpoena for documents that you said we were entitled
20 to under the Russell Road order and they were supposed to produce to
21 us, which are absolutely relevant, so that we can know what the interest
22 was, how much he received, whether he really did only own two thirds
23 or whether he owned the full thing has been an issue at trial.

24 And because there's nothing in family court in divorce cases
25 that say you have to meet your burden first before finding out about the

1 community property. The Court has already -- the Supreme Court's
2 already said, the rules of family court apply to this case and have to be
3 imposed prejudgment. And the motion in limine for Larry Burch and the
4 motion for protective order for Matt Klabacka and who knows what
5 motions are next.

6 So at this point, there is no way that any of -- I don't see how
7 any of us can take the depositions and adequately prepare for trial and
8 my client is the one who's most prejudiced by that because she has the
9 burden of proof. And if she can't meet that burden of proof, then the
10 case won't proceed any further. And she's the one that has to go first
11 when this trial is scheduled to start on the 24th.

12 They have been -- to the extent that they tried to argue
13 against this and say that there's some way we can do this, I just want the
14 Court to recall that you have accommodated them multiple, multiple
15 times, and especially with this expert report. And they should not be
16 able to -- you know, having received the Court's good graces and to
17 make sure that everybody had an adequate chance to prepare, we
18 should not be prejudiced with that as a result.

19 And I'll just remind you that you did multiple scheduling
20 orders. You had an original scheduling order that you did on January --
21 you had scheduling orders on 11/17/2018. You had scheduling orders on
22 10/25/2021. You had the scheduling order before that, which originally
23 had set the trial, I believe last year and had made -- the original
24 deadlines were April 19th for our expert report and July 19, 2021 for their
25 expert report.

1 On June 21, 2021, they filed a motion requesting a six month
2 extension. They filed a motion for summary judgment and said, if you
3 don't grant it, give us a six month extension to file our expert report.
4 They retained their expert, their expert engagement letter that they
5 produced to us was July 13, 2021, six days before the expert disclosure
6 deadline. And Eric signed it as investment trustee of the ELN Trust on
7 July 23rd, 2021, which was four days after the disclosure deadline. But
8 you let that happen and you said I'm going to give you more time and
9 you gave them until December 31st, 2021.

10 And then they came in and said, Judge, we really need more
11 time. And you did an amended scheduling order, and you gave them
12 more time, yet again another time. And unfortunately, if we'd had those
13 original dates before you gave them that second extension to February --
14 to January 28th, then they would have produced everything on
15 December 31st and we'd have an extra month, 28 days that we could
16 really use right now, but we don't have that. We can't -- we didn't have
17 enough time to address and deal with all these issues.

18 And the problem is now that because they were given this
19 opportunity twice to extend the deadline and to move things, my client
20 has been severely prejudiced of this. And I know we all want this to go
21 forward. Trust me, Ms. Nelson didn't want this to be continued any
22 more than anybody else, but she understands that she has to be able to
23 present her case. And if we've gone this far, we've gone this long, we're
24 this close. We have expert reports. We have the deposition scheduled.
25 A continuance of 60 days is not going to make the difference, but it will

1 ensure that everybody gets a fair and adequate opportunity to present
2 their case, which is what everybody, Eric Nelson, Matt Klabacka, Lynita
3 Nelson, NBGS deserves in this case.

4 So we respectfully request that you give us the time to
5 adequately present our client's case at the remand trial in this matter.

6 THE COURT: Thank you, counsel.

7 MR. LUSZECK: Can I respond?

8 MR. CARMAN: You want to go first?

9 THE COURT: Who wants to go first, Mr. Luszeck or Mr.
10 Carman, whoever?

11 MR. LUSZECK: Mike, you can go if you want.

12 THE COURT: Yeah, I figured.

13 MR. CARMAN: And Your Honor, I don't even understand the
14 request for a continuance. We have worked together with counsel.
15 We've worked together with counsel well to make sure that this trial will
16 go forward. The reason that we have been dealing with this deposition
17 issue is because we want the trial to go forward. It was a commitment
18 on the part of both counsel, all counsel to ensure that it would go
19 forward.

20 The only problem right now is this joinder. And I got to -- to
21 the extent that Mr. Karacsonyi's saying, oh we didn't have time. The
22 joinder was done on January 31st. They waited 24 days to serve the
23 complaint. Had the complaint been served on January 31st, we wouldn't
24 be in this situation at all. They would have been past their response
25 time; they would have been included in deposition notices. The reason

1 we're in this position is because they served the third party on --

2 MS. HAUSER: February 24th.

3 MR. CARMAN: -- February 24th. And it does create a
4 situation where it's very difficult to notice depositions when a party has
5 been joined at the 11th hour. And we don't even know -- they don't have
6 an attorney. They -- you know, it's not a situation where we can work
7 with them.

8 We think that that -- I mean, we urge you to reconsider that
9 joinder. If you reconsider the joinder, we have a heck of a lot more days
10 to schedule depositions. Mr. Karacsonyi talked about the dates available
11 next week, but we also have dates available this week. The only
12 problem with those dates is the fact that this party was joined, they don't
13 have counsel, they haven't made an appearance, they're obviously not in
14 default and it's created this situation.

15 But you know, to the extent that they're trying to use this as a
16 -- they're trying to piggyback a request for a continuance on it. You
17 know, you can't hold on to a complaint for 24 days and then blame
18 opposing counsel for not serving it and claim that your client is being
19 prejudiced. The only concerns that we've had with the depositions are
20 because there was a 24 day delay in serving that complaint.

21 THE COURT: Mr. Luszeck.

22 MR. LUSZECK: Your Honor, if I may, I'm somewhat shocked
23 with the request and the statement that they haven't had adequate time
24 to prepare for trial. They've had five years. It'll be five years in May
25 since this case was put on remand. They've had nearly five years to

1 prep for trial.

2 If this Court recalls when this case was remanded, I had --
3 just the absurdity here, Your Honor. I had to file a motion because Lynita
4 was taking the position that somehow we had the burden of proof at
5 trial. So we probably wasted a year or 18 months just for this Court to
6 confirm that it was Ms. Nelson as opposed to the ELN Trust that had the
7 burden on remand.

8 From there, Ms. Nelson indicated that she was retaining
9 Anthem Forensics to prepare an expert witness report, which this Court
10 repeatedly granted them extensions on. We waited for years to get an
11 expert report from Anthem Forensics. I can see the fact that once that
12 was received, the ELN Trust requested an extension because it was --
13 because we essentially received a 50 page report which dealt with a lot
14 of different issues that hadn't been previously addressed, one, and two,
15 we had to jump through loopholes just to get Anthem Forensics' file. It
16 took forever just to get their file just to know what documents they've
17 relied on. So this concept that somehow all they need is 60 days, they
18 need adequate time. They've had that time.

19 The reason why -- you have to ask them, Your Honor. Why
20 didn't they depose Eric -- they've had five years to depose Eric. Why
21 haven't they deposed him yet? Why were they waiting weeks before
22 trial?

23 What about Doug Winters? Doug Winter's report was
24 produced over a month ago and then they only recently noticed his
25 deposition.

1 These depositions, we have two weeks. I am committed on
2 my end to do whatever I can whether or not it's working Saturdays,
3 Sundays, taking depositions on those days to get this thing to trial at the
4 end of this month. The parties and everybody involved need finality.
5 They need to have this case tried as soon as possible. A 60-day
6 continuance is not going to benefit anybody. If Ms. Nelson is concerned
7 about her case now that she needs extra time to prepare, she's had five
8 years. There's no need to continue this thing out any further. It's not
9 going to benefit anybody; it is just going to create a world of problems.

10 For the very reason of just trying the parties to accommodate
11 schedules. I don't know in June, I don't have much availability for a trial,
12 Your Honor. And same with May. I don't know about Mr. Carman or Ms.
13 Hauser or Mr. Karacsonyi or this Court.

14 I mean, Your Honor, how much time did you have to put in
15 into clearing two weeks for your calendar? My recollection is, is you
16 book your trials months in advance. And I imagine you're prepared to
17 go at the end of the month. We will do whatever -- the ELN Trust will do
18 whatever it needs to on its end to go to trial. And I urge this Court not to
19 continue this out, to make counsel get this thing done and prepare for
20 trial.

21 In my mind there's only three depositions that -- that really need to
22 go forward, Eric, Lynita's and Doug Winters'. You know, they did notice
23 Matt Klabacka's deposition, which we filed a motion for protective on. I
24 think it's frivolous, I don't think it needs to go forward for the reason
25 stated in the motion for protective order. And it is curious to, Your

1 Honor, we sent interrogatories to Ms. Nelson last year asking who they
2 intended to call as witnesses of trial. Matt Klabacka wasn't on there, and
3 he was added at the last minute and as this Court knows he didn't
4 become the distribution trustee until after this decree of divorce was
5 entered. He has no logged knowledge regarding the tracing of assets
6 between 2001 to 2013. There is nothing he could add to this Court for
7 what this Court has already stated is the sole issue at trial, which is to
8 complete a tracing for 2001 to 2013.

9 So Your Honor, I plead with you, let's get this thing going.
10 Let's go to trial at the end of the month. I've been preparing for it; I
11 imagine Mr. Carman has. This can be done if counsel works together in
12 clearing schedules. But it's time to put this to bed, Your Honor. This
13 divorce was filed in 2009. You entered a decree in June of 2013, and this
14 was remanded five years ago. Let's get this done, please.

15 MR. CARMAN: And Your Honor, I just want to add one thing.
16 Mr. Luszeck said there's three depositions that need to go forward, Eric's,
17 Lynita's and Mr. Winters'. Candidly, Mr. Winters is the only deposition
18 that needs to go forward. The Supreme Court has already ruled that the
19 testimony of the party is not relevant in determining the issue that you're
20 determining. As much as I would like to take Ms. Nelson's deposition
21 before the hearing because I think it could show motives and potentially
22 bad faith, the only necessary deposition is Mr. Winters. And I do think
23 that that is where counsel needs to focus all their efforts on right now.
24 And we will make sure it happens.

25 You know, I -- the logistical barriers that have kind of been

1 put in place because of the timing of the service of the complaint on the
2 third party, it's a problem, but it's not a problem we can't get around.
3 And we can pay for expedited transcripts. There's just no legitimate
4 reason to delay this trial that everyone's been preparing for, for so long.

5 THE COURT: Mr. Karacsonyi.

6 MR. KARACSONYI: Your Honor, may I reply?

7 THE COURT: Sure.

8 MR. KARACSONYI: First of all, we filed the motion for NBGS
9 in August of 2021, and I know the Court was busy and had it under
10 submission for a while. We tried serving that -- the NBGS. Oddly
11 enough, so you know, the registered agent is Eric Nelson. They could
12 have called me up and said, we'll accept service.

13 We served Rochelle McGowan at the front desk because she
14 said Eric wasn't there on February 9, which unfortunately, even though
15 that's the registered agent's office, is not sufficient and then waited until
16 we could catch him, and we caught him in the parking lot on February
17 24th and there's a picture of him with the documents so that he can't
18 dispute that he received them.

19 This has been like they said, five years. They had -- this had
20 nothing to do with her taking five years to do an expert report. We had
21 Larry Burch involved for years after the fact. And unfortunately, through
22 no fault of anybody's, that just didn't work out and we had to start over
23 from that point.

24 April 30th to January 28th is how long they had to do their
25 rebuttal report, nine months. And now they're pleading with you, but I

1 pled with you. I pled with you to say, please don't give them this long to
2 do this rebuttal report because it's going to create problems. And you
3 gave them that opportunity. So we're simply asking for the same
4 opportunity, 60 days or 45 days. Do 45 days. But give us enough time.
5 These depositions are necessary.

6 We -- they're acting like we delayed Doug Winters.
7 Remember, we got the report January 28. We have a 21 day period for
8 the subpoena. You have to give seven days' notice of the subpoena and
9 then there's 14 days, at least 14 days to respond. That's 21 days. How
10 much time did we have? We didn't have enough time. We did that. We
11 did the subpoena for his documents so that we would have them in time
12 to depose him. So we had to follow the procedures and we set his
13 deposition before the deadline you'd originally set, which was March
14 4th. And if that had gone forward, great, but it didn't because we had
15 these issues.

16 We do need the testimony of the parties. To say that we
17 could have taken Eric and Lynita's deposition. Well, why didn't they take
18 Lynita's a long time ago? They've scheduled Lynita's for March 1st
19 because each party wanted to know what the other party's position was
20 in the expert report and to be able to ask the other party about any
21 information they thought was necessary based on that. And whether
22 their testimony is relevant to -- you know, their testimony as to this is
23 community or this is separate, the Supreme Court says is of no weight.
24 But certainly Eric has a lot of information about what his expert report --
25 what his expert wrote. He was the one conducting all the business and

1 transactions and we're entitled to ask him that.

2 Like I said, 45 days would make all the difference. Shoot, 30
3 days would make all the difference. We could do this in 30 days. 30, 45,
4 60, but something where she has time to take these depositions so I can
5 get a transcript so I could be ready for trial, and I could be ready to
6 prepare that. There's no way even if you reconsidered NBGS, which you
7 shouldn't, but even if you did, there's no way we could take those
8 depositions in time right now.

9 We're sitting here, we're literally nine business days from the
10 last day before trial. We're supposed to have pretrial memos. We're
11 supposed to meet with you for a pretrial conference. We're supposed to
12 put together exhibit books and present them to you. We're supposed to
13 have all of that ready to go. How is that going to happen? And when
14 you have to take three days of depositions on Saturday and Sunday and
15 whatever day, it's impossible. They know it's impossible. They're just
16 trying to rush us to the finish line because they know we have the
17 burden. They know it's impossible.

18 THE COURT: Thank you, counsel.

19 This was my concern about trying to get this case resolved
20 on the issue and maybe I've been too lenient giving people continuances
21 and giving time. The ultimate goal is to give everybody a fair chance in
22 court. And whether they like the decision or not, at least they felt they
23 got a fair chance on that and they might have had a stupid judge or
24 whatever, but at least they got to be heard. And whether they disagree
25 with the decision, that's the whole reason for -- but the court hearings is

1 to give everybody a chance to be heard.

2 My concern, I am inclined to be quite honest to reconsider
3 joining NBGS as a party. The reason the Court wanted to join on that
4 was for the property, so that if there was concern that he was getting rid
5 of property, the Court wouldn't have exercised jurisdiction over it. The
6 reality as to the Brianhead, I'm not concerned about it. Ms. Lynita has no
7 claim on the property itself, only the interest. It's a financial interest and
8 she could have bought the property herself because they got a first right
9 to refuse. So who bought it is of no consequence, other than if I need to
10 reach the assets for the money. And the fact would be what it sold for, it
11 sold for. We can figure that out on then if she's entitled to more than her
12 community property, half as all her separate property, so be it. Then she
13 can get the financials. So I don't need NBGS for the financial part on that
14 as far as the property -- I mean, for the property itself, just financial.

15 Bella Kathryn, we'll have to look at Bella Kathryn, but the
16 reality of it, it's really looking at the money. And I think Mr. Karacsonyi
17 hit it right on the button. The issue is, is there sufficient resources to
18 make Ms. Lynita whole if she's successful in her case? That's the issue,
19 not if it's the Brianhead property or this other property at stake, the Band
20 One. That's gone if that's sold.

21 As far as the third parties on that, trying to get the property
22 back from third parties is -- would be difficult, if not impossible, unless I
23 added those third parties. I don't know if NBGS was a party on all the
24 Band One. I forgot. Through the course of this argument to be quite
25 honest on it, but the fact is NBGS, joining them as a party was an issue. I

1 feel I can have them supplement after post-trial to bring NBGS,
2 depending on the evidence to say, okay. Here, let's give them their day
3 in court, give them the chance to be represented by counsel if necessary.

4 But I want to get this trial done. That's the issue, I need to
5 get this trial done. I think NBGS does add consequences that the Court
6 didn't fully think through as far as delay. I want to get this done for the
7 parties.

8 Same token, I think they need to get the depositions of Mr.
9 Winters for sure. They all agree on that with the expert. Lynita and Eric,
10 whether they need those depositions or not, they have a right to. I
11 mean, this is these parties' life, this is their trial, this is their chance to
12 testify in court. While they cannot testify as to the character of the
13 property, they can testify as to how they got the property, where it went,
14 how they got it, how it was acquired, how it was disposed of. It doesn't
15 make it their claim which community or not, that's not what they'd testify
16 to. But they can testify where they got the property from or where it
17 went. Whether that is borne out on that, they have a right to testify to
18 that and any evidence on that, so they do have a right to be -- to depose
19 on exactly where the property came from or where it didn't go.

20 So I am inclined to amend my motion as far as my decision
21 as joining NBGS as a part of the action at this time. And depending on
22 what happens at trial, I can have them file a complaint and add them on
23 before I close out the case to bring them in if we need to. But I really
24 want to get this going and that would add a delay with their attorney
25 coming in, getting them caught up to snuff, getting all the documents,

1 which I didn't really think about all the discovery issues with the
2 documents they'd be entitled to. That would just drag this on for
3 another year or two.

4 I'm inclined to -- well, it's really against my better judgment
5 and my scheduling is to try to push this case back. I also want Mr.
6 Karacsonyi to feel that he's had a fair chance. I've accommodated a lot
7 of parties, a lot of continuances on that, which I don't -- my calendar is
8 booked six months in advance, but I'll adjust things or get a senior judge.
9 Like my other calendar I had for the two weeks at this end of this month,
10 I had rescheduled to do double hearings next week and double hearings
11 the week afterwards when I come back because my cases are six months
12 in advance.

13 So I did not want a senior judge to hear my calendar with
14 abuse and neglect because the families that should be heard by the
15 judge that knows what he's talking about determining someone's
16 parental rights. Those are important issues, just as Lynita and Eric
17 Nelson's issues are very important and need to be held by me. I'm
18 inclined to give them a short continuance, but I don't know -- so they can
19 get the discovery done as to Eric, Lynita and Mr. Winters.

20 I'm inclined to grant to protective order as to Mr. Klabacka. I
21 don't think as far as the contempt hearing, I don't think there's enough
22 there for Mr. Klabacka if Mr. Nelson was the one that transferred all
23 those documents, [indiscernible] documents. I don't see you need him
24 for that as far as what he could add to for this. I think he came in after
25 the fact. This is really as the property before. So I'm going to grant the

1 protective order as to Mr. Klabacka.

2 I don't know how you guys' schedules look. If I try to move
3 things around to give a 30 day continuance. I don't know what you guys
4 look like.

5 MR. LUSZECK: Your Honor, can I make a proposal?

6 THE COURT: That would be sometime in May. What's that?

7 MR. LUSZECK: Can I make a proposal, Your Honor?

8 THE COURT: Absolutely.

9 MR. LUSZECK: Can I make a proposal if -- you know, Mr.
10 Karacsonyi's conceded Ms. Nelson has the burden. How about this?
11 What if we keep -- give them another week. We could start on March
12 18th. So right now trial is supposed to start on March 21st.

13 THE COURT: Right.

14 MR. LUSZECK: If there's three depositions that need to be
15 taken, why don't we start the week of March 28th? That gives him a
16 whole another week that everybody should have set aside for trial.
17 Allow him to present his case in chief March 28th. And at the end of the
18 week if he meets his burden and it requires us to come back at a later
19 date, we can do that and we can schedule the remaining at trial.

20 But I'm really concerned with kicking it out 30 days. I don't
21 know how that's feasible. We've got this two week period which
22 everybody has calendared for months. Why don't we just keep that on,
23 start with the 28th? He can start with his case in chief. And then if Ms.
24 Nelson's able to meet her burden, then we can schedule some dates in
25 order for the ELN Trust and Eric to put on their defense.

1 MR. CARMAN: Can I actually weigh in?

2 THE COURT: Sure.

3 MR. CARMAN: I don't understand. If -- with the joinder
4 being reconsidered, we can do depositions tomorrow, Wednesday,
5 Thursday, Friday. I mean, it's a week delay from when they were
6 originally scheduled. I don't understand why it would necessitate the
7 continuance of the trial at all. It's basically delayed Mr. Karacsonyi a
8 week in taking the depositions, but I don't see how it's going to have a
9 meaningful effect on the start time and date of the trial.

10 The problem was that we had to give notice to the third
11 party. Without that notice requirement, why not just do depositions this
12 week and proceed as planned?

13 THE COURT: Mr. Karacsonyi.

14 MR. KARACSONYI: Yeah. First we would have to schedule
15 that, and she has -- Ms. Nelson has been in town, she has to leave. We
16 have other things on our calendar. I don't know what their calendar is,
17 but I'm not open for a full day pretty much any day this week right now.
18 Friday's booked.

19 And since starting our trial and then giving them time to start
20 their case in chief, that would be totally prejudicial, one. It doesn't
21 resolve all the time issues. But it would just basically put us in a position
22 of preparing for the trial, doing a week of trial and then having to re-
23 prepare for trial whenever their case goes. You having to figure out
24 what happened at the last trial, them getting to spend months of extra
25 time or days, weeks of extra time preparing for our case and picking it

1 apart that they wouldn't haven't -- you know, if it had all gone at one
2 time that we would all have gone forward. We won't see what they're --
3 they'll probably be adding exhibits, new exhibits that they didn't have,
4 adding to their memorandum. I mean, it would just be totally prejudicial
5 to make us go and then say, okay. Now we're going to give you time to
6 put on your case and we're going to schedule a new date for that so you
7 can prepare to the umph degree and get an extra advantage that she
8 didn't have.

9 MR. CARMAN: And Your Honor, just --

10 MR. KARACSONYI: We could all schedule dates right here.

11 MR. CARMAN: -- just as an offer, I will clear my schedule. I
12 have March 9th available, March 10th available, March 11th available,
13 March 14th available and March 18th. I can make all of those dates
14 available to accommodate depositions. I don't understand how
15 essentially a week delay of those depositions would necessitate a trial or
16 meaningfully change any prejudice that could occur. It may -- we can do
17 this. I mean, to vacate that trial that we've all been working toward, it
18 just doesn't -- I can't see what prejudice would occur to Ms. Nelson by a
19 week delay of the depositions. It just doesn't make sense to me.

20 MR. KARACSONYI: They're just trying to minimize her --

21 MR. LUSZECK: And Your Honor, I will clear my calendar and
22 I'll work weekends. I mean, same thing, we've had this on calendar
23 forever. Let's get this done. Continuances were granted to both sides; it
24 wasn't just us. It was Ms. Nelson for her expert as well, which they
25 received numerous continuances on. We've got to get this thing tried

1 and kicking this out, you know, another 30 days or whatever is not going
2 to be beneficial to anybody. We've got the time, let's get it done. That's
3 why attorneys get paid, is they clear calendars and they do whatever
4 they can to get cases and to move them on to trial. And I know it's
5 inconvenient, but we can do it. That's why we're paid to do what we do.

6 MR. KARACSONYI: They're just trying to minimize the
7 concerns. Again, they pled with you for that additional time. You gave
8 them until January 28th. In fairness, she should get additional time. She
9 has -- she needs the ability --

10 THE COURT: If we kicked it out a week, Mr. Karacsonyi -- if
11 we kick it out a week and then I opened up the first week of April for trial
12 to give you the back to back weeks so it wouldn't prejudice you for them
13 having more time to prepare. It basically kicks it back a week, gives you
14 time to make up for the week that we missed for the depositions and
15 gives you time to schedule it out, and gives them time to read the
16 transcript and get ready. But I'm inclined to kick it out a week and just
17 open up my April 1st week. For that following week I'll also open it up. I
18 don't know how I'll do it, but we'll find something like that, so you got
19 back to back weeks because I need to get this done.

20 That way it gives them that extra week for the week it was
21 delayed. Takes off any issues about Mr. Luszeck or Mr. Carman having
22 extra time to prepare for trial on that and gets two weeks done on that
23 and gives them that extra week for the depositions that were canceled. That
24 way you guys don't have to work about working on Saturdays or
25 Sundays.

1 Is that -- can you guys make yourself available the first week
2 of April then for the second week of the trial and we'll just push back the
3 beginning? What's the date?

4 MR. CARMAN: And Your Honor, it's a problem for me right
5 now because I have a trial on Thursday, and I was scheduled to be out of
6 town on the 8th and 9th. I'm sorry, the 8th, just the Friday. So the
7 Thursday and Friday I'm not available.

8 THE COURT: How about you, Mr. Luszeck.

9 MR. NELSON: And no disrespect, Your Honor. Let's move
10 forward on that. If we have to go without Mike, we'll do it.

11 MR. CARMAN: Yes.

12 MS. HAUSER: Fine.

13 THE COURT: All right. Does that work for you, Mr. Luszeck?

14 MR. LUSZECK: Yeah. I mean, I've got something in the
15 morning on the 8th, a hearing in another matter. But other than that I
16 can make it work.

17 MR. KARACSONYI: I have an in person settlement
18 conference at the federal courthouse on the 5th.

19 THE COURT: How long is that? Is that the morning?

20 MR. KARACSONYI: I don't know, I guess -- it's with the
21 magistrate, Judge.

22 THE COURT: Oh, okay.

23 MR. KARACSONYI: I don't know how long it goes.

24 THE COURT: Got anything else? Because what I can do on
25 that, we can start the trial that week late. See where we're at on that.

1 And if we need to start like on the 5th in the afternoon to accommodate
2 someone that has a, you know, a magistrate hearing, we make it happen.
3 We need to get this done on that. And if we don't -- I'm hoping we'll be
4 done in two weeks, unless you'll be done in two weeks to be honest
5 depending on that. But I'll just get a senior judge to come cover my
6 calendar for that first week of April, I guess.

7 MR. NELSON: And Your Honor, I'll take any steps that I can
8 to continue the trial scheduled for Thursday the 7th. And maybe
9 hopefully we can be done by then and me not being there on Friday
10 won't have any effect.

11 MR. KARACSONYI: This is -- Judge, when are they going to
12 -- I mean, then let's agree on the record when we're going to take these
13 depositions because I don't want to be told, oh, I'm only going to do
14 your -- one deposition on the 18th and then we're doing the week before
15 trial again and I'm in the same position. I mean, if we're going to make
16 this work --

17 THE COURT: Let's do it now.

18 MR. KARACSONYI: -- we need to set the depositions right
19 now to know.

20 THE COURT: Let's do it now then. They gave their
21 availability, so let's set it now. As far as Eric's deposition, you guys?

22 MR. NELSON: Your Honor, I'm available any day. I would
23 prefer not to be on the 16th of March because I have 25 scouts that I'm
24 taking to the cabin.

25 THE COURT: Okay.

1 MR. NELSON: But I'm available every day. Saturday,
2 Sunday, midnight, weekends, everything. I'm traveling back to Las
3 Vegas tomorrow morning.

4 THE COURT: Okay. Mr. Luszeck and Mr. Karacsonyi, did you
5 want to sound some proposals for Eric, Lynita and Mr. Winters and we'll
6 come back to counsel, see if that works for them?

7 MR. KARACSONYI: Okay.

8 THE COURT: How about Mr. Eric?

9 MR. KARACSONYI: Can they do this weekend?

10 THE COURT: Did you want to do it --

11 MR. CARMAN: Yeah. I can't do a weekend, but I -- what
12 about the dates we originally cleared, Mr. Karacsonyi? Mr. Karacsonyi, I
13 thought you had the 10th --

14 MR. KARACSONYI: I'm looking, I'm sorry.

15 THE COURT: I think he's looking at the dates.

16 MR. CARMAN: It looked like on your email it was the 10th,
17 the 14th and the 18th.

18 MR. KARACSONYI: I have a hearing at 1:30 on the 10th, but I
19 can clear that. I mean, I can go do the hearing as a break during our
20 deposition.

21 MS. NELSON: I have to have them back to back. I can't
22 come to one and then --

23 MR. KARACSONYI: Oh, you have to have them back to back,
24 okay. We got to find two days back to back for Ms. Nelson so that she
25 can -- doesn't have to go back and forth.

1 THE COURT: We have the 9th and the 10th. I don't know,
2 does that work?

3 MR. KARACSONYI: Can you do the 14th and the 15th?

4 MR. CARMAN: Yeah. The 15th actually I have a hearing, but
5 it's the same thing, I can break for --

6 MR. KARACSONYI: What time's you're hearing?

7 MR. CARMAN: -- the hearing. I've got an 11:30 and a 1:30. I
8 can probably coerce my lovely wife into covering at least one of them.

9 MR. KARACSONYI: Okay. And I've got an 11:00, so we can
10 just break for the 11:00 and 11:30 hearing and make that our break. And
11 then just stay after until after 5:00 if we need to. Can you do that?

12 MR. CARMAN: Yeah. I can stay after 5:00. Tuesday the --
13 actually, Tuesday the 15th, it might be difficult, but hopefully I can, yes.

14 MR. KARACSONYI: Well, I just want to make sure we have
15 adequate --

16 MR. CARMAN: If you have one that you expect is going to
17 go after 5:00, maybe schedule that for the 14th.

18 MR. KARACSONYI: Well, no, no. I just mean I want to make
19 sure we have enough time. Actually, I could do the 16th too. Can you do
20 the 16th? 14th and the 16th, can we do that? Can you do --

21 MR. CARMAN: I have an evidentiary hearing the afternoon
22 of the 16th, I wouldn't be available.

23 MR. KARACSONYI: How about 17th and 18th? Although
24 that's eight days before trial.

25 THE COURT: Yeah. I mean, the whole thing was giving you

1 another week was to give you more time to go through the --

2 MR. KARACSONYI: This is the problem --

3 MR. CARMAN: Yeah. Right now I'm scheduled for trial on
4 the 17th. It's day four of an ongoing trial. And --

5 THE COURT: How about the --

6 MR. CARMAN: What about the -- do you still have the 10th
7 available, Mr. Karacsonyi?

8 MR. KARACSONYI: I'd have to break for a hearing at 1:30.
9 Can you take Lynita's on the 10th?

10 MR. CARMAN: Yeah. I should be -- I have a hearing, but I
11 can get someone else to cover it. And then we could do Eric's on the
12 11th if you're available.

13 MR. KARACSONYI: No. I can't do the 11th. I've got another
14 deposition all day. It's the last day of the discovery period in that case.

15 MS. NELSON: They can't do the 9th?

16 MR. KARACSONYI: I can't do the 9th. I can make the 9th
17 work. I'd have to --

18 MR. CARMAN: I can make the 9th work if it's available.

19 MR. KARACSONYI: Yeah. Can we do the 10th and the 14th?
20 10th and the 14th?

21 MR. CARMAN: Yeah.

22 MR. KARACSONYI: Eric on the 14th.

23 MR. CARMAN: Yeah. We can make those -- we've got same
24 type of thing. I may need to break at 3:30 on the 14th for a hearing. It
25 would probably take about 45 minutes, but hopefully we can just

1 schedule breaks around it.

2 MR. KARACSONYI: Okay. So we'll do Lynita on the 10th,
3 Eric on the 14th, and what about Winters? Can we do him on the 15th?
4 He won't need as much time; we just have to break.

5 MR. CARMAN: Yeah. I think we're good.

6 THE COURT: Does that work for you, Mr. Luszeck?

7 MR. KARACSONYI: Did you did you contact Mr. Winters?

8 MR. CARMAN: We'll need to contact him.

9 MR. LUSZECK: [Indiscernible] -- 10th and 13th --

10 THE COURT: Let me see what works for Mr. Luszeck first
11 before --

12 MR. LUSZECK: -- work for me but then --

13 THE COURT: Mr. Luszeck, those dates work for you --

14 MR. LUSZECK: Yeah. I can make the --

15 THE COURT: -- if they do Lynita the 10th, Eric the 14th and
16 Mr. Winters the 15th, if he's available?

17 MR. KARACSONYI: Actually, can we do him the 16th?

18 MR. LUSZECK: Yes. I will make it work. Yeah. I'll make it
19 work.

20 MR. KARACSONYI: I don't want to pay him for breaks.

21 THE COURT: The 16th? They'd like to do Mr. Winters on the
22 16th instead of the --

23 MR. CARMAN: I can't. The 16th I have an evidentiary
24 hearing. It starts at 1:30, but I could do the morning. But I'm -- I don't
25 want to put you in a time crunch.

1 MR. KARACSONYI: What about the 17th?

2 MR. CARMAN: Right now I've got -- that's day four of a trial.
3 That's an all-day setting. I'm trying to move that ironically, but I don't
4 know if the judge will grant that request. You know what, I think
5 Michelle might be able to cover it actually on the 17th if that's --

6 MS. HAUSER: Or the 16th -- well, not Thursday, but the 16th,
7 because --

8 MR. KARACSONYI: Okay. We'll do it on the 16th then.

9 MS. HAUSER: Hold on, I'm looking at my calendar, Josef. I
10 just -- 16th probably would work better for me on Winters.

11 MR. KARACSONYI: Yeah. So 16th for Winters, 10th for
12 Lynita, 14th for Eric.

13 THE COURT: Do those dates work for you, Mr. Luszeck?

14 MR. LUSZECK: Yeah. Yes, Your Honor.

15 THE COURT: Okay. All right. Then why don't we reschedule
16 the trial to start week one on March 28th and week two start on April 4th.
17 And then we'll accommodate. If you need a break for another hearing
18 for an hour, we can break during that, or we'll work it out and then at
19 least we'll get it started.

20 MR. KARACSONYI: But the 5th, you're going to --

21 THE COURT: I think we said on the 15th --

22 MR. CARMAN: My only concern is we do have to clear the
23 16th with Mr. Winters.

24 THE COURT: Okay.

25 MR. CARMAN: But I'm hopeful we can -- if there was a

1 conflict, we could find another date and time. Are you comfortable with
2 that, Mr. Karacsonyi?

3 MR. KARACSONYI: I mean, as long as it's soon. As long as
4 it's not right -- the week before trial.

5 MR. CARMAN: Understood.

6 THE COURT: Yeah. That was the key, was to give you that
7 week we missed on that so you could adequately read the depositions and get
8 all this stuff done. As far as -- why don't we summarize today, it's been a
9 long time? Let me go through each motion and make sure we've
10 addressed those.

11 On the motion regarding Lyndell, I think we -- that got
12 resolved as far as that. I believe the issue was talking about the -- you
13 wanted the accounting for the rents collected. Is that correct Mr.
14 Karacsonyi -- I mean, Mr. Luszeck?

15 MR. LUSZECK: Yeah. I want the accounting plus the source
16 documents, Your Honor, for the time period that Lynita managed Lyndell
17 and Band One.

18 MR. KARACSONYI: Band One? This is all brand new.
19 Lyndell and Band One, we were talking about their whole opposition
20 counter motion had to do with the one month or two months that she
21 collected the rents before the property manager could take over.

22 MR. LUSZECK: The request for the source document has
23 been ongoing for months, if not over a year, Mr. Karacsonyi.

24 MR. KARACSONYI: That's not even before the Court. You've
25 already ruled on that.

1 THE COURT: Stay with Lyndell. I think he asked for --

2 MR. KARACSONYI: He's just adding things.

3 MR. LUSZECK: It absolutely is. The counter --

4 THE COURT: -- to produce the statements for the financial
5 account for rents collected for Lyndell. Let's focus on that. That's what
6 the motion was.

7 MR. KARACSONYI: Yeah. We've already said you've already
8 ruled on this --

9 MR. LUSZECK: Okay, fine.

10 MS. NELSON: Can I clarify something?

11 THE COURT: Yes, ma'am.

12 MR. KARACSONYI: You've already ruled on this --

13 MR. LUSZECK: No. He didn't already rule on that.

14 MR. KARACSONYI: You said before the source documents --

15 MR. LUSZECK: Other than to say that it had to be provided.

16 MR. KARACSONYI: The source documents, you said give
17 him the account, the same thing that they gave to us, which was an
18 accounting and the statements of the bills that were due.

19 THE COURT: And then at trial if we need source documents,
20 we can get those brought if you need the --

21 MR. KARACSONYI: If they think --

22 THE COURT: -- accounting statements, okay.

23 MR. KARACSONYI: If they think any of the rents are short --

24 THE COURT: I'm just trying to make it clear.

25 MR. KARACSONYI: Yeah.

1 THE COURT: We had so many orders, so many things,
2 discovery. I want to make sure we got it right for the order.

3 Ms. Lynita, did you want to add something? You said --

4 MS. NELSON: One tenant was unclear as to where --

5 THE COURT: You may sit.

6 MS. NELSON: Excuse me. I'm sorry.

7 THE COURT: We've been here all day. You can sit down.

8 MS. NELSON: Let me just stand up. I'm already there.

9 Thank you. Thanks for hearing me. One rent, there's a communication
10 with language in that. And so it wasn't made clear to him where he was
11 supposed to pay the rent. And I asked them to personally go talk to him.
12 Because when you're in person, it's a lot easier. And so it wasn't all of
13 the rents. It was one tenant that did that. And I do have the accounting
14 and I've had the accounting, so.

15 THE COURT: So as to the motion to management of the
16 property, that's been resolved. And the order on that is that that will be
17 granted as to the accounting and statements that Ms. Lynita will provide.
18 We'll leave the source documents. If we need those at trial, we can -- if
19 you need those afterwards, or it comes into credibility we'll get those
20 who need it. But that's my understanding as to Lyndell, correct?
21 Everybody speak up now or forever hold your peace.

22 MR. CARMAN: Is the Court going to establish a deadline for
23 that accounting just so we are able to look at it before we depose Ms.
24 Nelson?

25 THE COURT: Sure. Do you got a -- do you know when you

1 get that --

2 MR. KARACSONYI: I'll give -- I got the -- she sent me an
3 accounting already.

4 MS. NELSON: We need him to sign the lease.

5 MR. KARACSONYI: Oh, the lease. We need a lease too for --

6 THE COURT: Okay.

7 MS. NELSON: For month-to-month.

8 THE COURT: A lease month-to-month.

9 MR. KARACSONYI: So we just have to give them the
10 accounting.

11 THE COURT: Okay. When can you get it to them by?

12 MS. NELSON: Today.

13 MR. KARACSONYI: Today.

14 THE COURT: What if we give you --

15 MR. KARACSONYI: Tomorrow.

16 THE COURT: -- tomorrow, close of business tomorrow?

17 MR. KARACSONYI: Sure.

18 THE COURT: That'll be -- what's the date tomorrow?

19 MR. LUSZECK: Perfect, thank you.

20 MS. NELSON: My attorney already has it.

21 THE COURT: That's what, the 10th?

22 THE CLERK: Yes.

23 THE COURT: All right. As far as the leases, is there any
24 problem with Mr. Nelson signing a month-to-month lease? I think that
25 was the next issue I believe.

1 MR. NELSON: I already signed it. Your Honor, I already
2 signed it. I gave it to Mr. Luszeck a couple weeks ago.

3 THE COURT: Okay. All right. If not, if you can have that
4 signed by close of business tomorrow as well, Mr. Nelson, if it's not. If
5 it's already taken care of, great.

6 MR. NELSON: Yeah.

7 MR. KARACSONYI: It's the same terms as the --

8 MR. LUSZECK: My --

9 MR. KARACSONYI: -- last lease, right?

10 MR. LUSZECK: Yeah. My recollection was he signed -- he
11 executed a lease for a year as opposed to month-to-month. So I mean
12 we can definitely discuss that issue with Mr. Karacsonyi I guess further,
13 but I think the ELN Trust had executed a lease for one year.

14 MR. KARACSONYI: Yeah. He had done a year and we didn't
15 want a year. We just wanted it to be for a short timeframe because if
16 you give her the property then they have to deal with each other for a
17 long time.

18 THE COURT: Well --

19 MR. NELSON: All right. It's all right Your Honor. I'll go
20 month-to-month.

21 THE COURT: All right. Thank you Mr. Nelson.

22 Number two, an order to show cause against Eric Nelson and
23 Matt Klabacka. I'm inclined to grant that as to Mr. Nelson and set it for
24 an evidentiary hearing at the close of our trial if necessary. Again,
25 depends on the -- what the Band One property, if Ms. Lynita's got no

1 claim in that Band One property, then the order to show cause becomes
2 moot, because then it becomes punitive instead of to force compliance
3 with it.

4 So I will grant the order to show cause as to set that for
5 hearing, order to show cause as to Mr. Nelson only because I don't
6 believe Mr. Klabacka can add anything to it. If it comes up on that -- that
7 evidence comes up with talking to Mr. Nelson, Mr. Klabacka could have
8 been in violation then we can add that. But right now it looks like from
9 all the documents are signed by Mr. Nelson to transfer those properties.

10 So an order to show cause and we'll set that for hearing
11 during our trial. Depending if we get done early, we can do it there. And
12 if it's moot, it's moot. So it's an order to show cause as to Eric only. And
13 that evidentiary hearing will be set during the time of trial, during the
14 trial proceedings as necessary.

15 MR. KARACSONYI: And then the 7 million that he says he
16 has now, are you going to make any orders to make sure that --

17 THE COURT: Yeah. At the end, let's get that. Remind me at
18 the end so we can get that to talk about the concerns you had about.
19 Motion -- I'm going to grant Mr. Klabacka's motion for a protective order.
20 I'm going to deny it as to attorney's fees and costs, but I will grant it as to
21 the protective order. Mr. Klabacka, I think he came in. He's got really
22 nothing to add when he came in as to -- it was after the tracing period.
23 And also the fact that as to the contempt, I don't think his testimony at
24 that time will be necessary. If it comes up as to evidentiary hearing, then
25 we can address it. But I will grant the protective order as to Mr.

1 Klabacka. Deny attorney's fees.

2 MR. KARACSONYI: What about Nevada State Title, Your
3 Honor, for the records from the sale of Russell Road?

4 THE COURT: Okay. Keep those to the end. Let's get through
5 these motions and we'll keep a track on that. Then we'll hear from every
6 at the end.

7 The other one I had was the motion to -- for the child support
8 and spousal support. This Court will deny it as to spousal support, but
9 the Court will grant it in part to review the child support to see if they
10 had made that offer for the 87,775. I need to review my notes on that
11 one. So let me make --

12 MR. KARACSONYI: I think you said, Your Honor, that it was
13 denied but that you would double check your notes. There was no
14 granting in part because you didn't see anything yet. And you said the
15 interest could be dealt with at trial on any interest that's owed to ELN
16 Trust on any sums that they say that she wrongfully retained.

17 THE COURT: Okay. All right. I believe I said granted, but I
18 would review the child support.

19 MR. KARACSONYI: You said deny it, but you would review
20 the child support to see if there was any mention of it at the hearing back
21 in 2000, whatever year, '13 or --

22 THE COURT: Yeah, okay. It'll be denied and then it will be
23 reviewed as to child support. Then I'll amend it appropriately if that does
24 come out that the child support was addressed and offered. The joint --

25 MR. CARMAN: And Your Honor, can I just ask for

1 clarification?

2 THE COURT: Sure.

3 MR. CARMAN: It's denied but the interest portion is still
4 going to be discussed as an offset at trial. Is that my understanding?

5 THE COURT: Yeah. When we get all the interest with the
6 amount that they owe. We're going to get reciprocal interest to the other
7 side as appropriate. And then we'll work out all the offsets.

8 MR. KARACSONYI: You already decided --

9 MR. CARMAN: So that --

10 MR. KARACSONYI: -- he's not --

11 MR. CARMAN: -- that portion is --

12 THE COURT: The order stays as is on that. We're going to
13 deal with the stuff when we get to trial about any money you have. But
14 this accounting that we did is going to stay. The ones we did --

15 MR. KARACSONYI: Yeah. Not the interest on the child
16 support.

17 THE COURT: -- with the penalties are going to stay.

18 MR. KARACSONYI: It's -- you were saying that interest
19 would work both ways on any money she owed.

20 THE COURT: Right.

21 MR. KARACSONYI: Yeah, okay.

22 THE COURT: Reciprocal interest will be there, but the
23 spousal support and child support stays as ordered subject to the Court
24 reviewing the child support offered by Mr. Luszeck to see if that was
25 addressed at that point.

1 As far as the joinder of NBGS, that will be granted. The
2 motion will be granted to delete them to reconsider that. Because again,
3 that just adds more. And again, depending on what happens at trial, if
4 we need to add them afterward, we'll let them refile the motion. And I'll
5 grant it afterwards if we need to and get them re-served and start all
6 over again if we need to do that. So I will grant the motion for
7 reconsideration dropping NBGS as a partner -- as a party.

8 MR. KARACSONYI: But the rest of your order then stands,
9 Your Honor, on them disclosing the Russell Road transaction and
10 depositing the 2 million?

11 THE COURT: Yeah. We can talk about that as far as getting a
12 guarantee for all the funds in there. So let's look at that right now.
13 Which is granted NBGS as a party. We'll address the Russell Road in a
14 second. And then I think, is that all the motions I had pending? At least
15 that were pending with that. And then as far as the Russell Road, let's
16 deal with that. And I think the other issues you asked about with the
17 Band One properties that you asked about as far as sufficient resources
18 to cover any potential judgment that Ms. Lynita may be able to secure.
19 Is that kind of what's left?

20 MR. KARACSONYI: Yeah.

21 THE COURT: Is that --

22 MS. HAUSER: Your Honor, the ELN Trust filed the motion in
23 limine on Burch, but I don't know if that was on for today, but that does
24 impact the trial. So whether you want to hear it today or have another
25 hearing in a couple days, that will also impact the trial.

1 THE COURT: What is that motion? I don't know what it is.
2 Maybe we can address it now. If not, we'll see. What is the motion? I
3 haven't seen it.

4 MR. LUSZECK: Yeah. It's as to Larry Burch's suitability to
5 testify at trial. I filed a motion to keep him out based upon the fact that
6 we never received his full file in the underlying proceeding. We -- based
7 on that, we think it would be inappropriate for him to testify. I filed a
8 motion on that. Mr. Karacsonyi just filed an opposition late last week. I
9 haven't had a chance to file a reply on that though.

10 THE COURT: Okay. And I haven't seen it at all.

11 MR. LUSZECK: Which I would like to.

12 THE COURT: I'll have to look at that.

13 MR. CARMAN: And Your Honor --

14 THE COURT: What's that?

15 MR. CARMAN: -- we intend to file a joinder to that motion as
16 well. Just you know, if we're going to argue it today, that's fine, but
17 there are some other aspects to Mr. Burch not providing his file that the
18 Court needs to really think about I think.

19 THE COURT: Okay. Well, the concern we have with Mr.
20 Burch is that he was a -- to be quite frank on that, he was a bankruptcy
21 trustee, an expertise in forensics. I think he kept looking at that with the
22 quote, arm's length transactions and fraud and things like that. He was
23 looking at it from that lens, and I couldn't get him focused on the lens of
24 just trying to say property A, where it came from, where it went. He kept
25 getting kind of caught up with the, I think his history in bankruptcy kept

1 trying to get the transaction, what was the nature of the transaction. It
2 really wasn't. It was property A, where it came from, where it went.

3 So that was the issue of Mr. Burch. I remember he's done a
4 lot of reports that are already submitted in the records. So I'm not sure if
5 we need his testimony or not, but I'll consider that motion that's
6 pending. I'll have to look at it since I didn't realize that was pending, but
7 I'll look at that and give Mr. Burch a chance to reply.

8 MR. CARMAN: And Your Honor, I just want to bring one
9 thing to light. I mean, Mr. Burch was a special master, appointed by this
10 Court as a special master. As a special master, he's subject to the rules
11 of judicial conduct. The fact that he's refused to release communications
12 between the parties, that he had a mandatory obligation under the rules
13 to disclose as ex parte communication. It really is a problem. And it's --
14 you know, the idea that he can come in to testify while we still don't have
15 access to his complete file. It's -- I mean, it really is a due process issue.

16 MR. KARACSONYI: It's --

17 MR. CARMAN: The rules are very clear that special masters
18 have to comply with the --

19 MS. HAUSER: And their court file --

20 MR. CARMAN: -- judicial [indiscernible - simultaneous
21 speaking].

22 MS. HAUSER: -- hasn't been tested. Your Honor, the other
23 issue is the reports, although the Court has received them, my
24 understanding and I could be off, is that they've never been tested
25 because you wouldn't allow a deposition. So his reports are hearsay and

1 especially it's more troubling when the parties haven't been able to even
2 question him on -- under oath on how he made the determinations he
3 made.

4 THE COURT: All right. We'll address that in a motion that's
5 pending. Let's see. And then I think the ones we have remaining was
6 the motion for reconsideration as to the Lyndell proceeds, I believe,
7 which was the --

8 MR. KARACSONYI: That was all part of the --

9 THE COURT: Yeah. All part of the --

10 MR. KARACSONYI: -- Russell Road.

11 THE COURT: Yeah. Russell Road, I'm sorry. As far as, you
12 know, a lot of these issues dealt with making sure there's sufficient
13 assets to satisfy Lynita. The problem is if there's -- if Lynita has
14 community property interest on those properties on that that's one thing
15 on that, if not, of course the trust is not responsible, Mr. Nelson's
16 responsibilities or financial obligations. As far as the Russell Road that
17 the Court had ordered, I believe the proceeds -- half of the proceeds to be
18 frozen. I believe on that as far as if she had community property in the
19 Russell Road, and to provide them with the paperwork so they could
20 check to see if it was indeed sale price and things like that. So I think
21 that was the issue that the motion for reconsideration was on that.

22 As far as -- the bottom line, it comes in that the concern is
23 that the fact that that will be sufficient assets to satisfy Ms. Lynita if she's
24 successful. And part of that was the proceeds from the Russell Road. If
25 she got that, at least there'd be half of the proceeds there to pay her for

1 that half if there was indeed. That was a concern on the Court on that.
2 And I think the other one was the

3 Band One, the concern was raised today about Band One
4 properties being sold for 2.85 million. If that was found to be, that was
5 her property that was sold. As far as how would they be able to have
6 sufficient resources to make her whole on the Band One. That's my
7 understanding that's left on the table; is that correct?

8 MR. LUSZECK: Yeah. That's part of it. And then the
9 documentation too, Your Honor, that they're requesting with respect to
10 the sale of Russell. But I go back to it, it's -- the same argument applies
11 true for both sides, right. Which is, we believe that LSN and Lynita owe
12 ELN a million dollars at least for payments made plus statutory interest.

13 So once again, it's -- you know, Lynita's kind of demanding
14 that assets in the name of the ELN Trust be frozen without a reciprocal
15 freeze on assets titled in the name of the LSN Trust. So that's the
16 overarching concern, Your Honor. I go back to; I don't believe she's met
17 a burden. I think if this Court is inclined to freeze anything, this Court
18 should require her to post some type of bond on it. This Court has that
19 discretion under the Nevada Rules of Civil Procedure.

20 But -- and once again, I mean, I think there's enough. You
21 know, I think Lynita's argument's been is, well, there's real property in
22 the name of the trust, which any judgment could be reduced from. But
23 my understanding is the same rings true for the ELN Trust, which is, I
24 believe there's enough real property in there that this Court can tie up.
25 And which very well is probably already tied up via the JPI. So I don't

1 see a need to freeze any liquid assets, Your Honor. And if that's the
2 case, it should be reciprocal for both parties.

3 THE COURT: As far as Mr. Nelson -- are you still on there,
4 Mr. Nelson?

5 MR. NELSON: I am, Your Honor. I think let's just get to trial.

6 THE COURT: Okay.

7 MR. NELSON: You can sort out all those dollars.

8 THE COURT: I think --

9 MR. NELSON: I haven't hid one dollar.

10 THE COURT: And I think you said you agreed that basically
11 that nothing that was transferred to NBGS would be further transferred.
12 I don't know, that's a different entity, but --

13 MR. NELSON: That's correct.

14 THE COURT: -- everybody knows what's going on. They
15 know what's going on on that --

16 MR. NELSON: Well, the kids aren't --

17 THE COURT: What's that, sorry?

18 MR. NELSON: The kids aren't going to sell the cabin and the
19 house, Your Honor. They're not going to sell it. That's their family home
20 and they've got other assets they could take. So they're -- let's get to
21 trial and if I lose, I'll make sure I find the money everywhere, but I'm not
22 selling one thing or trading anything that's not fully accounted for.

23 THE COURT: So the cabin and what's the other property? Is
24 that the Bella Kathryn?

25 MR. KARACSONYI: Yeah.

1 MR. NELSON: Bella Kathryn. And remember she sold her
2 house, so I have a right to sell mine.

3 THE COURT: Do you know the value of those properties for
4 the other half? I don't know what we sold it --

5 MR. NELSON: She sold hers for about a million dollars 10
6 years ago. So it'd be about effective value 1.6.

7 MS. NELSON: It wasn't a million.

8 MR. NELSON: And I think that's about the value of mine.

9 MR. KARACSONYI: The Bella Kathryn's probably worth two
10 to three million now.

11 THE COURT: Is it?

12 MS. NELSON: On Zillow it's almost -- it's 2.8.

13 THE COURT: Okay.

14 MR. KARACSONYI: But the problem is, Your Honor, the
15 Russell Road funds, I mean, he's saying just trust me, and they're trying
16 to point the finger the other way, but she hasn't -- if they have any
17 specific properties, they'd like to bring up that she's sold that they want
18 to file a motion, file a motion. But they haven't filed a motion. This is
19 just to divert attention. He said he has \$7 million in assets right now.

20 THE COURT: Okay.

21 MR. KARACSONYI: You already awarded him -- you already
22 ordered him to put two in his attorney trust account. He just sold 2.85
23 million in assets. He should deposit every cent from the -- either the
24 mortgages or promissory notes or every cent that was received in cash
25 into his attorney's client's -- attorney-client trust account. And Your

1 Honor, it's only -- now it's only three weeks to trial. Certainly that's not
2 an inconvenience for him, but it ensures that you know what you're
3 going to give her.

4 Because if you say again, okay. She was entitled to Band
5 One, she was entitled to Russell Road again. Let's say -- let's just say
6 you find everything to be community, okay. That's just -- it's just a
7 hypothetical. I'm not saying that's what's going to happen, okay. But
8 let's say you do, then you have to give her the same thing she got last
9 time. You have to give her the Band One properties. You have to give
10 her Lyndell, you know you can give her Lyndell. You have to give her
11 half a Russell Road. And so in order to do that --

12 MS. NELSON: And half the cabin.

13 MR. KARACSONYI: And half the cabin you gave her, and it
14 was -- that just stayed the same. But in order to do that, you have to
15 have all the funds from Russell Road, and you have to have all the funds
16 from the Band One properties.

17 And so that way you know specifically what you're going to
18 give to her. So he needs to deposit those funds to the extent that he
19 received any funds or whatever it is from the promissory note.
20 Otherwise you're going to be guessing. You're going to say, okay. I find
21 that it was 50/50, everything's community. We're going to do half and
22 half. She's going to get Band One and Russell Road, and they're going
23 to say, well, there is no more Band One and Russell Road. Well, okay.
24 What can I give her? Well, Judge, we'll disclose to you now what we
25 have. I mean, that's -- she shouldn't have to put her fate at stake like

1 that.

2 THE COURT: Yeah. I think Band One, the real property could
3 not be further sold by NBGS. I don't have jurisdiction over them Mr. --

4 MR. KARACSONYI: No, no. Not NBGS. Band One's not
5 owned by --

6 THE COURT: No. Not the Band One. Not -- those issues on
7 that. They were sold by different properties on it. How can you
8 guarantee they can't be resold? That was the issue we talked about, Mr.
9 Eric.

10 MR. KARACSONYI: Well, I know how you can guarantee it
11 yourself, Your Honor. We've already served them. What you could do is
12 just -- and rather than dismissing them entirely, is just leave them as a
13 party and have them in the case with their -- any issues related to them
14 bifurcated and delayed to a later date pending your decision. Because
15 they have no case based on what happened between Eric and Lynita at
16 the time of divorce. So they weren't -- they didn't own the property at
17 that time.

18 So first you're going to adjudicate the ownership of those
19 properties at the time of divorce, and you can hold any claims against
20 them in abeyance. And then if you determine that she had a community
21 interest in those properties and they're necessary, they'll be subject to
22 the JPI, and you can go forward then at that time against -- with claims
23 against them and that they'll already have been served. But that
24 prevents them from -- that ensures that you can actually make an
25 enforceable order against NBGS to hold those properties. And it doesn't

1 prejudice them because they don't have claims based on 2013. Their
2 claims are based on the transfer recently.

3 THE COURT: That's my concern. Is the Band One property
4 not being transferred any further on that to the fact that the Court can't
5 control it on that. But I'm not sure what the --

6 MS. HAUSER: That one is sold.

7 THE COURT: Yeah. They sold --

8 MS. HAUSER: Band One sold, Your Honor.

9 THE COURT: It was ten different --

10 MR. KARACSONYI: No.

11 MS. HAUSER: It's not in --

12 MR. KARACSONYI: You're mixing -- Bella Kathryn was
13 transferred to NBGS. The Band One properties, there were 10 -- there
14 were --

15 THE COURT: 10 different sold.

16 MR. KARACSONYI: 10 that are sold. There are some that are
17 still owned, and can they disclose today whether they've sold any
18 others? Because that's really --

19 MS. NELSON: I just had two days ago. They're still in Band
20 One.

21 MR. NELSON: Yes. The other -- the last three homes have
22 not been sold. Two are in escrow, but I won't close on them. I wasn't
23 closing on them until subject to the final ruling.

24 MR. KARACSONYI: Two are in escrow. I mean, this is how
25 we learn of things, Judge. This is -- you got --

1 THE COURT: What are the three --

2 MR. KARACSONYI: We've got to freeze all of them.

3 THE COURT: What are the three homes that are left in the
4 Band One?

5 MR. NELSON: Guadalupe [phonetic], let's see here. But
6 none of the escrow papers have been signed. Anaconda (phonetic) and
7 Baxter (phonetic).

8 THE COURT: Do you know what those are worth?

9 MR. KARACSONYI: I don't know the exact amounts, but I'd
10 ask you to tell him right now --

11 THE COURT: Yeah. Don't sell those.

12 MR. KARACSONYI: -- that he's not to sell those.

13 THE COURT: The JPI still covers those on that. So hold off
14 for any sales on those until we get our decision from the trial. We
15 should get on that. So those -- any remaining Band One, Guadalupe,
16 Anaconda and Baxter's not to be sold. So JPI will clearly keep those
17 from being transferred on that. And again, you can kind of delay escrow
18 and stuff until after the trial. And if you get that issue on that, then you
19 can go forward. But right now, they're not to be further transferred.
20 That way they can protect the Band One. I don't know what those are
21 worth.

22 MR. KARACSONYI: I don't know the exact amount right now.

23 MR. NELSON: About 250,000, 300,000 a piece, something
24 like that.

25 MS. NELSON: Another million dollars.

1 THE COURT: So it'd be about 750 to a million.

2 MR. NELSON: Closer to 750.

3 MR. KARACSONYI: But to ensure that you have the --
4 because you're dividing everything as of 2013. That's their date of
5 divorce. That's -- we already know what the values are assigned to all
6 the property. You just have to make a decision as of that date. But if you
7 decide that she was entitled to Band One, she'd be entitled to all the
8 proceeds from Band One. So we need to freeze those monies from Band
9 One and make sure that that asset is still held within the proper -- within
10 the community or within the estate that can be divided.

11 THE COURT: Well, I imagine the assets from 2.8 million is
12 not cash. I imagine you got a lot of mortgages and papers.

13 MR. KARACSONYI: That's what he says. We don't know.
14 We've never seen any documents. To this day we haven't had a
15 disclosure on it.

16 MR. NELSON: Yeah. 1.7 -- about 1,750,000 are first
17 mortgages at 6 percent interest all due and payable in three years. I can
18 -- we could -- you could sell them for more than the 1.750. But I won't
19 move them, I won't trade them. I'm not -- I just need to be able to, if it
20 goes beyond the trial, I have to -- I might need money to live on and to
21 have to pay attorneys, their expenses.

22 THE COURT: All right. With the 1.7 million, as far as
23 mortgages, none of those first mortgages can be sold or transferred
24 pending the trial on that. And again, we'll get all those numbers. And
25 during trial you get to see if they've got an interest on that. The first

1 mortgages he said is about 1.75 million --

2 MR. KARACSONYI: And will he disclose those?

3 THE COURT: -- and first mortgage at six percent interest.

4 MR. KARACSONYI: And any payments on those should be
5 frozen until the trial. I mean, it's only a few weeks. And then whatever
6 cash she got for the sales needs to be frozen too. And that's the only
7 way to truly protect her. There are games being played. He's saying, oh,
8 if it goes on longer, Judge, I'm going to have to spend it. I mean, it's not
9 fair to her.

10 THE COURT: Well, the fact was Band One was in the trust
11 when we started. I transferred. The Supreme Court said I couldn't and
12 transferred it back. So we'll see where that goes on that. But there's
13 interest on it. It may only be a community property interest. So it'd be
14 half of those proceeds if she has a community property interest in it.

15 MR. KARACSONYI: Well, no. Because --

16 THE COURT: I don't know if there's going to be sole
17 ownership on that, we'll have to get to those facts when we get there.

18 MR. KARACSONYI: Well, because -- no. But I'm just saying
19 even if you found -- if you found everything was community, you would
20 -- you gave her half before. It's not just half of that property. In order to
21 get half of all the property she needed Band One a hundred percent. You
22 gave her a hundred percent of Band One. That was just a way to get her
23 the same amount as him.

24 THE COURT: Well, I gave that in order so she could have the
25 income that was coming in before. The income, there was rentals on,

1 that gave her a source of income --

2 MR. KARACSONYI: Right.

3 THE COURT: -- through the 24 year marriage. That's what
4 that was for, to guarantee she had income coming in as far as that. The
5 spousal support was a lump sum because I know she had trouble getting
6 it. But that Band One property was to give her rental income coming in,
7 so she'd have that for the rest of her life or until she sold it as a source of
8 income. That was the purpose for that, was to equalize that, and to give
9 her some support on that. The Supreme Court said I could not take that
10 from the trust on that.

11 So we're going to have to see the interest, because I believe
12 that was in the Band One with the trust and I transferred. The Supreme
13 Court said I couldn't touch that trust to pay his obligation, which that
14 was, was to be an ongoing financial income for her to come on.

15 So we're going to have you hold the -- all the first mortgages.
16 And as far as -- did you get cash payments? How much cash payments
17 did you get from that? Mr. Eric, did you know what cash you got?

18 MR. NELSON: Your Honor, from 4/16 I am holding every
19 penny and accounting for every penny. So they're being held or
20 accounted for. Every cent is being accounted for.

21 MR. KARACSONYI: That's not enough to be accounted for.
22 We need the money.

23 MR. NELSON: That's over \$7 million.

24 MR. KARACSONYI: He didn't answer your question. How
25 much money did he get?

1 MR. NELSON: Over \$7 million. That's over \$7 million. I
2 guess she wants everything.

3 THE COURT: Okay.

4 MR. KARACSONYI: How much money did he get?

5 THE COURT: As far as -- did you want to be heard on that
6 Mr. Luszeck? I know Mr. Eric's talking about freezing stuff that's in the
7 trust on that. So I want to give you a chance to be heard on that.

8 MR. LUSZECK: Well, yeah. I mean I think what you're
9 inclined to do is just hold it and not allow him to transfer the first
10 mortgages. So I think that issue's done, right. You said that he
11 shouldn't do that. And I think Mr. Nelson has agreed on the record that
12 he wouldn't transfer those first mortgages. So to me, I think this Court
13 has already disposed of that issue. I don't know why we're continuing to
14 talk about it.

15 MR. KARACSONYI: Because we're continuing to talk about it
16 because transferring it's one thing. But if he gets cash payments on
17 those, what's he going to do with it? And that only accounts for 1.75 he
18 said. Where's the other million from Band One? What did you do with
19 it, Mr. Nelson? Where did you put it? We have no idea.

20 THE COURT: You're going to get to ask of that in his
21 deposition I imagine.

22 MR. KARACSONYI: I know, but until then where's the
23 money? Who's going to --

24 THE COURT: Well, the fact is --

25 MR. KARACSONYI: -- control it?

1 THE COURT: -- her interest on that is not -- her interest in
2 that would be a community property interest, it'd be half those proceeds,
3 not the 2.8. As a community property interest on the Lyndell property. If
4 she had that interest on that, the other half, we give her that half. With
5 the Lyndell, we see what that's valued on that. But the 1.7 million in first
6 mortgages would be basically -- would be over half --

7 MR. KARACSONYI: No, Judge. But --

8 THE COURT: -- of the community property with 2.8.

9 MR. KARACSONYI: Judge respectfully, you had to give her
10 that to give her half of the property. Then she would have half of Bella
11 Kathryn. How are you going to get half of Bella Kathryn? How are you
12 going to get half of all the other properties? You needed that to get her
13 to half. That was the minimum amount you needed to get her to have
14 was to have 100 percent of Band One, 100 percent of Lyndell and half of
15 Russell Road. If you don't freeze a hundred percent of Band One, you
16 could never get her a 50 percent of the total.

17 THE COURT: Well, the fact was on that -- the problem was
18 on that I equalized the trust --

19 MR. KARACSONYI: Right.

20 THE COURT: -- as community property. Supreme Court said
21 I can't do that.

22 MR. KARACSONYI: No, I understand.

23 THE COURT: The issue comes on it was community
24 property. Just because I gave her half of that doesn't mean she had a
25 community property interest. I gave her half of the trust issued with the

1 Band One to equalize distribution. Supreme Court said I couldn't do that.
2 You guys had the trust [indiscernible] that married couples don't do,
3 right. They do trusts. What does that have to do? Separate the property
4 for separate trusts. That was the problem. I didn't create that. You guys
5 did it and I know why you did it, right. And I tried to do -- I made my
6 findings specifically with the intent of the parties to keep that. Mr.
7 Jeffrey Burr said, advise them of the fact that they could add stuff if -- to
8 keep it equal, but they didn't have to on that. That's what they did. I put
9 that in. Supreme Court said the intent didn't matter. The intent had
10 nothing to do with it. The fact is a trust is a trust. And unless it was co-
11 mingled with separate property -- unless they had co-mingled
12 community property in that, I couldn't do it.

13 So you're right. I did try to equalize it and give half on that.
14 But that was through the marriage distribution. Supreme Court said I
15 couldn't do that.

16 MR. KARACSONYI: No, I understand.

17 THE COURT: So the fact is, if she's got a community
18 property interest in the Band One, I'll freeze the 1.7 and any first -- issues
19 on that. As far as -- you said you have an accounting from April 16th,
20 2021. Again, I don't know how accurate that accounting is, but you said
21 you've got -- account for every penny on that and you got resources to
22 cover that accounting, because that's what we're going to get at the end
23 of trial depending on that. You said you have an accounting from April
24 16th, 2021. Is that right, Mr. Nelson?

25 MR. NELSON: Yes. And you can have it in three -- yeah.

1 Your Honor, you can have it in three days after the trial guaranteed.
2 Everything's kept up to date on my side.

3 MR. KARACSONYI: After the trial, Judge. Judge, the JPI --
4 the Supreme Court said --

5 MR. LUSZECK: Your Honor --

6 THE COURT: I'm done. I'm done.

7 MR. NELSON: -- it seems like he --

8 THE COURT: You're going to freeze 1.7 million of the Band
9 One first mortgages held and with the 6 percent interest will be held.
10 And cannot -- and the JPI cannot be further transferred. Any payments
11 received on those notes will be held. An account on that -- as far as the
12 other issues on that, we'll get there in the depositions of you. In a trial,
13 we'll see if we get there, then we'll see exactly what, if anything,
14 transpired since April 16th, 2021.

15 Again, the JPI Band One was in place throughout there. So
16 when we get to the contempt, we'll address all that. Part of contempt
17 will be any money proceeds that was accumulated from violation of the
18 JPI will be addressed as well. As far as the Bella Kathryn property, the
19 Bella, I don't know what that was worth on that, but we'll address the
20 Bella Kathryn property as well if we need to do that. But I think there's
21 sufficient assets if we have to do that. With Mr. Nelson on that, we'll
22 start separating assets on that to the best of the ability on that. But right
23 now, let's freeze the 1.7 million.

24 And then as far as the Russell Road, I'm inclined to have the
25 2 million frozen assets from the trust on that for the Russell Road. Let

1 me hear Mr. Luszeck on that one. But that's my thinking. So there's the
2 cash on that for half of the Russell Road, the 2 million just being frozen.
3 That'd be for about a month or so if they're successful. And then the 1.7
4 million in first mortgages with 6 percent to be frozen throughout the final
5 determination of the Court. Mr. Luszeck, do you want to be heard on
6 that? That was on your motion for reconsideration.

7 MR. LUSZECK: Yes. I don't have anything to add, Your
8 Honor, other than what I put in my moving papers. And I -- one thing, I
9 just think it's inequitable that this Court's tying up the liquid assets of the
10 ELN Trust and it's not doing the reciprocal with the LSN Trust. So I've
11 said that repeatedly today in the underlying pleadings that were
12 previously filed. So I've got nothing to add other than that, other than
13 the ELN Trust has, you know, once again has a real concern that it's not
14 going to be able to collect on any judgment, but it will [indiscernible]
15 against the LSN trust, so.

16 THE COURT: Okay.

17 MR. KARACSONYI: All her properties not sold.

18 THE COURT: Yeah. We'll see what her properties --

19 MR. NELSON: Your Honor if I could?

20 THE COURT: What's that?

21 MR. NELSON: Why don't we freeze all the assets from 4/16
22 forward and with the exception of needed living expenses or expenses
23 that are required to have attorneys, kids, et cetera like that. I mean,
24 that's only fair. I mean, for me to go back two years, let's get this trial
25 on. We're -- let's just find one thing. Is there any community property?

1 And then throw me in jail if there is.

2 THE COURT: We may with the JPI, so -- no. Just -- no. As
3 far as that, you guys can freeze what you want on that. I am going to
4 deny the request to set aside the order of January 31st, 2022 as far as to
5 the proceeds from Russell Road. I'm going to maintain the \$2 million to
6 be held in an escrow account and also to freeze the Band One first
7 mortgages. And the 6 percent will be -- no longer to be frozen on that
8 until the Court can make a determination on that. As far as the other
9 issues, we'll resolve those at trial when we get there.

10 But I think that gets sufficient. I think there's other sufficient
11 assets that are available that the Court can do to address Bella Cathrine,
12 and any other property we have when we come down. There is some
13 property that Ms. Lynita may owe to the trust and stuff, a million dollars
14 or not whatever, somewhere in there. But we'll get all this resolved. I
15 think the \$2 million liquid from the Russell Road, plus the documents for
16 Russell Road, which is not to be further disseminated, only through the --
17 to be provided so they can see what the numbers look like. Those are
18 not to be further distributed. Upon the close of trial we'll have those
19 destroyed to protect the confidentiality of course, pending any appeal
20 when that's resolved. And then we'll freeze --

21 MR. LUSZECK: Your Honor, I do have an issue with that,
22 which is, why can't -- that should come out at trial. If she's able to prove
23 her case in chief regarding Russell Road, then she should be entitled to
24 all that information. Not until then.

25 MR. KARACSONYI: No, no, no.

1 MR. LUSZECK: I mean, we go back to, you're ordering that
2 Lynita provide the bank statements despite the fact that we requested it
3 because you said we'll deal with the source documents at trial. It should
4 be the same with Russell Road.

5 THE COURT: Yeah.

6 MR. LUSZECK: If she's able to prove her case in chief at trial,
7 we can have the documents ready and produce them at that time and
8 then she can review them. But not before then. Once the cat's out of the
9 bag, Your Honor, I'm very concerned that we're going to be able to get
10 all that documentation back and have it destroyed.

11 MR. KARACSONYI: They're --

12 MR. LUSZECK: So it's the same principle. If she's not willing
13 to produce her stuff it's inequitable for the Court to order that the ELN
14 Trust provide this documentation as well.

15 MR. KARACSONYI: Your Honor, you've already decided it 10
16 times. They've got to give us that stuff. How do -- we're going to go to
17 court litigating the Russell Road property interest. How are we going to
18 litigate that when we don't even have the documents that show what he
19 got for it, or what -- where it went, or if he owns two thirds, he claims he
20 only owns two thirds. Let's see who got those proceeds. That's relevant
21 to the upcoming case. That is a specific -- he's trying to confuse by
22 talking about bank statements post-divorce. No. This is a specific piece.

23 THE COURT: I'm done. I'm done. I'm done. The documents
24 I think are relevant. The sale documents of the proceeds from the sale
25 and basically where the proceeds went. If he got two thirds or one third,

1 I think that's fair enough on that. They don't have to provide all the
2 documents, but documentation of the sale so they know the price and
3 where the proceeds were distributed. I think that's fair enough. And
4 then they're not to further disclose those outside of these hearings and
5 that way people can get on.

6 I remember just going all the way back to when we started
7 on this back in 2008, 2009 Harbor, if I remember the things on that going
8 all the way back at that point. So that'd be the order. 2 million would be
9 frozen. The documents from the sale as to the proceeds and the
10 distribution not to be further disseminated outside of that. Freeze the
11 Band One first mortgages 6 percent. And then we will, as far as the
12 other issues we'll get that resolved. I guess we got a motion in limine
13 coming up. We'll do that.

14 So as far as who wants to write the order from today?

15 MR. KARACSONYI: Oh, you forgot -- so I mean this goes
16 hand in hand, but we issued a subpoena to Nevada State Title for the
17 escrow file, which is the documents we're entitled to. So I assume, since
18 you're denying --

19 THE COURT: Is that from Lyndell?

20 MR. KARACSONYI: No, no.

21 THE COURT: I mean --

22 MR. KARACSONYI: That's the -- for the Russell Road.

23 THE COURT: Russell Road, I'm sorry.

24 MR. KARACSONYI: Yeah. So those go hand in hand, since
25 you're -- since you've ruled that we're entitled to those documents,

1 obviously we have a subpoena out there to make sure that we got the
2 actual documents and not some forgery or fake.

3 THE COURT: Have they filed a --

4 MR. KARACSONYI: They filed -- yeah. We agreed to put it --

5 MR. NELSON: Your Honor --

6 MR. KARACSONYI: -- on hearing today.

7 THE COURT: Oh, okay.

8 MR. NELSON: Your Honor, that's problematic because one
9 third of that property is owned by a third party and they are not going to
10 allow that to happen unless the court order comes to them to deliver
11 those documents. I'd be in breach of my fiduciary responsibilities.

12 THE COURT: And who is that, Nevada?

13 MR. KARACSONYI: That's just games, Your Honor.

14 THE COURT: Who is that?

15 MR. KARACSONYI: We're entitled to it.

16 MR. LUSZECK: Your Honor, I go back to this is all after the
17 fact. The point of the trial is the tracing between 2001, 2013. That sale
18 happened recently. If she can prove she has an interest in the property, I
19 think she's entitled to that documentation. But we're putting the cart
20 before the horse here. She has to prove an entitlement to those assets.
21 And once she does that she's entitled to documents. I mean, and they
22 already knew that it sold. They know what -- the amount that it sold for.
23 It's a matter of public record.

24 MR. KARACSONYI: That's not --

25 MR. LUSZECK: What they're wanting is to dive deeper into

1 that, and I think that's inappropriate until she can prove her case in chief.

2 MR. KARACSONYI: Judge, they just keep arguing with your
3 same -- you've ordered this ten times that she's entitled to those
4 documents. They just want to get you to change your mind.

5 THE COURT: Well, the issue is to give them the documents --

6 MR. LUSZECK: Yes.

7 THE COURT: -- for the sale and basically where the proceeds
8 went. There's a lot of other documents in the Nevada. I don't think they
9 give all those issues on that. But the issue, you want to know -- to make
10 sure that that's what it was sold for, that they're not lying to you --

11 MR. KARACSONYI: And the Nevada estate title --

12 THE COURT: -- and where it went to.

13 MR. KARACSONYI: -- will show -- the title will show the sales
14 documents, where the monies were wired to, who they went to, and
15 we're entitled to know that. This is a property that was owned at the
16 time of the divorce again.

17 MR. LUSZECK: They're not.

18 MR. KARACSONYI: He's just -- you're entitled -- NRCP 16.2
19 applies in divorces. You're supposed to disclose everything. He's trying
20 to treat this as a different case. This is a divorce case.

21 MR. LUSZECK: No. It's a case where you have to prove your
22 case in chief before you're entitled to a remedy, Counsel. That's the law.

23 MR. KARACSONYI: It's not a remedy, it's just information.

24 MR. LUSZECK: You prove your case --

25 MR. KARACSONYI: It's relevant information.

1 MR. LUSZECK: -- [indiscernible - simultaneous speaking]
2 entitled to documents.

3 THE COURT: All right. I'm done with that.

4 MR. LUSZECK: [Indiscernible - simultaneous speaking]

5 THE COURT: So they're to provide -- going to provide the
6 documentation as far as those issues on that. They provide the
7 documentation. You're worried about them using it against your client
8 or against the trust on that. I don't see what they would use that for.
9 The fact that they're joint titles, documentation is the way we go and let's
10 get this thing done.

11 So I'm going to deny your motion for the reconsideration as
12 the Russell Road. So those orders will stay in effect. I will grant it as the
13 NBGS being added as the necessary party. It'll be granted in that. And
14 no attorney's fees will be awarded for either of these parties on that. I do
15 believe you're right that you're entitled to a bond. I think Ms. Lynita
16 needs to post a bond for the \$2 million that they're holding. I think you
17 need to post a bond, and so that they got that -- issue on that. They
18 defer on that. So post a bond.

19 MR. KARACSONYI: She doesn't -- Your Honor, she can't post
20 a bond. That is the property that she's entitled to under community
21 property.

22 THE COURT: Well, I don't know if she is entitled to it or not.
23 I guess we'll see.

24 MR. KARACSONYI: Well, we'll find out.

25 THE COURT: Yeah.

1 MR. KARACSONYI: But I mean, you have a JPI, the Supreme
2 Court told you to hold those property -- to hold all the property. I don't --
3 how is she going to post a bond? You didn't make them post a bond --

4 MR. LUSZECK: That's fine. And Nevada --

5 MR. KARACSONYI: You didn't make them post a bond on
6 appeal. They -- you just said if you hold the property, that's good
7 enough. That's what's been the case.

8 THE COURT: I'm done. I'm done. You guys are arguing
9 until the cows come home. We're going to get this trial done. I gave you
10 an extra week, all right. We're going to get this done and sort all those
11 issues on that. Right now on that, I'll ignore the bond right now because
12 you're saying she's living off credit cards. I don't know what her story is
13 or what the situation is. I know the assets she had during the divorce
14 was a long time ago. I don't know where those went, where they went. I
15 don't care where they went. The fact that she's living on credit cards,
16 that's not my issue, unfortunately. Not to be nasty about it.

17 The issue is community property. Is there Community
18 property? Can she show community property? If she doesn't her
19 remedy is the tort that you have going on that. As in the investment
20 trust, or did he breach his fiduciary duty? Did Mr. Klabacka breach any
21 fiduciary duties? That's torts. This is simply about community property.
22 That's what it's about. And I'm not going to turn this into a tort claim or
23 anything else. We're going to get this done. I gave you an extra week
24 out of respect for you and the courtesy to give everybody a fair chance
25 to get their case on and we'll get all those issues.

1 So that'd be the order of the Court. Mr. Karacsonyi, I'm
2 going to -- who wants to draft the order? Because I won't have it drafted
3 in two weeks by the time the trial starts, or is this minute order okay that
4 we went on the record? Is that good enough for you guys? You want a
5 written order? Because I'm -- I've got double hearings for the next two
6 weeks to open up my trial for you guys. So I'm going to be buried. It's
7 up to you guys. You want a written order; can a minute order suffice? I
8 think I went through all the orders. Do you want a written order?

9 MR. KARACSONYI: Well, I don't know what the minutes are
10 going to say. Can we just have the transcript suffice as the order?

11 THE COURT: You guys okay with that? The transcript suffice
12 as the order, or do you want a written order?

13 MR. KARACSONYI: We probably need a written order.

14 THE COURT: If you want a written order I'm going to have to
15 ask one of you guys to do it, because I just won't get to it.

16 MR. KARACSONYI: We'll prepare a written order, Your
17 Honor. We'll try to keep it as vanilla as possible.

18 THE COURT: All right. We're going to have Mr. Karacsonyi
19 draft the order. We'll have it served upon the counsel, see if they agree
20 with it, all right? If not, just submit your order and any objections to it or
21 counter orders and I'll get those reviewed for you before trial starts. All
22 right.

23 MR. LUSZECK: Your Honor, and then we've just got the
24 Larry Burch motion that I'd like to get a hearing date on.

25 THE COURT: Okay. Yeah. Let me -- well, we got that week

1 open. We've got the first week open. Can hear that in the --

2 MR. KARACSONYI: Well, we have the 18th pretrial
3 conference. Should we do it then? Do you still have that on calendar,
4 Your Honor? 10:30 on the 18th?

5 THE CLERK: No. You have a trial set that day.

6 MS. HAUSER: Your Honor, the problem if we push that out
7 is if you do let the testimony go forward and we don't have time to
8 subpoena his file, if I remember that motion --

9 THE COURT: Okay.

10 MS. HAUSER: -- correctly.

11 THE COURT: All right. Let me give you a motion for Burch
12 and we'll figure out a pretrial conference date at that time too. See
13 where we're at. See if you guys got all your depositions done and stuff. Okay.
14 And we'll figure out a pretrial when you guys got your calendars and
15 everything. I'm sure there may be other issues that arise with the --

16 THE CLERK: So what are we doing --

17 THE COURT: -- before -- I need a date for a motion. About
18 an hour.

19 THE CLERK: Do you want to do it the week before the trial,
20 or do you need it next week?

21 THE COURT: Probably next week would be better for you
22 guys. The sooner the better, probably? All right.

23 MR. LUSZECK: Yes.

24 THE COURT: Okay.

25 MR. CARMAN: Yes, sir.

1 THE COURT: And I think you already filed your opposition,
2 Mr. Karacsonyi, or no? Okay. So they just need to reply. So five days
3 for reply. So anytime next week should work.

4 THE CLERK: We can do Thursday the 17th at 3:00 o'clock.

5 THE COURT: We can do late in the afternoon on the 17th,
6 3:00 o'clock.

7 MR. KARACSONYI: Yeah. That works.

8 THE COURT: Because again, I double booked all my cases
9 for the next couple weeks, but is March 17th 3:00 o'clock?

10 MR. LUSZECK: Yeah. I think that's kind of the same problem
11 with having it on the 18th. I mean, we'd prefer to have it heard earlier if
12 we can, Your Honor.

13 THE COURT: Okay. All right. Let me see if we can. Can we
14 hear it any time this week?

15 THE CLERK: We can do it Tuesday the 15th at 3:00 o'clock.

16 THE COURT: We can do Tuesday the 15th. Does that help
17 any better?

18 MR. KARACSONYI: Did we --

19 THE COURT: 15th at 3:00 o'clock.

20 MR. KARACSONYI: That wasn't one of our depo dates, was
21 it? No, 14th, 16th. Yeah. That's fine with me.

22 THE COURT: Does that work? The 15th at 3:00 o'clock just
23 on the motion in limine for Larry Burch?

24 MR. CARMAN: I think that was one of our deposition dates,
25 wasn't it?

1 MR. KARACSONYI: No. It's --
2 MS. HAUSER: We're doing Winters --
3 MR. KARACSONYI: -- 14th and 16th.
4 MR. CARMAN: Okay.
5 THE COURT: What's that? I'm sorry.
6 MR. KARACSONYI: We have Lynita on the 10th --
7 MR. LUSZECK: I thought we had depo dates for the 10th,
8 14th and the 16th.
9 MR. KARACSONYI: Yeah. I agree with that.
10 THE COURT: Yeah. That's the dates I got.
11 MS. HAUSER: Yeah. I thought we had it on the 15th.
12 MR. LUSZECK: Yeah. So Tuesday the 15th at 3:00.
13 THE COURT: Does that work?
14 MR. KARACSONYI: Yeah.
15 MR. LUSZECK: We'll make that work.
16 THE COURT: All right. We'll --
17 MR. CARMAN: Your Honor, do we need to do a formal
18 joinder to that?
19 THE COURT: No.
20 MR. CARMAN: We're joining in the --
21 THE COURT: No. I'm okay on that.
22 MR. CARMAN: I just want to make sure --
23 THE COURT: We've got enough paperwork filed on that. So
24 we know you've joined position, unless there's anything you want to add
25 on -- in specific on that with the general joinder. You don't need to file a

1 joinder.

2 MR. CARMAN: Thank you for that.

3 THE COURT: All right. And that's set for when, the 15th?

4 THE CLERK: March 15th at 3:00 p.m.

5 THE COURT: I'll see you guys March 15th at 3:00 o'clock, all
6 right. Thanks everybody. We took a lot of time, but hopefully we made
7 some steps forward, I'm hoping.

8 MR. KARACSONYI: Thank you, Your Honor.

9 THE COURT: But if not, we'll get there.

10 MR. NELSON: Thank you, Your Honor.

11 THE COURT: Thanks everybody.

12 MR. LUSZECK: Thank you.

13 THE COURT: Thank you.

14 MS. HAUSER: Thank you.

15 THE COURT: Thank you Ms. Nelson and Mr. Nelson.

16 MR. KARACSONYI: Thank you. Thank you for your time.

17 [Proceedings adjourned at 12:48 p.m.]

18

19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

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Adam L. Johnson
CLERK OF COURT

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff,

vs.

LYNITA NELSON,
Defendant.

CASE#: D-09-411537-D
DEPARTMENT O
SUPREME COURT NO. 87234

SEALED

BEFORE THE HONORABLE FRANK P. SULLIVAN
FAMILY COURT JUDGE
MONDAY, MARCH 28, 2022

SEALED TRANSCRIPT RE: TRIAL

APPEARANCES

For the Plaintiff

JEFFREY P. LUSZECK, ESQ.
MICHAEL P. CARMAN, ESQ.
MICHELLE A. HAUSER, ESQ.

For the Defendant

JOSEF M. KARACSONYI, ESQ.
ROBERT PAUL DICKERSON, ESQ.
NATALIE KARACSONYI, ESQ.

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1 Las Vegas, Nevada, Monday, March 28, 2022

2
3 [Case called at 9:39 a.m.]

4 THE COURT: This is the time set for the evidentiary hearing
5 as to Nelson v. Nelson. This is our case, D-09-411537. Before we start
6 with -- I guess we'll start at the right with Mr. Dickerson, just go down the
7 line and get our appearances for the record. We'll start with Mr.
8 Dickerson.

9 MR. DICKERSON: Good morning, Your Honor. Bob
10 Dickerson, bar number 945, appearing on behalf of Lynita Nelson.

11 THE COURT: Thank you. Good morning. Ms. --

12 MS. KARACSONYI: Natalie Karacsonyi, bar number 10579.

13 MR. KARACSONYI: Josef Karacsonyi, 10634, on behalf of
14 Lynita Nelson.

15 MR. LUSZECK: Jeff Luszeck, bar number 9619, on behalf of
16 Matt Klabacka, the distribution trustee of the trust. And I would note,
17 Your Honor, in light of the fact that we're dealing with the tracing
18 between 2001 and 2013, the time which Mr. Klabacka was not serving as
19 the distribution trustee. He's not present here today.

20 THE COURT: All right. Good. Thank you, Counsel.

21 MS. HAUSER: Good morning, Your Honor. Michelle Hauser,
22 bar number 7738, on behalf of Plaintiff Eric Nelson.

23 MR. CARMAN: And Michael Carman, bar number 7639, for
24 Eric Nelson.

25 THE COURT: Thank you. Good morning, Mr. Nelson, Ms.

1 Lynita.

2 As far as any preliminaries on it, did you want any opening
3 statements? There's a lot of exhibits. I don't know if you guys had a
4 chance to go through to stipulate to anything that you guys will admit or
5 we'll do that probably later on during the trial, since there's quite a
6 volume of documents, we're just going to take it as we go.

7 MR. KARACSONYI: That was our preference, Your Honor.

8 MR. CARMAN: Yeah. It was -- with the volume and the last
9 minute nature of it all, we'll -- as we go along then we'll try to identify
10 them and make it smooth as possible if there's stuff that we stipulate to.

11 MR. KARACSONYI: Your Honor, I believe just as -- just a
12 housekeeping matter, we were going to set some additional dates now
13 that we all have our calendars too.

14 THE COURT: Yeah. Well, we got to get started today and
15 then right before we break for lunch or so, see if you need some more
16 dates. I don't know how many dates you think you guys are going to
17 need.

18 MR. CARMAN: And I did want to warn, Your Honor --

19 THE COURT: Do you want to wait to see where --

20 MR. CARMAN: -- I think when we set this we indicated that
21 we had some hearing conflicts during this week. I do need to break
22 away at about 2:30 for a hearing in front of Judge Forsberg. I expect to
23 be about 20 minutes.

24 THE COURT: All right.

25 MR. CARMAN: I just want to warn you if I get up and leave

1 the courtroom, it's not because it's something the Court said.

2 THE COURT: I mean --

3 MS. HAUSER: And I believe, Mr. Karacsonyi --

4 THE COURT: -- you guys have walked out on me before.

5 MS. HAUSER: -- you're unavailable April 5th?

6 THE COURT: I don't know why this would be any different.

7 MR. KARACSONYI: Yeah. April 5th.

8 THE COURT: Yeah. Feel free on that. I do apologize about
9 Thursday and Friday. I had some personal matters come up. But I know
10 Mr. Karacsonyi's in a settlement I think for the Federal Court next
11 Tuesday is it?

12 MR. KARACSONYI: On the 5th, right.

13 THE COURT: On the 5th, so.

14 MR. KARACSONYI: And we can't do the 5th. And then
15 somebody mentioned --

16 MR. CARMAN: Well, I -- yeah. I had a conflict --

17 MR. KARACSONYI: -- next Friday.

18 MR. CARMAN: -- on the 8th. It was -- hopefully we didn't
19 need that last day when we set it as a two-week trial, but I do want to let
20 Your Honor know I'm out that day. I had a preplanned trip to Portland in
21 Seattle.

22 THE COURT: Okay. We'll see where we're at and figure out
23 how far we get and how much time people need, and we'll figure out to
24 accommodate to get this done for everybody. I guess without further
25 ado, did you want opening statements?

1 MR. KARACSONYI: Yes, Your Honor. But --

2 THE COURT: I'll start with Mr. Karacsonyi.

3 MR. KARACSONYI: -- one of the witnesses is in the
4 courtroom. I would just ask for opening statements that he be excluded.

5 THE COURT: Okay. We'll have our witness step outside
6 please and -- there's a side room you can wait there, sir. Right in the
7 side there. Thank you.

8 MR. LUSZECK: Are we going to start with additional dates or
9 no? We're just going to --

10 THE COURT: We'll wait to get started on that. And maybe
11 right before lunch or right after lunch we'll just get some time. If you
12 guys look at your schedule during lunch we'll figure out what it looks
13 like.

14 MR. LUSZECK: Okay, great.

15 THE COURT: Mr. Karacsonyi, you can sit down if you want
16 to.

17 DEFENDANT'S OPENING STATEMENT

18 MR. KARACSONYI: Thank you, Your Honor.

19 As the Court has indicated, this trial is about tracing.
20 Properties held in the ELN Trust and LSN Trust to determine their
21 character beginning May 30th, 2001.

22 The case we will present, Your Honor, will present a clear
23 picture of community property commingled with separate property to
24 such an extent that by June 3rd, 2013, and indeed much earlier, the
25 community property is inseparable from any separate property which

1 was held on May 30th, 2001. In fact, the evidence is going to show that
2 the extent and amount of community property transferred into or
3 accumulated in the ELN Trust from May 30, 2001 to the date of the
4 divorce is so overwhelming, that it would be impossible to conclude that
5 the property at the time of divorce was anything other than community
6 property.

7 And I'd like to walk you through just step by step how we're
8 going to prove that. First, Eric and ELN Trust have really tried to build a
9 case on a fallacy that only separate property was ever transferred into
10 the ELN Trust. And they rely on the Nevada Supreme Court statement
11 that the ELN Trust was funded with separate property because, "In 2001,
12 Eric and Lynita converted their separate property trust into Eric's trust
13 and Lynita's trust respectively and funded the spendthrift trust with the
14 separate property contained within the separate property trust."

15 And as was argued by ELN Trust in their motion for
16 summary judgment: "As the Nevada Supreme Court found, the separate
17 property agreement executed by Eric and Lynita was a valid binding
18 agreement that effectively transmuted their community property to their
19 respective separate property. As this court is further aware, Eric and
20 Lynita's separate property as separate forth in the separate property
21 agreement was used to fund their respective separate property trusts."

22 Now, during our prior trial, you received the testimony and
23 report of Dan Gerety, and in it Mr. Gerety did an accounting of the very
24 timeframe we are here today to explore, which is May 31st, 2001
25 forward. And we're going to revisit with Mr. Gerety in his report. And

1 you're going to be reminded that Mr. Gerety prepared a balance sheet of
2 the ELN Trust purportedly as of May 30, 2001 to begin that accounting.
3 And this balance sheet has been presented before multiple times during
4 even these remand proceedings as the alleged separate property starting
5 balance of the ELN Trust.

6 Now as Mr. Gerety's report will indicate, it was his
7 "Understanding that ELN Trust was funded exclusively with property
8 previously contained in the Eric Nelson separate property trust." And
9 then Mr. Gerety opines in his report that, "We traced beginning assets
10 per the May 31st, 2001 balance sheet to the assignments or other source
11 documents contained in Exhibit 3."

12 The evidence is going to show that it is true that some
13 property transferred to the ELN Trust was transferred from Eric's
14 separate property trust, but not all property transferred to the ELN Trust
15 came from the separate property trust. In fact, right there in the very
16 source documents and assignments that Mr. Gerety relied upon, which
17 are already a part of this Court's records are transfers of entities not from
18 Eric's separate property trust, but from Eric himself, none of which are
19 listed in the separate property agreement.

20 Specifically Cleopatra Gaming Management LLC, Dynasty
21 Development Group LLC, Cleopatra's Palace LLC, Cleopatra's Club
22 Casino LLC, Cleopatra's Wild Goose Casino LLC, Cleopatra's Cable
23 Bridge Casino LLC, Cleopatra's Wild Grizzly Casino LLC, Hacienda Casita
24 LLC, Evanston Horse Racing Inc., Wyoming Downs Rodeo Events LLC.

25 And you'll be familiar with Dynasty Development Group LLC,

1 because it was valued at 1,568,000 in the decree of divorce based on its
2 cash and owned the 121.23 acres of Mississippi property valued at an
3 additional \$607,775.

4 The evidence will show that Evanston Horse Racing Inc. and
5 Wyoming Downs Rodeo Events LLC, were two of the three entities sold
6 in what has been referred to throughout these proceedings as the
7 Wyoming Downs transaction for \$11,514,350. The sale was more than
8 just the Wyoming Downs Racetrack and actually came with off track
9 betting, other land and options for other properties such as High Country
10 Inn. And we're going to explore that asset purchase agreement. And
11 you're going to see in that asset purchase agreement that there is no
12 delineation or itemization of the purchase price to each entity and the
13 option being purchased.

14 The evidence will also show that while Eric owned 40 percent
15 of Eric Nelson Auctioneering at the time of the separate property
16 agreement that was conformed to him, during our tracing period, he
17 acquired the other 60 percent of the entity. And there is no
18 documentation that Eric Nelson Auctioneering was ever assigned to or
19 held in the ELN Trust. And despite him acquiring 60 percent of the
20 company's community property, the income for the company was
21 deposited in the ELN Trust.

22 And in fact, we're going to visit with Larry Burch and discuss
23 with him his tracing of the 2009 to 2012 time period. And you're going to
24 see multiple intercompany transfers that deal with all these community
25 property funds. The evidence is also going to show loans made by Eric

1 personally, which are not traced to any separate property source.

2 Now aside from the community property transferred into the
3 into the trust, you're going to hear testimony about the skills and
4 qualifications Eric acquired throughout the marriage and how he worked
5 during the entirety of the relevant period not taking any income.

6 You're going to hear him explain how he personally did not
7 have any income. All the income has been for the last 25 years
8 generated from my careful management of our assets protected under
9 separate property trust. And the evidence will support that and will
10 show that even in instances where management fees or other income
11 was paid for Eric's services, it was paid to his trust or one of its entities.

12 You're also going to hear about numerous transfers by
13 Lynita to Eric, or ELN Trust, or his family members without any
14 consideration, or for consideration alleged by Eric for which no
15 documentation exists and which, quite frankly, belies logic. And while
16 Eric will claim that the transfers were gifts or bargained exchanges, the
17 facts and circumstances surrounding the party's marriage and financial
18 dealings and the party's testimony will provide clear and convincing
19 evidence that there were no gifts or exchanges.

20 In fact, Eric's testimony will establish that he made decisions
21 for the entirety of the marriage without consulting Lynita, and that he
22 managed all of the party's finances. And that Lynita's testimony will
23 establish that she relied on her husband, that she believed in the sanctity
24 of marriage and the trust that came with it, and that she signed what he
25 put in front of her on most occasions. Both parties' testimony will

1 establish conclusively that there was no donative intent behind the
2 transfers, and that the circumstances are such that Lynita did so under
3 the belief that the property transfer belonged to the parties.

4 All of the evidence I've just laid out will demonstrate co-
5 mingling of community property as separate property to such an extent
6 that they cannot be traced. That being said, the evidence will show one
7 additional fact. That in and of itself, without any of the other evidence I
8 just outlined conclusively establishes that the property in the ELN trust
9 was so inextricably commingled with community property, that the
10 community in the separate property if any remains cannot be reasonably
11 separated.

12 Specifically, Wyoming Downs, the racetrack was reacquired
13 in 2003 with property that is presumed to be community and cannot be
14 traced to a separate source. And I'll walk you through that, what the
15 evidence will show.

16 In 1998, Wyoming Horse Racing Inc., which was Eric's
17 separate property in the property settlement agreement, purchases
18 Wyoming Downs for 250,000. The evidence will show that very shortly
19 thereafter, he sold it to a company named Dynasty Inc., which is an
20 unrelated party and is a company that's also referred to as Phoenix
21 Leisure. Although the details are kind of murky, Eric ends up with stock
22 in Phoenix Leisure and Wyoming Horse Racing gets a deed of trust as to
23 an undivided 20 percent interest in Wyoming Downs to secure a
24 purported \$19 million mortgage. The mortgage and transaction are part
25 of a complex three party exchange that Eric alleges allowed Phoenix

1 Leisure to save about 15 million in taxes.

2 Anyhow, fast forward to our data tracing and the alleged list
3 of assets that Mr. Gerety performed -- prepared. And what you'll see
4 from Dan Gerety's list is there is no debt owed by Phoenix Leisure listed
5 thereon at that point in time. In fact, the total net asset value he lists for
6 ELN Trust is six-million, nine-hundred and twenty-four dollars, six-
7 hundred and twenty-nine cents [sic] -- or 620 -- sorry, \$6,924,629.28. And
8 the total of all the assets without any liabilities is \$7,229,490.89.

9 Now on March 9, 2003, a promissory note is given by
10 Phoenix Leisure to Eric L. Nelson, an individual, the holder for
11 \$416,666.67 and it's recorded against Wyoming Downs. Why? Because
12 in the secured convertible promissory note, it states that it is secured by,
13 "100 percent corporate and/or affiliate and/or subsidiaries' interest or
14 ownership in Wyoming Downs located in Evanston, Wyoming".

15 This promissory note was never mentioned in the prior trial.
16 As far as I can tell, never produced by Eric and not referenced in any
17 expert -- by any expert in any report. But fortunately, it was discovered.
18 Later that year on November 6th, 2003, a deed in lieu of foreclosure,
19 grant bargain sale deed was recorded wherein Phoenix Leisure
20 conveyed Wyoming Downs to Wyoming Horse Racing Inc. Wyoming
21 Downs -- or Phoenix Leisure cited as consideration the 1998 mortgage,
22 which was only secured by a 20 percent interest in Wyoming Downs, and
23 which no longer showed up as a debt of Phoenix Leisure on the books
24 and records of ELN Trust.

25 That transaction didn't make any sense because the hundred

1 percent interest in Wyoming Downs was pledged by Phoenix Leisure to
2 Eric Nelson, an individual. And the deed in lieu would've left Eric's
3 mortgage encumbrance still remaining on the property and would've
4 violated his security interest. And it didn't make any sense because the
5 deed in lieu wasn't correct. It wasn't factual. And we know this
6 definitively because the evidence will show that on August 23rd, 2006,
7 Phoenix Leisure through its president Eugene McCarley and Wyoming
8 horse racing through its president Eric Nelson, signed and recorded an
9 estoppel affidavit in Uinta County concerning Wyoming Downs
10 correcting the deed in lieu that the actual consideration for the deed in
11 lieu of foreclosure that Reacquired Wyoming Downs was the \$416,666.67
12 in cancellation of the mortgage between Phoenix Leisure Corporation
13 and Eric L. Nelson. And at the time of making that deed, the making the
14 2003 deed, and in 2006, they believed that that consideration
15 represented fair value of the property deeded.

16 Again, this estoppel affidavit was never mentioned in any
17 prior trial, never produced by Eric as far as we can see, and not
18 referenced by any expert in any report. But fortunately, it too was
19 discovered.

20 The evidence will further show that the records of ELN Trust,
21 although not sufficient to show a tracing without source documents, do
22 not show any loans to Phoenix Leisure of \$416,666.67. And that there is
23 no record of such a loan related to Wyoming Downs. And Eric will tell
24 you during his testimony that the promissory note may not have even
25 been [indiscernible], but could very well have been for consulting

1 services, community labor.

2 Finally, the evidence will show that Daniel Gerety and ELN
3 Trust believe that almost everything owned at the time of divorce,
4 although not directly traced, is a result of the transaction involving
5 Wyoming Downs making everything inextricably commingled with
6 community property. Thank you, Your Honor.

7 THE COURT: Thank you, counsel. Mr. Luszeck, did you want
8 to go next or Mr. Nelson?

9 PLAINTIFF'S OPENING STATEMENT

10 MR. LUSZECK: Sure, okay.

11 Your Honor, I was a little on the fence about whether even to
12 make an opening argument today or just wait until my case-in-chief. But
13 I just want to remind this Court, we're here on a limited issue. And that
14 limited issue as articulated by the Supreme Court, is to trace assets to
15 determine whether any community property exists within the trusts.

16 And upon remand, the ELN Trust filed its motion for
17 determination of burden of proof at trial. And within that motion, the
18 ELN Trust argued and requested that this Court find that Lynita and/or
19 that LSN Trust have the burden to show by clear and convincing
20 evidence that separate property which funded the ELN Trust was trans-
21 mutated into community property.

22 Your Honor, in a lengthy decision, you found that Lynita
23 bears the burden of proof to demonstrate by clear and convincing
24 evidence that the separate property in each trust commingled with
25 community property to the extent that the separate property and

1 community property could no longer be separate via tracing.

2 So in summary, this Court found that Lynita was required to
3 take two steps to satisfy her burden of proof. One, she must identify
4 community property that was deposited or transferred into the trust.
5 And two, if and only if Lynita identified community property that was
6 deposited or transferred into the trusts, that must be -- she must
7 demonstrate by clear and convincing evidence that the separate property
8 in each trust commingled with that community property.

9 On April 30th, 2021, after four years after this case was
10 remanded to this court, Lynita served -- or Ms. Nelson served her 16th
11 post appeal disclosure of documents, which contained an expert report
12 from Anthem Forensics, which did not conduct the tracing that was
13 ordered by this Court, Your Honor. It was deficient on numerous
14 grounds and evidence will show that.

15 But as a direct result of the deficiencies within there, the ELN
16 Trust filed a motion for summary judgment. And it's important to notice,
17 Your Honor, you probably heard for the first time a lot of new entities
18 that haven't been mentioned before. Cleopatra, there's a bunch of
19 Cleopatras, a Wild Grizzly and Evanston Horse Racing. None of that was
20 included in Anthem Forensics' report. And this is just further
21 confirmation of what I raised months ago, which this is going to be a trial
22 by ambush.

23 None of these entities, none of these transactions, there was
24 no analysis regarding any of this in Anthem's report. And all of a
25 sudden, the day that trial starts, we're hearing about this for the first

1 time. None of these arguments were made in the opposition of the
2 motion for summary judgment. And it's readily apparent that this Court
3 was close to granting the motion for summary judgment because it
4 found that Lynita, for all of the transactions that were complained of in
5 Anthem's report, this Court found that she had failed to meet her burden
6 to show that there was community property infused in the trust that was
7 somehow clear and convincingly trans-mutated with separate property.

8 So it's interesting that these arguments, after they realized
9 Anthem's report, was not going to be sufficient to win at trial. They've
10 concocted these new arguments that we've never heard of before today,
11 which we'll get to in a little bit.

12 This case has been going on since 2009, Your Honor. We
13 had a 10 day trial in 2012. This matter has been on remand since 2017.
14 And once again, the first time that I'm hearing these arguments are
15 today, the same time that you're hearing them. The evidence is going to
16 show that there's numerous issues. Even though we're just hearing
17 them for the first time, there's going to be numerous issues with those
18 which will be identified. And we'll go from there. We'll deal with the
19 Gerety issues, with the Anthem Forensics issues.

20 And I guess I'll just close with this, Your Honor, as a final
21 issue. I just want to illustrate for a minute how absurd this case has
22 gotten. At trial back in 2012, this Court attempted to equalize the trust.
23 And if you recall, in doing so, it ordered the ELN Trust to transfer
24 approximately \$4 million worth of assets from the ELN Trust to the LSN
25 Trust, which is significant.

1 In addition to that, this Court awarded Ms. Nelson alimony,
2 child support, ordered that the ELN Trust pay attorneys -- or pay fees
3 over to Mr. Burch and to Mr. Dickerson's office. But the position that's
4 being taken by the other side, at least statements made at recent
5 hearings, is they believe they're going to do -- be able to do better this
6 round than they did in 2012, which is just absurd, Your Honor. They're
7 looking at this case completely differently. All of the trial strategy, the
8 arguments, everything is completely different to what it was in 2012.
9 And we're hearing about it today for the first time.

10 We're happy to present our case when we have the
11 opportunity to do that. But at the end of it, Your Honor, we're going to
12 request that this Court find that all of the assets that funded the ELN
13 Trust were separate property. And as such there's no community
14 property contained therein.

15 THE COURT: Thank you, Counsel.

16 MR. CARMAN: And I'm just going to -- same thing here. I'll
17 be really brief. I just want to respond to a few things. I would like to
18 save the opportunity to do an opening statement during our case in
19 chief, if in fact we have to present a case in chief. But I will say this, Your
20 Honor, due process on a fundamental level requires parties to provide
21 notice of their claims to the other side of the case. Today they've walked
22 into court with a new case. It's not the case that they've articulated they
23 were going to present. It's not the case that the Supreme Court told
24 them to present. It's not the case that you asked them to present. They
25 have walked in today with a new case. When I say today, I mean today.

1 They filed a pretrial memo just a couple days ago. Instead of tracing,
2 they decided in their pretrial memo to suddenly raise an apportionment
3 argument.

4 They cited an obscure case out of Louisiana, which relied
5 upon a Louisiana statute to say that when the labors of a party who are
6 part of a community are used to enhance separate property, the court
7 should just divide it as community property. Number one, there's no
8 community in this case. These are two trusts. They're separate legal
9 entities. It's not at all applicable in relation to that New Orleans case or
10 Louisiana case. But I'll say this. If they had wanted to raise a *Pereira*
11 argument, a case that's at least recognized under Nevada law, it would
12 be totally inapplicable to this case. *Pereira* deals with a separate
13 property business, not a trust. It's a separate legal entity. It deals with
14 whether the community has been compensated. Again, this is not a
15 community case, it is not the same type of case.

16 But if Your Honor was going to apply it even remotely by
17 analogy, Your Honor knows that the community would've been
18 overcompensated had it existed, because you determined in your
19 alimony and child support awards that the community essentially -- or
20 the community that could have existed for the purposes of child support,
21 would have earned over \$30,000 a month and had throughout the course
22 of the marriage. Again, there is no community. This is a case where
23 trusts paid bills associated with the parties.

24 But this idea that you can walk into court with an absurd
25 apportionment case on the eve of trial, it should be dispelled, that the

1 myth that they can do that should be dispelled by this Court. If they had
2 an apportionment claim, they should have placed us on notice of it.
3 Their expert should have rendered an opinion on it. We have prepared
4 to respond to their expert report, to respond to the case that they claim
5 they were making all throughout the course of this process.

6 And instead, they've walked in, and they've decided they're
7 not going to do that. They're not going to do what you ask them to do.
8 They're not going to do a tracing. They're not going to even pretend that
9 their expert performed a tracing. Instead they're going to try to undo the
10 findings that you made previously. They're going to try to ignore the
11 Supreme Court decision as to why we're here today. They're going to
12 try to undo the findings of this Court that were accepted by the Supreme
13 Court, and they're going to try to undo the pronouncements of law that
14 the Supreme Court made in its decision.

15 Your Honor should not let this happen. It's not how trials are
16 supposed to be conducted. And this is not at all compatible with basic
17 concepts of due process. So I -- you know, as we're moving forward
18 with this trial, we would ask the Court to impose sanctions. You don't
19 get to do this. You certainly don't get to do this in your courtroom, and I
20 hope that you put down your foot and make them print -- put the case on
21 that they said they were going to put on. Not a new case that they didn't
22 place anyone on notice of, including this Court.

23 And I'll leave it at that. I'll say this too. Throughout the
24 opening argument that they just made they want to present Lynita as a
25 victim. And I understand the Court at the initial trial was sympathetic to

1 her. But on a basic level, in this case, Lynita was the investment trustee
2 of the LSN Trust all throughout the course of the LSN Trust's existence.
3 She was the investment trustee. She made decisions. She made
4 decisions to allow someone else to manage assets within her trust. She
5 made a decision to not challenge decisions that were made in relation to
6 her trust. She made those decisions. What she's trying to do is convince
7 you that she shouldn't be held for the -- she should not be held at all
8 responsible for the consequences of her actions.

9 You will see throughout the presentation of this case what
10 Lynita wants, she wants the benefit of decisions Eric made that made
11 money for her trust, for his trust, but she doesn't want to deal with any
12 of the consequences. She doesn't want to deal with the reality that there
13 were massive risks involved with different transactions that occurred
14 throughout the course of the marriage, that she was shielded from
15 because of the actions of Eric. She doesn't -- she wants to pretend like
16 that didn't happen. She just wants benefits. She doesn't want to deal
17 with risks, doesn't want to deal with consequences, doesn't want to be
18 responsible for liabilities.

19 And we do ask, Your Honor, believe it or not, we're asking
20 you to look at this case from a fundamental fairness perspective. I get it.
21 You made different credibility determinations at the first trial about Mr.
22 Gerety. You made credibility determinations about Eric. We do want
23 you to hear the evidence with an open mind today. And in particular,
24 you know, I've got to just mention at the last hearing, despite the fact
25 that it's not in the decree, Your Honor made a comment that Dan

1 Gerety's only client was Eric. That Eric was the one who was essentially
2 funding Mr. Gerety's practice. Those findings were not in the decree.
3 And they're very -- I want you to actually hear from Mr. Gerety what his
4 business has looked like, what his business is, and how small of a part of
5 his business Mr. Nelson is.

6 I think that there were maybe emotional reactions to
7 testimony at the first trial that may have given this Court a different
8 impression of the case. And I'm hoping that we can undo a little of that
9 because we ask you to kind of listen to this with an open mind.

10 You concluded in your decision that Lynita was a passive
11 passenger on this train, but you know, we've taken -- we have the benefit
12 of having taken her deposition and having heard her deposition
13 testimony. You actually need to hear what she knew about these
14 transactions. This idea that she was a passive participant and didn't
15 partake in any of the decision making, it's just not accurate based upon
16 her own testimony. So I am hoping, Your Honor, and again, this is
17 without -- I hope I'm not offending the Court in any way, but I do hope
18 that you rethink some of the opinions that you formed at the initial trial
19 regarding Ms. Nelson and regarding why we're here today and what the
20 motives of the parties are.

21 THE COURT: Thank you, counsel.

22 MR. CARMAN: Thank you.

23 MR. KARACSONYI: Your Honor. It seemed like there was
24 some legal argument there and request for sanctions, and I'd like to
25 respond to that.

1 THE COURT: I'm not entertaining sanctions at this time.
2 Let's get our trial going. Let's get testimony. I'm not offended by any of
3 these comments as far as everyone get a fair chance. When I did my
4 trial, I made my findings very specific. I put them on the record. I
5 believe my decision was multiple pages on that. What people agree or
6 disagree on that as far as people's testimony will be judged by their
7 testimony, their memory, how they recite any prior testimony they made
8 that could be in conflict. So we'll get through all that.

9 I take Mr. Gerety with an open mind. That comment made
10 last time, I made findings as to credibility at that time, which the
11 Supreme Court had indicated they were not going to question. The
12 Court hears the testimony to determine that. My recollection was that I
13 felt that Mr. Gerety had pretty much been a captive of Mr. Nelson. I may
14 not have been correct at that point. I don't know. But it's moot now.
15 Let's get everybody out there and give everybody a chance to argue and
16 cross-examine. I'll make specific findings as to everybody's credibility.

17 MR. LUSZECK: Speaking of fair chance, Your Honor, so
18 they're going to begin their case-in-chief with Mr. Gerety, okay. Is that
19 true?

20 MR. KARACSONYI: Yeah.

21 MR. LUSZECK: Okay. So we sent interrogatories to
22 opposing counsel last November asking who they were going to call at
23 trial. These were the four people that were listed, Ms. Nelson, Mr.
24 Nelson, Anthem Forensics, Mr. Burch. It has never been disclosed that
25 they were going to call Mr. Gerety as a witness -- as a fact witness, as an

1 expert witness in the trial. So imagine my surprise when last
2 Wednesday I'm going home, and I see a trial subpoena had been served
3 on Mr. Gerety. And as I sit here today, I don't even know what they
4 intend. Is he a fact witness? Is he an expert witness? I can tell you
5 they've submitted in their trial notebooks, Mr. Gerety's report is listed as
6 an exhibit. So I imagine they're trying to call as an expert. They gave
7 him a \$26 check. So I don't think they intend to pay him as an expert as
8 he would otherwise be entitled to. But once again, this goes to the
9 absurdity here in this trial by ambush.

10 So Mr. Gerety prepared a report in 2012, nearly a decade
11 ago. They were able to cross him for two days, at least two days, maybe
12 three days back in 2012. After all of the cross-examination, he said, I
13 would not change my report. Mr. Gerety has done little if anything
14 regarding this case for a decade. And you saw they just excluded him.
15 So he couldn't sit through the opening argument, despite the fact that
16 they're trying to rely on his report. And now all of a sudden they're
17 going to start questioning him regarding all of these entities that we're
18 hearing about for the first time today. That's not fair, Your Honor.

19 Their experts were able to look at our expert's rebuttal
20 report. They know the exact issues that are going to be touched on.
21 None of these entities or these arguments that are being raised today,
22 they weren't addressed by Anthem Forensics. Nevertheless, they want
23 to be able to put Mr. Gerety on the stand. And for the first time you get
24 to hear it, for the first time we get to hear it, hear these new legal
25 theories and ask Mr. Gerety what he knows about this from a report that

1 he drafted 10 years ago. That's not fair, Your Honor. It's -- once again,
2 it's trial by ambush and this Court should not allow this to happen. This
3 is not equitable. It's not fair. Where were all these arguments in
4 Anthem's report? Where was the supplement to Anthem's report? The
5 answer is -- or even the pleading. Or even the pleading, or discovery,
6 everything. This is the first time we're hearing about this.

7 And once again, they're going to put Mr. Gerety on the stand
8 and question him about a report he did 10 years ago without the ability
9 to even hear about these new case theories or these new transactions or
10 entities. It's inequitable. It doesn't give everybody a fair chance, Your
11 Honor. This Court should not allow it to happen.

12 MR. KARACSONYI: Your Honor, may I respond?

13 THE COURT: You join in on the objection?

14 MR. CARMAN: Well, I would just say it completely flies in
15 the face of our witness disclosure rules. It should not be allowed.

16 MR. KARACSONYI: So as Your Honor recalls they filed
17 motions to prevent witnesses who have already been part of this record
18 from even being admitted into trial. Our position was that we could just
19 simply read all the prior testimony and use all the prior records that have
20 already been admitted. They had a chance to question all these
21 witnesses. But you said just recently, in the last two weeks, that you
22 want everybody to bring the witnesses here to testify because everybody
23 has to have a chance to cross-examine.

24 So now we have Mr. Gerety here again, rather than just
25 being able to read his record and everything else into the -- report into

1 the record, that's already part of the record, been in the record for 10
2 years. And we're required to do that.

3 They filed a witness list on August 3rd. This whole ambush
4 thing is a complete absurdity. You know what's ambush, they feel is
5 ambushed, that we didn't sit down with them and walk them through our
6 trial strategy and mental impressions before court. They're the ones
7 with all the records. Eric has all the records. Eric provided Gerety all the
8 records. We had to get a deed that wasn't produced to us. Why not? So
9 you get to hide the evidence and then we don't get to use it later that we
10 had to discover late into the -- into these proceedings, things in
11 Wyoming Downs.

12 This is not ambush, they can't be ambushed. Everything is in
13 -- everything that's been disclosed is going to be -- everything that's
14 going to be relied upon has been disclosed. It's in the records and it's in
15 their very records. They bring up this issue of Gerety even in their
16 motions for summary judgment. They kept noting that we failed to
17 reach out to Dan Gerety in previous motions, that we failed to subpoena
18 him. So we did subpoena him, and you said that we had additional time
19 to do discovery and they could have filed another motion for summary
20 judgment. You invited them or said that they could have. And Mr.
21 Carman said at a prior hearing that he intended to do it. He didn't do it.

22 But there was additional discovery done after that date. We
23 got his file. He's already testified. It's Eric's own records. How is that
24 ambush? I mean this whole ambush idea is an absurdity. What they're
25 really trying to do is just create an issue for appeal because they know

1 that the evidence is going to show. And we're going to walk through the
2 documents that are already part of the record. Everything that we're
3 going to present basically, everything, a hundred percent has been in
4 their possession for 10 years, more than 10 years, except for two deeds
5 or an estoppel affidavit and a promissory note that's been in Mr.
6 Nelson's possession at least since 2003. So there can't be an ambush.

7 THE COURT: Thank you.

8 MR. KARACSONYI: We have the right to --

9 THE COURT: That's okay.

10 MR. KARACSONYI: -- to call him. He was a witness --

11 THE COURT: It's okay. I'm going to note the objection of
12 Gerety testifying. I'm going to have him testify. He's going to testify as
13 the tracing. He's not an expert, he's an accountant. He was never -- as
14 far as that, so his testimony today will be as an accountant. Anything he
15 can be as far as tracing any of the property in question, that'd be the
16 limit of his testimony. As far as expert, things that happened from he
17 has no knowledge of. To my knowledge, he hasn't been involved since
18 the 2012. But he can talk about since the tracing goes from 2001 through
19 the decree of divorce. We'll see what he's got to say as far as property
20 that people are arguing that have the community property.

21 He can testify as to where it came from. I remember his
22 account to and from. He had numerous accounts. So I remember
23 reports on that. I remember his testimony. It was a decade ago, but I do
24 remember, but not going to recognize him as expert. He can be as the
25 accountant and anything he can say as the property that you're claiming

1 community property in, he can testify to where it came from, where it
2 went. I'll note the objection for appellate purposes on that, that it was
3 not listed -- disclosed as a witness on that. So I'll note the objection on
4 that raised by the trust and by -- concurred in by Mr. Nelson's counsel on
5 that.

6 Let's get this show on the road and get stuff in there.

7 MR. LUSZECK: Your Honor, can I just raise --

8 THE COURT: And we preserve it for appeal.

9 MR. LUSZECK: -- three points real quick, just for the record?

10 THE COURT: Sure. Absolutely.

11 MR. LUSZECK: So --

12 THE COURT: The fair record, let's keep it clean.

13 MR. LUSZECK: Yeah. So what is the point of an expert
14 report then? If an expert -- isn't the whole point, the expert's supposed
15 to identify transactions and flaws with the legal case theory? Once
16 again, none of this -- these new things that are being complained of
17 today, they weren't in Anthem's report, Your Honor.

18 Second point. Them talking about obtaining Gerety's file,
19 they obtain that back in 2012. So while I was going through trial
20 transcripts, Your Honor, Mr. Gerety was on the stand and Mr. Dickerson,
21 who was questioning him on cross, asked him about his work file. And
22 I'm going to quote right here.

23 Question from Mr. Dick Dickerson. "Is there any chance I
24 could get a copy that CD?"

25 Mr. Gerety, "Sure".

1 Question, "Say later today".

2 Mr. Gerety says, "I'll give that to you right now".

3 Question, "I appreciate that. I'll take that right now."

4 And then throughout the rest of the trial, they utilized Mr.
5 Gerety's documents throughout the proceedings. So that's the second
6 point. The fallacy that they just got this stuff now is not correct. They've
7 had it for over a decade.

8 The third thing, if they're -- if they have the ability to call Mr.
9 Gerety now and to question him regarding all these new transactions
10 which are coming to light just today, I think we're reserving our right to
11 call him in our case in chief too. And he's going to have the ability to
12 look into these transactions. Because he may not be prepared to talk
13 about them today, because it's been a decade. They weren't raised in
14 Anthem's report and the first time any of us are hearing anything about
15 this is today. So we're reserving our right as well to call him in our case
16 in chief to deal with these if it's necessary to do so.

17 THE COURT: Absolutely. We give everybody a chance to get
18 everything out there. My plan in this is to get everything out there, so
19 you can take it all up to Supreme Court with everything out there so they
20 heard everything, and they can decide what should be done, or shouldn't
21 be done, but let's get this going and vote on that and see what the
22 testimony comes and see what issues we have.

23 MR. KARACSONYI: I just want to -- he testified previously,
24 it's all part of the record. We're only going to ask him about the thing he
25 -- go through what he previously provided. It's already part of the

1 record. They said we needed to do that because they needed due
2 process to cross-examine him. That we couldn't -- their position was we
3 couldn't just read the record, the prior record, which we believe is the
4 right thing that we could have done.

5 So for clarity, we're calling him because they required us to
6 do this. We can't just read back the record that's already before this
7 court apparently.

8 THE COURT: Well, we talked about giving people a chance
9 to cross-examine and reports on that. It was a decade ago. So I'm
10 starting fresh and see what people -- I don't remember what Mr. Gerety
11 testified to. I can look at that and get those if I need to for issues on that.
12 But let's get this moving, otherwise we'll never get done. We'll note
13 your objection for the record, so you keep that clear for any post-trial
14 motions on that. But let's get this going. Let's bring in Mr. Gerety and
15 let's get this moving forward so we make some progress.

16 THE COURT: I'm going to ask you to remain standing, Mr.
17 Gerety, and raise your right hand. We'll get you sworn in and get this
18 moving forward for you.

19 DANIEL GERETY, DEFENDANT'S WITNESS, SWORN

20 THE CLERK: Please state your name and spell it for the
21 record.

22 THE WITNESS: Daniel Thomas Gerety, D-A-N-I-E-L, Thomas,
23 T-H-O-M-A-S G-E-R-E-T-Y.

24 THE COURT: Okay. Sit down, get comfortable, sir. We'll get
25 you some water and everything. And I know you testified before. I think

1 it was about a decade ago. So I know you know all the routines. So
2 we'll jump right into it, and it'll be kind of like going to the dentist for
3 you. Getting your teeth drilled, but you've got to get it done, right.

4 THE WITNESS: That is a good --

5 THE COURT: Good analogy?

6 THE WITNESS: -- analogy.

7 THE COURT: You may proceed, Counsel, at your pleasure.

8 DIRECT EXAMINATION

9 BY MR. KARACSONYI:

10 Q Mr. Gerety, what is your place of employment?

11 A Gerety and Associates, CPA -- CPAs.

12 Q And what's the address?

13 A 6823 Southeastern Avenue, Suite 101, Las --

14 Q And how long have --

15 A Go ahead.

16 Q Oh, go ahead. Sorry. I didn't mean to --

17 A Oh, just Las Vegas, Nevada 89119.

18 Q And how long have you been in a certified public
19 accountant?

20 A For over 40 years.

21 Q And you previously testified in this matter, correct?

22 A That is correct.

23 Q And you previously prepared a report that you indicated
24 trace the assets held in the Eric L. Nelson Nevada Trust dated May 30th,
25 2001, between May of 2001 and September of 2011; is that correct?

1 A I prepared an expert report, yes. That did a trust accounting.

2 Q And you were also an accountant for Eric and his various
3 entities?

4 A That is correct.

5 Q And for a number of years?

6 A Yes.

7 Q And what years were those?

8 A Oh probably sometime around 2000, starting maybe a little --
9 I was at RSM McGladrey, which I started -- transferred in '96. I left in '04,
10 2004. So it was between '96 and 2004. That's when I started with Eric.

11 Q All right. I'm going to show you what we marked as Exhibit
12 L-R. It's going to be in volume 2.

13 MR. KARACSONYI: May I approach with --

14 THE COURT: Sure, absolutely.

15 BY MR. KARACSONYI:

16 Q Here you are, sir.

17 A All right.

18 Q And the tabs tell you the letters.

19 A Okay. And which tab?

20 Q L-R.

21 A Okay.

22 MR. KARACSONYI: And Judge, this was already admitted at
23 a prior trial, but I know we wanted to have a clean record as so far as you
24 indicated what was admitted at this time. So we'd ask that the Court
25 readmit or so that we can use this copy instead of going back to the

1 Court's archives.

2 THE COURT: Any objection? Did you want a little foundation
3 from -- lay foundation of the report --

4 MR. LUSZECK: I don't have any further objection related,
5 you know, to earlier. So I'd lodge that same objection.

6 THE COURT: Okay. We'll note that the objection's raised as
7 to his testimony as previously raised by counsel.

8 Do you recognize that document as a document that was --

9 THE WITNESS: Yes, I do.

10 THE COURT: Okay. I admit it as Exhibit L-R.

11 [Defendant's Exhibit L-R admitted into evidence]

12 THE COURT: We'll note they raise the same objection as to
13 Mr. Gerety's testimony.

14 BY MR. KARACSONYI:

15 Q And Mr. Gerety, for your report you obtained source
16 documentation from ELN Trust?

17 A Yes.

18 Q Okay. And you also had source documentation provided to
19 you in your role as an accountant for Eric or the ELN Trust?

20 A That is correct.

21 Q And do you recall from whom you obtained the source or
22 backup documentation for your report?

23 A It would have been from Eric and Rochelle. I forget
24 Rachelle's last name.

25 Q McGowan?

1 A Yeah.

2 Q All right. And you also sent a list of items you needed to eric
3 in his office? Do you recall that?

4 A I'm sure -- yes, I'm sure we did. I don't recall exactly what we
5 sent.

6 Q I'll show you what's been marked as Exhibit DDD, which is in
7 Volume 14.

8 A Thank you. Which exhibit did you --

9 Q DDD.

10 A Okay.

11 MR. KARACSONYI: Judge, this was already admitted Exhibit
12 ZZZZ in the prior trial, but I'm just going to move to admit to again, make
13 show we have a clear record.

14 THE COURT: Think you have the same ongoing objection as
15 far --

16 MR. LUSZECK: I mean, I'd like to get some foundation on
17 this.

18 MR. KARACSONYI: Well, it's already admitted as Exhibit
19 ZZZZ.

20 THE COURT: It's the same document. It could have been
21 changed. I don't remember what documents were in the ZZZZ, but you
22 can see if you can recognize it just to make sure it is the same document
23 that was previously admitted in ZZZZ.

24 MR. KARACSONYI: It was produced to us also recently by
25 Gerety, so -- okay, let me back up then.

1 THE COURT: MR. KARACSONYI: This was stamped by your
2 office.

3 MR. LUSZECK: I don't disagree with it. I could have
4 disclosed it. I just don't know --

5 MR. KARACSONYI: Mr. Gerety --

6 MR. LUSZECK: -- know what you're doing with it. I mean,
7 it's - it's an undated document. You had time to open it and question it
8 before you pulled out. So.

9 BY MR. KARACSONYI:

10 Q Mr. Gerety, you were served with a subpoena duces tecum
11 from our office?

12 A Correct.

13 Q And you responded to that subpoena?

14 A Correct.

15 Q And you provided -- did you provide those records to Mr.
16 Luszeck's firm?

17 A I did.

18 Q And to your knowledge, did he Bates stamp them G&A and
19 then produce them to us?

20 A I have no knowledge of that.

21 Q Okay. Do you know -- you gave them to him -- you did
22 respond directly to us, correct?

23 A I gave them to Jeff's office first.

24 Q Okay. And was it your understanding that they would be
25 produced to us through Jeff's office?

1 A Yes.

2 Q And at that time, you signed a custodian of records affidavit
3 saying that what you gave Mr. Luszeck and to our office was a true and
4 correct copy of all your records?

5 A Yeah. I don't recall. I believe so, but I don't recall.

6 Q And can you look at this document for us, please?

7 A Yes.

8 [Witness reviews document]

9 THE WITNESS: Okay.

10 BY MR. KARACSONYI:

11 Q And you had sent a list of items -- had you sent a list of items
12 you needed for your analysis to Eric and his office?

13 A Well, let's take -- when you say "I."

14 Q Your firm?

15 A My firm did, yes.

16 Q Okay. And is this the list of items that you sent to them with
17 the documentation you needed?

18 A I don't recall.

19 Q Can you look through it, please?

20 [Witness reviews document]

21 THE WITNESS: I did look through it. I mean, I just -- I
22 haven't looked at this. I don't recall. If it was in my file, I'm sure it would
23 have, but I can't, because I -- Angelo Ruccia was the one that was putting
24 a lot of that together, so I personally probably did not send this. If it was
25 in the file, I'm sure he did, but other than that I don't recall looking at this

1 at all, actually.

2 MR. KARACSONYI: Your Honor, this was already admitted
3 as ZZZZ in the prior trial. It was produced to us by Mr. Gerety's office.
4 We move to admit it. And Bates stamped by Mr. Luszeck.

5 MR. LUSZECK: Yeah. I guess my objection, Your Honor, is
6 one, in the description under the exhibits it says, "list of items needed by
7 Jan Gerety." And if you look at the top -- top of the documents, says
8 "Assignment of the following assets in the Nevada trust." It may have
9 been, but it's, you know, what this description is doesn't comport with
10 this -- what this is, and there's no date on it as well. So I guess those are
11 the objections that I have. And Mr. Gerety's testified this may have been
12 sent by somebody from his office but he doesn't have any personal
13 knowledge regarding that fact.

14 THE COURT: Yeah, I'm con --

15 MR. CARMAN: And there's significant notes on the
16 document as well. So I have to -- I mean, it hasn't been properly
17 authenticated by the author of the document.

18 THE COURT: I'm concerned. I don't know what has -- what
19 is admitted before. I mean, have any question, the question, counsel on
20 that based if it was prior admitted? I don't remember. That was a
21 decade ago on that. The reason we had him here today was to get
22 testimony to previously asked questions. He says he doesn't recall
23 looking at that at all. So you said it could have came from somebody
24 from your office but not you personally?

25 THE WITNESS: That is correct.

1 THE COURT: At this time I'm not going to admit it this time.
2 We'll leave it out there.

3 And just keep track on that, and when we're done later, we
4 can look at stuff. Because again, I don't remember what was admitted,
5 what wasn't admitted, what the foundations were. So let's see. We'll
6 hold off on that. Just make a note on it, so we make sure before close of
7 trial we can close any loopholes at that time. But it won't be admitted
8 this time. Lack of additional foundation.

9 MR. KARACSONYI: All right. We'd like to reserve the right to
10 recall him, then, Your Honor, if we get the original exhibit for these.

11 THE COURT: Absolutely. And they may -- they may call him
12 in their case as well, too, so we'll see. Yeah.

13 MR. KARACSONYI: Okay.

14 THE COURT: We'll just keep a running track so we can --
15 there's a lot of exhibits.

16 BY MR. KARACSONYI:

17 Q And sir, the documents that you received from Eric and his
18 office regarding ELN Trust, you believe them to be accurate?

19 A They were the documents -- if all the GLs and the bank
20 statements, yes, I believe them to be accurate.

21 Q Now, your accounting -- we're back on Exhibit L -- you
22 started with a balance sheet as of May 31, 2001. Do you see that, Exhibit
23 L on your report, Exhibit 2?

24 A The first exhibits?

25 Q Yeah. Exhibit 2 to your report, sir. Yeah, I'll do the Bates

1 number.

2 A Okay.

3 Q It is --

4 A I have it.

5 Q Okay.

6 A DG-00015.

7 Q Yes, correct, DG-00015. And do you believe this to be a
8 complete and accurate list of the assets owned as of May 30, 2001 by
9 Eric Separate Property Trust or the ELN Trust?

10 MR. LUSZECK: Objection. Compound.

11 THE COURT: Do you want to clarify it?

12 THE WITNESS: Yes.

13 BY MR. KARACSONYI:

14 Q What is a general ledger?

15 A General ledger is the detailed transactions that have been
16 posted to the company's books. So it'll include all the cash transactions
17 and show really how the balance sheet items and the income statement
18 items and the detail what's been posted to each of those accounts
19 showing, beginning balances, the activity during the year, or whatever
20 period that general ledger is for, and then the ending balance at the end
21 of that period.

22 Q And you can consider it a master accounting document?

23 A I've never used the word master report, but it is accounting
24 document that's used for everybody's books. Yes.

25 Q And it shows all transactions during the relevant time

1 period?

2 A It should, yes.

3 Q Okay. And it should show all assets, liabilities, equity,
4 expenses, and income or revenue?

5 A Yes, it should.

6 MR. LUSZECK: You know, Your Honor, it sure sounds like
7 they're trying to use him as an expert when you said he was just going
8 to be a fact witness. If they're going to use him as an expert, are they
9 going to have to compensate him as an expert in this case?

10 MS. HAUSER: This is tax season.

11 MR. LUSZECK: This is tax season. They paid him \$26 to
12 appear here.

13 MR. KARACSONYI: Your Honor --

14 THE COURT: That's not for Mr. Gerety to determine on that,
15 but as far as his purpose here, he is not an expert. He was not listed as
16 an expert witness in this court on, that he's here for tracing. I'll let him
17 determine what property was in the Trust so they can trace it or wasn't in
18 the Trust so we see where property came from. He can testify to that,
19 but this Court's not recognize it. He was an expert in the first thing. This
20 time he would not be referred as an expert, because his report was
21 submitted on that. They got their own expert from Anthem.

22 So we'll deal with Anthem as the expert in this case as far as
23 his balance sheets that he put together on that shown property. He can
24 testify to that, where the property came from, where it went, so we can
25 determine if there's any community property interest and any property

1 that was in the ENL Trust.

2 MR. CARMAN: So we should be objecting that they're
3 seeking information that -- request an expert opinion from the witness?

4 THE COURT: You probably should keep that, because this
5 can't have an ongoing objection, so you probably want to just for the
6 record object on that. But basically I'm just -- all I'm here to see what
7 property he said in his accounts that it had, where it came from, where it
8 went, and then he can close it up with Mr. Burch and everybody else that
9 traced the property. But if Mr. Gerety, for this purposes on that, might
10 just -- what property he identified in the Trust at different period and
11 where it went.

12 MR. CARMAN: It just -- I'm sorry, Your Honor. I'm having
13 trouble wrapping my brain around that. So they're admitting the report
14 to the extent it conveys the observations of a percipient witness, but if
15 they're asking for his opinions and his general knowledge of accounting,
16 we have the right to object because --

17 THE COURT: Yeah. I'm not -- I'm just trying to say what
18 property -- all I'm trying to do is trace property.

19 MR. CARMAN: Okay.

20 THE COURT: And he had property that he's seen on that. I
21 don't know what his ledger looked. I haven't looked at any documents
22 yet till they're admitted. Find out who came in the courtroom and see
23 what -- anybody know who this is in the courtroom?

24 MS. HAUSER: That's our expert.

25 MR. LUSZECK: The ELN Trust expert, that's who it is.

1 THE COURT: He can -- the expert can remain, of course. You
2 can continue on that one.

3 MR. KARACSONYI: All right.

4 BY MR. KARACSONYI:

5 Q And Mr. Gerety, you previously prepared general ledgers for
6 the ELN Trust?

7 A We did.

8 Q Can you turn to Exhibit A -- I'll get it for you. It's in Volume I.

9 THE WITNESS: May I rephrase that answer actually?

10 THE COURT: Which answer?

11 THE WITNESS: That we prepared general ledgers.

12 THE COURT: Okay.

13 THE WITNESS: We prepared a trial balance, so we took
14 beginning balances, posted as a journal entry all of the cash transactions
15 from the client's general ledger, and then made adjustments as we saw
16 fit. If things were posted and there were some accounts that were not
17 being posted to the client's general ledger, we just posted the activity as
18 a single journal entry, not as the detail of what a general ledger would
19 be.

20 BY MR. KARACSONYI:

21 Q Do you do that as an accountant for your clients?

22 A Yeah, all the time.

23 Q And you maintained general ledgers or had general ledgers
24 for the Eric L. Nelson Nevada Trust from May 2001 forward, correct?

25 A We didn't maintain them. The client's internal accounting

1 department maintained the general ledgers. And we then took their
2 general ledgers and made journal entries to them to get to the ending
3 balances.

4 Q And you maintained that as part of your file?

5 A Yes.

6 MR. LUSZECK: Object -- I guess just objection as to time.

7 MR. KARACSONYI: Yeah, this is -- I'm only doing within the
8 tracing period.

9 THE COURT: I think he said May 30, 2001, but you're saying
10 the balance sheet and ledgers you were talking about?

11 MR. LUSZECK: Well, but I don't know Mr. Gerety's testifying
12 that he was maintaining them throughout his time as an accountant. I
13 don't think he represented the ELN Trust in 2001. I may be wrong, but I
14 don't know that I'm following.

15 THE WITNESS: That's a correct statement. The -- Rochelle
16 was the person maintaining those GLs.

17 THE COURT: Rochelle McGowan?

18 THE WITNESS: Yes.

19 BY MR. KARACSONYI:

20 Q Or Lana Martin?

21 A Yeah, possibly Lana, too.

22 Q Okay. I'm going to show you what we marked as Exhibit A.
23 And can you look through this document and tell us what this is?

24 [Witness reviews document]

25 THE WITNESS: Yes.

1 BY MR. KARACSONYI:

2 Q And what is this?

3 A This is the client's general ledger that was -- they prepared, I
4 believe, using Peachtree, if I recall. This is the printouts from that.

5 Q For the period from May 1, 2001 to December 31, 2001?

6 A Correct.

7 MR. KARACSONYI: Your Honor, I move to admit Exhibit A.

8 THE COURT: Counsel?

9 MR. CARMAN: It's an objection, Your Honor. He's not the
10 author of the document. He just testified that it was created by another
11 party.

12 MR. KARACSONYI: Your Honor, this was produced to --
13 these are regular kept business activity. These were produced by their
14 client, are the only records of the general ledgers. And these were relied
15 upon by us as documents produced throughout the course of this case,
16 including in prior -- and I've never seen attorneys object to documents
17 they produced and offered to the Court to rely upon in prior trial as part
18 of this very record.

19 THE COURT: Again, I haven't reviewed all the documents
20 that were admitted, that last one on that, but we'll let it in this time and
21 [indiscernible] till we see the probative --

22 MR. CARMAN: Okay. And just so we're clear for the record,
23 not objecting based upon authenticity, but the contents of the
24 documents are hearsay, obviously the date it was entered by a third
25 party. So I just wanted to clarify, it's not an authenticity objection; it's

1 just a hearsay objection.

2 THE COURT: And his testimony was it was a client's general
3 ledger they kept, and you just added the -- at the end of the balance? Is
4 that what you did on the -- add the transactions?

5 THE WITNESS: That's correct. We took the total of the
6 transactions and posted them.

7 MR. KARACSONYI: In which case, Your Honor, it's not
8 hearsay, because anything offered by an opposing party is not -- is an
9 admission. Any -- information, statement is excluded as -- defined as
10 non-hearsay.

11 THE COURT: Overruled. Let's move on. It'll be admitted at
12 this time. See where we're at and we'll see what probative value we put
13 on when we're all done with the testimony. See if we connect all the
14 dots.

15 [Defendant's Exhibit A admitted into evidence]

16 BY MR. KARACSONYI:

17 Q And if you'll turn to Exhibit B, Mr. Gerety, the very next one.

18 A I'm there.

19 Q Can you identify this document?

20 A It's the ELN Nevada Trust general ledger for the period
21 January 1st, 2002 through December 31st, 2003.

22 Q And if this was part of the file, your file would have been
23 provided to you by a representative of the ELN Trust?

24 A Yes. It was given to us by a representative of the ELN Trust.

25 MR. KARACSONYI: Your Honor, I move to admit Exhibit B.

1 MR. CARMAN: Same objection.

2 THE COURT: Same ongoing objection? And what was that
3 time period, Mr. Gerety, January --

4 THE WITNESS: January 1st, 2002 through December 31st,
5 2003. So it actually covers two years.

6 THE COURT: Covers two years?

7 BY MR. KARACSONYI:

8 Q Okay. Finally, sir --

9 THE COURT: It'll be admitted, Exhibit B, with the objection
10 the hearsay.

11 [Defendant's Exhibit B admitted into evidence]

12 THE COURT: You can continue, Mr. --

13 BY MR. KARACSONYI:

14 Q Finally, can you turn to Exhibit C, sir?

15 A I'm there.

16 Q Can you identify this document?

17 A It's the general ledger for the Eric L. Nelson Nevada Trust for
18 the period January 1st, 2004 through December 31st, 2004.

19 Q And this was -- had been provided to you by a representative
20 of the Eric L. Nelson Nevada Trust?

21 A Yes.

22 MR. KARACSONYI: I move to admit Exhibit C, Your Honor.

23 THE COURT: Note the objection hearsay.

24 MR. CARMAN: Same objection, Your Honor.

25 THE COURT: Yeah. I think you have to keep raising it,

1 because --

2 MR. CARMAN: Yeah.

3 THE COURT: -- the Supreme Court, they say you can't have
4 an ongoing --

5 MR. CARMAN: Unless you order me not to.

6 THE COURT: Yeah. I believe the Supreme Court said you
7 have to. There's no such thing as an ongoing objection, I believe.

8 MR. CARMAN: That's correct.

9 THE COURT: You can continue, counsel.

10 BY MR. KARACSONYI:

11 Q All right. And do you recall what time period you were -- you
12 said you may have been the accountant for the ELN Trust in 2000,
13 somewhere in 2000 but it could have been a different period. Do you
14 recall the exact dates?

15 A No -- yes -- well, not -- let me think here. My first work with
16 Eric was not any tax preparation at all. It was just consulting on a
17 transaction in 2000, early 2000s, I think. The -- the first year we did any
18 tax work was the first year they filed separate returns -- actually, tax
19 preparation work, because what I mean to say was the year they filed
20 separate returns. And we did not do the Trust initially till a couple of
21 years after that for tax return.

22 Q When you say they, you're referring to the parties, Eric and
23 Lynita?

24 A Yes, when I said they, I meant the couple, the married --
25 when they were still married at the time. So we filed a married filing

1 separate return. I'd have to look at the tax returns to tell you which year
2 that was.

3 Q Now, if we go back to Bates DG0003. That's an exhibit now.

4 A What was the number again.

5 Q Control number? DG0003.

6 A 3? Okay. I'm there.

7 Q Okay. You stated here that "On the summary of findings, we
8 found no evidence that any community property was transferred to ELN
9 Nevada Trust or that any community property was comingled with the
10 assets of the ELN Nevada Trust." Do you see that?

11 A What's the paragraph?

12 Q Summary of findings, the first sentence.

13 A Okay. Yes, I see it.

14 Q Okay. And you -- above that, you stated that the trust
15 accounting starts in the paragraph before that with a balance sheet as of
16 May 31, 2001. "Since there were beginning balances in the equity
17 accounts on the balance sheet, capital contribution draws and retained
18 earnings, it appears that for ease of accounting, the person doing the
19 bookkeeping for ELN Nevada Trust used the Peachtree accounting file
20 used for ELN Separate Property Trust with its ending account balances
21 and just changed the name to ELN Nevada Trust."

22 MR. CARMAN: And I'm going to object to the question. He's
23 -- that's -- an expert can rely upon hearsay in forming an opinion, but
24 he's not been proffered as an expert here today.

25 THE COURT: As far as -- I don't know where you're going

1 with that. As far as -- it says position as far as either way, no evidence,
2 community property and transfers. I don't know what that is as far as
3 the purpose of that question. I'm not sure where you're going with that.
4 If you want to explain where you're going with that.

5 MR. KARACSONYI: I'm just going to go through that --

6 THE COURT: As far as -- I don't care if he determines it's
7 community or not. That's not his testimony. Right now it's the tracing,
8 what was in the property on May 30th, 2001, where it came from. So I'm
9 not sure where this statement -- the prior statement was as an expert.
10 He's not the expert in this case, so I'm not sure what the question, the
11 purpose of that question is where it says, "no evidence of community
12 property being transferred." I don't know where you're going with that.

13 MR. KARACSONYI: Well, Your Honor, again, this was all --
14 this is all part of the record. I mean, you're basically prohibiting us from
15 going back through the record?

16 THE COURT: I don't know where you're going with tracing
17 on that, as far as his -- what he thought it could be property or not --

18 MR. KARACSONYI: I am going to tracing.

19 THE COURT: I'm not interested in his community property
20 opinions at this time. He's not an expert. You should have listed him as
21 an expert this time and gave a report to the other side, I'd let you go on
22 that. As far as what he determined in his prior one, I don't care if he felt
23 there was no evidence of community property transferred to the Trust or
24 not. That's not -- so what we're trying to determine on is whether -- he
25 can testify was in there as of May 30th, 2001, he can say where it came

1 from on that. We'll determine if it's community or not. But as far as that
2 summary of findings on that, that was an expert, was already admitted.
3 He's not here today as an expert. He's here today as a tracing. That's
4 what the supreme court said, tracing. And the Anthem is your experts. I
5 don't know where you're going with that with his summary of finding.

6 No evidence of community property transferred on that. If
7 you want to leave it at that -- I'm sure that wasn't your purpose, because
8 that would go against your interests, I would guess. I'm not sure where
9 you're going with it. So where you plan on going with his summary of
10 findings as the expert?

11 MR. KARACSONYI: Well, I just want to show him the
12 documents attached thereto, Your Honor, and the tracing of the actual
13 entities and the transfers.

14 THE COURT: All right. Then show him what's -- then show
15 him the stuff on that, what was in there, what was in his balance sheet.

16 MR. KARACSONYI: Okay.

17 BY MR. KARACSONYI:

18 Q Mr. Gerety, you received documents. The documents you
19 attached to your report, were those all true and correct copies of
20 documents that you received from the ELN Trust?

21 A Yes.

22 Q All right. Can you turn to Exhibit 3 of your report then?

23 A What's the Bates number?

24 Q DG00017.

25 A Okay.

1 Q Okay. And this is an assignment and assumption of
2 corporation stock for Eric L. Nelson Separate Property Trust to Eric L.
3 Nelson Nevada Trust that was provided to you?

4 A Correct.

5 Q Okay . And this is for the stock in Phoenix Leisure, Inc., a
6 Canadian corporation?

7 A Correct.

8 Q Okay. And the assignor here is Eric L. Nelson, Trustee of the
9 Eric L. Nelson Separate Property Trust, and the assignee is Eric L.
10 Nelson, Trustee of the Eric L. Nelson Nevada Trust, correct?

11 A That is correct.

12 Q If you turn to Page 43. This is an assignment and
13 assumption of corporation stock from Eric L. Nelson -- or Eric Nelson
14 Separate Property Trust under Agreement 71393 to Eric L. Nelson
15 Nevada Trust under Agreement dated 5/30/2001; is that correct?

16 A Correct.

17 Q And it pertains to 100 percent of his stock in Lucky Lucky
18 Lucky, Inc., a Nevada corporation; is that correct?

19 A Yes.

20 Q Okay. And the assignor here is Eric L. Nelson, Trustee of the
21 Eric L. Nelson Separate Property Trust under Agreement dated 7/13/93,
22 and the assignee is Eric L. Nelson, Trustee of the Eric L. Nelson Nevada
23 Trust dated May 30, 2001; is that correct?

24 A That is correct.

25 Q Go to Page 45. And this is an assignment and assumption of

1 membership interest from Eric L. Nelson to Eric L. Nelson Nevada Trust
2 under Agreement dated 5/30/2001, correct?

3 A Correct.

4 Q For Cleopatra Gaming Management, LLC?

5 A Correct.

6 Q And the assignor here is Eric L. Nelson?

7 A Correct.

8 Q And the assignee is Eric L. Nelson, Trustee of the Eric L.
9 Nelson Nevada Trust dated May 30, 2001; is that correct?

10 A That is correct.

11 Q All right. Now, please turn to 48. It says it's an operating
12 agreement of Dynasty Development Group, LLC; is that correct?

13 A Yes.

14 Q And it says that the initial -- it says: "This operating
15 agreement is entered into as of the 7th day of January 2000 by Eric L.
16 Nelson, the initial sole member"; is that correct?

17 A That's correct.

18 Q Okay. Turn to please DG49 -- excuse me, 47. Sorry. And this
19 is an amended and restated operating agreement of Dynasty
20 Development Group, LLC?

21 A Yes.

22 Q Okay. And it says there in the highlight: "Whereas the
23 company desires to remove Eric L. Nelson as the initial sole member and
24 appoint as the sole member of the company to Eric L. Nelson Nevada
25 Trust under agreement dated 5/30/01 with Eric L. Nelson as trustee." Do

1 you see that?

2 A I do.

3 Q Did I read that correctly?

4 A Yes.

5 Q Turn to DG49. And this is an assignment and assumption of
6 membership interest from Eric L. Nelson to Eric L. Nelson Nevada Trust
7 under Agreement dated 5/30/2001, correct?

8 A That's correct.

9 Q And it's for Cleopatra's Palace, LLC?

10 A Correct.

11 Q And it says that the assignor there is Eric L. Nelson; is that
12 correct?

13 A That is correct.

14 Q And the assignee is the Eric L. Nelson, Trustee of the Eric L.
15 Nelson Nevada Trust dated May 30, 2001?

16 A Correct.

17 Q And it says: "Whereas assignor is the owner of 100 percent
18 of membership interest in Cleopatra's Palace, LLC, which was formed
19 pursuant to an operating agreement dated as of June 6, 1997." Do you
20 see that?

21 A I do.

22 Q "Whereas assignor desires to assign for valuable
23 consideration 100 percent of his rights, titles, duties, obligations, and
24 interest in and to LLC to assignees." Is that correct?

25 A That is correct.

1 Q All right. Turn please to 51.

2 A Which -- to where?

3 Q DG51.

4 A 51. Okay.

5 Q And this is an assignment and assumption of membership
6 interest from Eric L. Nelson to Eric L. Nelson Nevada Trust under
7 Agreement dated 5/30/2001?

8 A That is correct.

9 Q And it is transferring 100 percent of membership interest in
10 Cleopatra's Club Casino, LLC?

11 A Correct.

12 Q And the assignor is Eric L. Nelson?

13 A That is correct.

14 Q And the assignee is Eric L. Nelson, Trustee of the Eric L.
15 Nelson Nevada Trust dated May 30, 2001?

16 A That is correct.

17 Q Turn to please DG-00053. This is an assignment and
18 assumption of membership interest from Eric L. Nelson to Eric L. Nelson
19 Nevada Trust under Agreement dated 5/30/2001; is that correct?

20 A That is correct.

21 Q And it assigns 100 percent of the membership interest in
22 Cleopatra's Wild Goose Casino, LLC; is that correct?

23 A That is correct.

24 Q And it's from Eric L. Nelson, the assignor?

25 A Correct.

1 Q To Eric L. Nelson, Trustee of the Eric L. Nelson Nevada Trust
2 dated May 30, 2001?

3 A Correct.

4 Q Turn to please, 55. And this is an assignment and
5 assumption of membership interest from Eric L. Nelson to Eric L. Nelson
6 Nevada Trust under Agreement dated 5/30/2001?

7 A Correct.

8 Q And this assigns 100 percent of the membership interest in
9 Cleopatra's Cable Bridge Casino, LLC?

10 A Correct.

11 Q And it's between the assignor, Eric L. Nelson?

12 A Correct.

13 Q And the assignee, Eric L. Nelson, Trustee of the Eric L.
14 Nelson Nevada Trust dated May 30, 2001?

15 A That is correct.

16 Q Go to DG57. And this is an assignment and assumption of
17 membership interest from Eric L. Nelson to Eric L. Nelson Nevada Trust
18 under Agreement dated 5/30/01, correct?

19 A Correct.

20 Q And it assigns 100 percent of the membership interest in
21 Cleopatra's Wild Grizzly Casino, LLC?

22 A That is correct.

23 Q And it assigns it from Eric L. Nelson, the assignor, correct?

24 A Correct.

25 Q To Eric L. Nelson, Trustee of the Eric L. Nelson Nevada Trust

1 dated May 30, 2001; is that correct?

2 A Correct.

3 Q Turn to 59. This is an assignment and assumption of
4 membership interest from Eric L. Nelson to Eric L. Nelson Nevada Trust
5 under agreement dated 5/30/01?

6 A Correct.

7 Q And it's for Hacienda Casita, LLC?

8 A Correct.

9 Q It transfers 100 percent of the membership interest in
10 Hacienda Casita, LLC?

11 A Correct.

12 Q And it's from Eric L. Nelson, the assignor to Eric L. Nelson,
13 Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 as the
14 assignee?

15 A Correct.

16 Q Is that correct?

17 A That is correct.

18 Q All right. Let's turn to DG63. And this is an assignment and
19 assumption of corporation stock from Eric L. Nelson to Eric L. Nelson
20 Nevada Trust under agreement dated 5/30/01?

21 A Correct.

22 Q And it assigns 100 percent of the stock in Evanston Horse
23 Racing, Inc., a Wyoming corporation?

24 A Correct.

25 Q And it assigns it from Eric L. Nelson, the assignor?

1 A Correct.

2 Q And Eric L. Nelson -- to Eric L. Nelson, Trustee of the Eric L.
3 Nelson Nevada Trust dated May 30, 2001; is that right?

4 A That's correct.

5 Q All right. We'll go to DG65. This is an assignment and
6 assumption of a membership interest from Eric L. Nelson to Eric L.
7 Nelson Nevada Trust under agreement dated 5/30/01; is that correct?

8 A That is correct.

9 Q And it's between Eric L. Nelson as assignor, correct?

10 A Correct.

11 Q And Eric L. Nelson, Trustee of the Eric L. Nelson Nevada
12 Trust dated May 30, 2001 as assignee?

13 A Correct.

14 Q And it assigns 100 percent of the membership interest in
15 Wyoming Downs Rodeo Events, LLC?

16 A Correct.

17 Q Going -- the date of this assignment is June 1, 2001; is that
18 correct?

19 A I think it's January -- I'm sorry. Just a second. Yes, that's
20 correct.

21 Q And it's pursuant to an operating agreement that was dated
22 as of January 4th, 2000; is that correct?

23 A That is correct.

24 Q And if you go back then to 63.

25 A Okay.

1 Q That assignment and assumption is dated June 1, 2001 as
2 well, correct?

3 A That is correct.

4 Q If you go back to 61, that assignment and assumption of
5 corporation stock that's dated June 1, 2001 as well, correct?

6 A That is correct.

7 Q If we go back to --

8 MR. LUSZECK: Your Honor, can I object? Are we really
9 going to go back through all these again, just look at the date when the
10 document speaks for itself?

11 THE COURT: No. I'm fine with that. I'm fine with -- they've
12 been admitted. I'll read all the stuff on that, but --

13 MR. CARMAN: Does counsel have an intent to admit these
14 documents, I guess is the question?

15 MR. KARACSONYI: It was admitted. It's part of his report.

16 MS. HAUSER: It was not admitted.

17 MR. KARACSONYI: It was admitted.

18 THE COURT: Isn't that part of the Exhibit LR?

19 MR. KARACSONYI: It's already been admitted at the prior
20 trial. This has always been part of the record. This is Exhibit L. This was
21 his full report that was admitted as a --

22 THE COURT: This is the Exhibit L? All right.

23 MR. CARMAN: This goes back to the objection. If they're
24 trying to admit his expert report, they need to have called him as an
25 expert witness here today.

1 MR. KARACSONYI: No. We did not call him as an expert.
2 We're just admitting documents that were provided to him by the ELN
3 Trust that he himself admit that he got these documents. These are
4 admissions by a party opponent.

5 MR. CARMAN: But they're in conjunction with is expert
6 report, Your Honor.

7 THE COURT: Well, the issue on that, we'll let in this part and
8 see if they can make the connection. I'm just trying to see what the
9 property was in the Trust as of May 30th, 2001. That's what I'm looking
10 at. I assume that's where you're going with that, what was in the Trust
11 at 2001. Let's see.

12 MR. KARACSONYI: That's what, to show what was
13 transferred and who it was transferred from.

14 BY MR. KARACSONYI:

15 Q All right. Mr. Gerety, so you first Eric Nelson when?

16 A Like I said, it was sometime between '96 and 2004. It -- met
17 him -- it was prior to the sale of the Jockey Club on the Strip, whenever
18 that was.

19 Q Okay. And did you -- you indicated before that you hadn't
20 prepared his personal returns prior to the year that the parties filed
21 separately. Had you prepared any other returns for any of the entities
22 associated with the Eric Nelson Separate Property Trust or the ELN Trust
23 prior to that date?

24 A If my memory's correct, I don't believe so.

25 Q You did consulting work, you indicated for Mr. Nelson. What

1 consulting work did you do for him?

2 A I consulted on a like-kind exchange, 1031 exchange, Code
3 Section 1031 exchange.

4 Q And which exchange was that?

5 A I was working with the owners of -- it was a Canadian corp
6 that owned the Jockey Club, Canadian Mining Corp., but actually owned
7 Las Vegas real estate. And Eric was putting that deal together for them,
8 and we -- I think the Wyoming property was involved in that, if I
9 remember correctly. It's been a long time ago.

10 Q Do you remember any specifics of that transaction as you sit
11 here today?

12 A Some.

13 Q Okay. What's -- what do you recall specifically?

14 A That I was advising the owners of the Jockey Club on how to
15 defer tax using a like-kind exchange. So they were selling the real
16 estate, even though it was a time share, but the commercial real estate
17 around it. And we were -- they were acquiring Wyoming property as
18 part of a like-kind exchange. And so we helped them defer paying tax on
19 that gain at the time by replacing it with like-kind property, real estate.

20 Q Now, by 2007, you were preparing the taxes for -- for Eric
21 individually and his entities; is that correct?

22 A By 2007? Yeah, I'm pretty sure I was preparing the Trust
23 then and the entities.

24 Q Yeah. That was going to be my question. You didn't just do
25 his personal taxes, but you also did the taxes for the Trust as well as the

1 entities held therein?

2 A Later, yeah. I mean, initially it was just his individual return.

3 Q All right. If you could turn to Exhibit YY-R.

4 A Why don't I have that?

5 Q I have Volume 12. No, you don't. I'm going to --

6 MR. KARACSONYI: May I approach the witness, Your
7 Honor?

8 BY MR. KARACSONYI:

9 Q Can you identify this document, sir?

10 A It is Dynasty Development Group, LLC's general ledger for
11 the period January 1, 2006 through October 31, 2011.

12 MR. LUSZECK: And this is -- are we at four lines or three
13 lines?

14 UNIDENTIFIED SPEAKER: Two lines.

15 MR. LUSZECK: Two lines.

16 BY MR. KARACSONYI:

17 Q And this would have been information provided to you by
18 ELN Trust and its representatives?

19 A Yes.

20 MR. KARACSONYI: Your Honor, I move to admit Exhibit YY.

21 THE COURT: Any objections, counsel?

22 MR. CARMAN: No objection.

23 THE COURT: Admitted Exhibits as YY-R.

24 [Defendant's Exhibit YY-R admitted into evidence]

25 /////

1 BY MR. KARACSONYI:

2 Q Okay. And if you go, sir. Bates 006798.

3 A Okay.

4 Q Okay. And then August 15, 2007, it shows the -- shows a
5 transfer of 32 acres to ELN Nevada Trust to sell to source. Do you see
6 that?

7 A I do.

8 Q Okay. And that was on August 15, 2007?

9 A Correct.

10 Q And that's from an account description of 120 total acres; is
11 that correct?

12 A Yes. The account name is 120 acres minus 32 SRS.

13 Q And the 32 being the 32 acres that were transferred there on
14 August 15, 2007?

15 A I believe so. Can't --

16 Q And then Exhibit SS.

17 MR. LUSZECK: And I guess just seems to any objection,
18 Your Honor, we're here to talk about his expert report and now we're
19 pulling up documents that are not specifically mentioned in their expert
20 report. And, once again, none of this stuff was addressed in Anthem's
21 report.

22 MR. KARACSONYI: This is the accounting that he --

23 THE COURT: Overruled.

24 MR. LUSZECK: Show me the citation from his actual report
25 that's citing all this stuff, counsel.

1 THE COURT: Overruled. Let's get on there and see where
2 we're at, see if they connect up. We note the objection and the fact that
3 it was not cited in the expert report submitted by Anthem.

4 MR. CARMAN: Just so we're clear, Your Honor, it was
5 disregarded by Anthem. Anthem disregarded all of these Peachtree
6 records and refused to incorporate them into the report. I mean, that's
7 why this should be objectionable. This was deemed not relevant by their
8 own expert and they're now admitting them into evidence.

9 THE COURT: Okay. Well, we can ask them when
10 they -- when they get them there, you can ask their expert straight out,
11 ask him.

12 MR. KARACSONYI: These are the books and records of the
13 trust, Your Honor.

14 MR. LUSZECK: They are, Your Honor, but that's the whole
15 purpose behind an expert, is to retain an expert to look at documents
16 and to provide an opinion. And Anthem didn't do that.

17 MR. KARACSONYI: You don't --

18 THE COURT: Let's move on. We'll get there. We note the
19 objection for the record. Let's get through this on that. We'll note when
20 they get the expert, you'll be able to address those specifically. Yeah.

21 BY MR. KARACSONYI:

22 Q Can you review Exhibit SS, Mr. Gerety?

23 A Okay.

24 Q Can you identify this document?

25 A It's the personal return of Eric Nelson for the tax year 2007.

1 Q Okay. And who was the preparer for the tax return?

2 A It was my firm.

3 Q Okay. So does this refresh your recollection, by 2007, you
4 had started preparing the tax returns for Eric L. Nelson?

5 MR. CARMAN: Objection, Your Honor. Form of the
6 question. He's already testified he was doing Eric's taxes in 2007.

7 THE COURT: I think he did say he was doing the 2007 tax
8 return?

9 THE WITNESS: I -- we prepared this return.

10 THE COURT: Yeah. I think you said you're doing Eric's first
11 and then a couple years after that you started doing the trust tax returns?

12 THE WITNESS: That is correct, yes.

13 THE COURT: But you did do this one, the 2007 tax return?

14 THE WITNESS: We did prepare the 2007 return.

15 THE COURT: Okay.

16 BY MR. KARACSONYI:

17 Q And do you recall which entities you also prepared returns
18 for during 2007?

19 A I'd have to look in my file because I don't have all the years in
20 my head, when we started each one. I think by -- yeah -- well, I'd have to
21 look at the file.

22 Q All right. Now, going to -- back to our prior exhibit --

23 MS. HAUSER: Which number?

24 BY MR. KARACSONYI:

25 Q -- which was --

1 THE COURT: YY-R.

2 BY MR. KARACSONYI:

3 Q And turning to bates 6828.

4 A 6828. What tab is that under?

5 Q Same, YY.

6 A I'm in SS. That was the tax returns, SS.

7 Q Yes. Take your time. I know it's a lot of folders.

8 A Okay.

9 Q And this here, there's an account ID 4,000. Do you see that?

10 A Yes.

11 Q And what is the account description?

12 A Management fee income.

13 Q And listed there, did Dynasty receive -- Dynasty Development
14 Group receive -- LLC receive managed fees from the Silver Slipper?

15 A Based on the -- yes.

16 Q And those are listed --

17 A It's saying -- per the GL, it's saying it is coming from the
18 Silver Slipper Casino, the description.

19 Q And in these general ledgers, at the end of each account
20 description, does it provide a balance for the year?

21 A Yes.

22 Q And so for -- if you go to 6829, the next page, there at the
23 fiscal year-end balance, it shows \$132,694.78 for the 2007 year in
24 management fee and income from Silver Slipper; is that correct?

25 A That is correct.

1 Q And on that same page, the last line, for fiscal year-end
2 balance, it shows \$140,108.73 for the 2008 year-end total received in
3 management fees?

4 A What number did you say again?

5 Q Same page.

6 A I know. But what was the dollar amount?

7 Q \$140,018.73.

8 A Correct.

9 MR. KARACSONYI: I apologize. You're right, I did say \$108.

10 Q Then if you go to 6830, the very next page, shows \$77,691.20
11 for the 2009 year-end total received in management fees; is that correct?

12 A That's correct.

13 Q And on 6831, the very next page, the very first line, it shows
14 \$95,810.82 for the 2010 year in total received in management fees from
15 Silver Slipper; is that correct?

16 A That's correct.

17 Q And on that same page for October 31, 2011, the end date of
18 the general ledger, it showed \$81,159.01 in total management fees; is
19 that correct?

20 A That's correct.

21 Q And now these management fee income would have been
22 income coming into Dynasty Development Group, LLC; is that correct?

23 A That is correct.

24 Q Now, you had previously explained that on the general
25 ledgers that you receive from your clients, you make journal entries and

1 adjustments based on what you see or observe?

2 A That is correct.

3 Q Now, on the general ledger there are various account IDs,
4 different numbers there on the left side. Do you see those?

5 A Yes.

6 Q Can you explain to the Court what those account IDs
7 correspond with?

8 A Those are the account numbers. So each account has a
9 different number.

10 Q Okay. And do types of accounts typically have certain
11 numbers?

12 A Yeah. Generally, you start with -- it depends on the clients. I
13 mean, you can pick anything, the truth is. But let's say if it's a thousand,
14 if you're using a four-digit account number, you know, cash would be
15 1,000, accounts receivable 2,000, plus whatever, accounts payable,
16 maybe, you know, 3,000, or you may break it up in between. You know,
17 3,000 could be your capital accounts. Like in this case, I think the 3,000s
18 are capital, assets are under the 1,000, liabilities under 2,000, capital
19 3,000, net income is 4,000, in this case.

20 Q Okay.

21 A But every client is different.

22 Q Okay. So -- but for this client, that's what I want to do. So if
23 we turn to -- let's just use the Dynasty Development Group one as an
24 example that we were just looking at.

25 A Okay.

1 Q 6729 is the start of the general ledger that we were just
2 looking at.

3 A Okay. I thought you were going to account number.

4 Q No, no. I meant -- I don't think you mentioned 6,000s.

5 A Well, they're on here. Okay, 6729.

6 Q Okay. So here we have 1,020, an account ID, and it says DDA
7 City National?

8 A Yes.

9 Q And so what would this be? A bank account?

10 A Yes.

11 Q Okay. A bank account held at City National Bank?

12 A I would assume so, yeah, based on the description.

13 Q Okay. And it would show all the transactions in and out of
14 that bank during that time period?

15 A Yes.

16 Q And so then if we move on -- before we do, there are
17 reference numbers associated or reference notes or numbers and then
18 journal, JRNL, entries there under some of the descriptions. Do you see
19 those?

20 A Yes, I do.

21 Q Okay. What's a reference number?

22 A A reference number, if it's a journal entry, it's going to be the
23 journal entry number usually. It looks like they're putting descriptions in
24 there too but, generally, you know, if it's a journal entry, it could be a
25 check number, it could be -- it's just a way for a client to trace it back to

1 some other source document.

2 Q Okay. And does that journal entry sometimes correspond
3 with another entry somewhere else in the general ledger?

4 A Yes. It has to. It has to or it wouldn't balance.

5 Q Okay. So, for example, if we see on 1606, reference 1223
6 CDJ, we would find -- CDJ stands for "cash disbursement journal"?

7 A Correct.

8 Q So we would see somewhere in the general ledger a cash
9 disbursement with a reference number of 1223 somewhere else in the
10 general ledger?

11 A Yes, you should.

12 Q All right.

13 A Probably in the expense accounts, the 6,000s.

14 Q Okay. So then let's keep going through this then. Okay. If
15 you go to 6775.

16 A Okay.

17 Q The next account is a 1,030 DIP account, HCP per BK. Do you
18 see that?

19 A I do.

20 Q And that should be an asset account as well because it has a
21 thousand prefix?

22 A Yes.

23 Q Okay. But this -- if there's nothing listed, this could just
24 be -- why is there no balance listed? Or why would no balance be listed?

25 A It could be a number of things. I mean, I can't tell you why in

1 this case because just don't -- you know, it's been too long there. But
2 you'll see accounts that were closed out but the description is still there,
3 the account number is still there so it will show up as no balance. That's
4 more likely what it is but I couldn't tell you for sure on this case.

5 Q Okay. And if there's a balance associated with an asset
6 account, should that be reflected at that -- during that period, should that
7 be reflected there in the general ledger?

8 A It should.

9 Q So for -- looking through -- for all the thousand accounts,
10 those are assets. What about when you move to 1,100, does that change
11 anything or are those assets as well?

12 A In this case on this GL, general ledger, the 1,100 is an
13 accounts receivable account.

14 Q So an asset?

15 A It's an asset, yes.

16 Q Do you -- does ELN Trust use the same numbering system
17 for all of its accounts?

18 A I don't know.

19 Q In your work as their -- as the accountant --

20 A I'm usually not --

21 Q -- do you recall?

22 A I usually have staff and tax managers reviewing that before it
23 gets to me so I don't know.

24 Q So it could be different per entity, by entity?

25 A Could be.

1 Q Does it appear that anything -- in this general ledger, that
2 anything that starts with a 1 is an asset? Anything in the thousands?

3 A It does. Let me see. Yes. Or a contra asset account
4 which -- like accumulated depreciation is -- reduces an asset account but,
5 yeah, it's a contra asset account. So it would be an asset. You net them
6 together.

7 Q Okay. And now going to 6804.

8 A I'm there.

9 Q It starts with the 2,000s?

10 A Correct.

11 Q And now these are accounts payable by the entity?

12 A That's correct.

13 Q And is that true for anything that starts -- that's in the 2,000s?

14 A Yeah. I mean, you can also tell too, assets are going to have
15 a positive balance, liabilities and capital will have a negative balance.
16 They'll have a subtraction in front -- negative sign in front of them. Or a
17 credit -- negative means it's got a credit balance. If it's a positive
18 number, it means it has a debit balance.

19 Q Okay. Now going to the 3,000s, it starts on 6813.

20 A Okay.

21 Q And what are -- what are these 3,000 numbers? Retained
22 earnings?

23 A These are capital accounts. So owner's equity. So you have
24 retained earnings in there, which is the earnings from the prior year will
25 accumulate.

1 Q And what do you mean by owner's equity?

2 A Well, it's an LLC to each member -- this one's -- each member
3 will have a capital account. And so all these 3,000 accounts, whether
4 they are retained earnings, capital, whatever that's in there, will all get
5 netted up together and that's what makes up the members capital
6 account, what their -- so it -- and the fact, it is your assets minus your
7 liabilities, is what those will total, plus or minus whatever the current
8 year's income is.

9 Q Okay. If you go to 6815. This is members contribution. Are
10 these contributions from the member of the LLC and they're out of
11 the -- either into the LLC, and then if there's any repayment out of the
12 LLC?

13 A That is correct.

14 Q And if you go to the next page, 6817, these are members
15 draws?

16 A Right.

17 Q So anything dispersed out to the member of the LLC?

18 A Would generally go through there, yes.

19 Q And then if you go to 6819, it says personal expense
20 disbursements; is that correct?

21 A That is correct.

22 Q So anything paid for the members' personal expenses would
23 be included in the capital?

24 A Yeah. It's considered a draw. It's a distribution. It's not a
25 business expense.

1 Q If you go to 6828, and we start with the 4,000s.

2 A Okay.

3 Q And everything in here in the 4,000s is income to the entity;
4 is that correct?

5 A Is revenue, right. So revenue generally is booked as a
6 negative number, or a credit.

7 Q And it's revenue received by the entity; is that correct?

8 A Yes. It should be.

9 Q Now, if you turn to 6839.

10 A Okay.

11 Q Start with the 6,000s?

12 A Okay.

13 Q And these are expenses of the entity?

14 A On these books, yes.

15 Q Okay. And going through, is that true for all the 6,000s for
16 this entity?

17 A I believe that's the intent of their numbering system. Just
18 scanning, it's what it appears. Actually goes through the 7,000s.

19 Q I was going to ask you about that. 7,000s are also expenses?

20 A Yes.

21 Q Any difference between 6,000 and 7,000 expenses, or is that
22 just --

23 A It goes to 8,000 --

24 Q -- a need for more numbers?

25 A No. It's -- there's no difference really. It's -- you run out of

1 numbers.

2 Q Okay.

3 A You could be -- you know, a lot of people will set up their
4 general ledgers, I mean, but everybody's different, but some people set
5 up, here's your revenue and expenses from operation for -- or cost of
6 goods sold maybe. Then you've got administrative costs that may have
7 a different number. And then you may have other items like interest
8 or -- not normal course of business income. You know, income from
9 investments might number the 7,000s or something like that. But each
10 client's different. It all depends on how they set up their books.

11 Q Okay. If you turn to -- well, first, can you tell me who's
12 Angelo in your office?

13 A Angelo was one of my managers, accounting managers in
14 my office. He's no longer with us now. He's got his own firm. But he
15 had worked for me.

16 Q What's his last name?

17 A Ruccile -- Ruccile -- Ruccia. Ruccia.

18 Q Did he work with you on this case and with this client?

19 A Yes. He prepared all the -- he did all the dirty work, putting
20 the trust accounting together.

21 Q And does your firm maintain the records related to the work
22 that he did?

23 A You have it, what's left of it. Our file retention policy is
24 we -- supposed to destroy anything after eight years. So everything was
25 gone from that except I still had -- should have but I still had one work

1 paper file left at -- which I sent to you guys.

2 Q Okay. All right. Can you please turn to Exhibit YYYYYY.

3 A Which exhibit?

4 Q YYYYYY.

5 MR. KARACSONYI: Oh, did I give it to him? I got to give it to
6 him.

7 THE WITNESS: Oh, yeah.

8 UNIDENTIFIED SPEAKER: Which volume is it?

9 MS. KARACSONYI: Which one? 16.

10 UNIDENTIFIED SPEAKER: 16?

11 MS. KARACSONYI: Yes.

12 THE COURT: We're going to have to give you more space
13 there, Mr. Gerety.

14 THE WITNESS: What's that?

15 THE COURT: You got to get more space.

16 THE WITNESS: I need a bigger table, huh. And you said Y?

17 THE COURT: YYYYYY.

18 BY MR. KARACSONYI:

19 Q Before you do that, I guess let's look at HHHHHH.

20 THE COURT: You want him to look at YYYYYY now? Is that
21 what he's looking at?

22 MR. KARACSONYI: Yeah. I'm going to have -- I'm going to
23 have him look [indiscernible].

24 THE COURT: Okay. And you want --

25 MR. KARACSONYI: It's Volume 17.

1 THE COURT: I think they want it open to, Mr. Gerety, I think
2 YYYYYY and HHHHHH. Is that what you want to look at?

3 MR. LUSZECK: Are we on 6 or 5? You said volume --

4 MR. KARACSONYI: HHHHHH.

5 THE COURT: Which is volume 17. And then YYYYYY is
6 Volume 16, is what I got.

7 BY MR. KARACSONYI:

8 Q All right. Looking at HHHHHH, sir, is this certificate of
9 custodian of records that you executed?

10 A I believe so, yes. That's my signature.

11 Q It is your signature --

12 A And my notary.

13 Q -- and is your name listed? Okay. And then attached to this
14 is the subpoena you reached -- you received; is that correct?

15 A Uh-huh.

16 Q Okay. And you were required, if you turn to page 2 of the
17 subpoena --

18 A Yes.

19 Q -- to produce, one, any and all documents, financial records,
20 and tax records including but not limited to tax returns, Form W-2,
21 Schedule K-1, Form 1065, Form 1099, etcetera, in the name of Eric L.
22 Nelson, Eric L. Nelson Nevada Trust, dated May 30, 2001, Lynita S.
23 Nelson, and or the LSN Nevada Trust dated May 30, 2001 --

24 A Yes.

25 Q -- covering the period from May 30th, 2001, through

1 June 3rd, 2013; is that right?

2 A That's correct.

3 Q And did you endeavor to provide all those records to our
4 office?

5 A I did.

6 Q And number two, you were asked to bring any and all
7 documents, financial records, and tax records including but not limited
8 to tax returns, Form W-2, Schedule K-1, Form 1065, Form 1099, etcetera,
9 referenced in or reviewed or relied upon in association with Gerety &
10 Associates, CPAs, LLC prior report dated July 5th, 2012. Do you see
11 that?

12 A I do.

13 Q And did you endeavor to provide us with all those records?

14 A I did.

15 Q Okay. And number three, you were requested to provide us
16 with any and all communications between any and all members, agents,
17 or employees of Gerety & Associates, CPAs, LLC, and Eric Nelson and/or
18 on behalf of the ELN Nevada Trust which identify facts and/or data that
19 Gerety & Associates, CPAs, LLC considered in forming its opinion. Do
20 you see that?

21 A I do.

22 Q And did you endeavor to provide us with all those
23 documents?

24 A I did.

25 Q Okay. Can you just look through this and tell us if you

1 endeavored to provide us all these documents that were requested?

2 A Yes. I mean, I did because I recall looking through this and
3 going through the file, identifying what we still had left. Because most of
4 these are gone. All our work papers are gone. Anything that -- I mean,
5 this is -- goes back ten years. Our file retention policy is eight. We do
6 keep tax returns forever, and I believe we sent you all of the tax returns.
7 And the only work paper file we still had left was the file on the expert
8 report. I think there may have been a second one but that was gone,
9 unavailable. But one file was still there that actually shouldn't have been
10 but was there and we sent it to you.

11 Q Okay. That was the expert report and the documents that
12 you had at that time?

13 A Right. In fact, I didn't even have the expert report. I had a lot
14 of the exhibits and the work papers but the expert report wasn't even in
15 the file. It was deleted because it was over eight years old. I had to ask
16 Jeff for a copy of it.

17 Q And one of the -- if you now turn to Exhibit YYYYYY, this was
18 one of the documents that you provided to us in response the subpoena.

19 A Okay.

20 Q Can you look at this and tell us what this document is?

21 A It looks like a bank -- some type of bank statement. It's a wire
22 that was debited.

23 Q Okay. And there are notes there as well. Do you see that?

24 A I do.

25 Q And notes written -- there's a date, 5/2/12, to an Angelo?

1 A Right.

2 Q Is that Angelo in your office?

3 A I would assume so but I can't tell for sure.

4 Q And the information that you received regarding trust
5 transfers or assets, was that received -- you would have received that
6 from somebody associated with the trust, you indicated; correct?

7 A That is correct.

8 Q Okay. And so it appears here that this is some information
9 that's been provided to you by the trust regarding something?

10 MR. CARMAN: Objection, Your Honor, to the extent that he's
11 trying to get this witness to identify who wrote the note on the bank
12 statement.

13 THE COURT: Sustained. If he doesn't know it --

14 THE WITNESS: I have no idea who wrote it, yeah.

15 BY MR. KARACSONYI:

16 Q Would your office have wrote a note as to -- to Angelo
17 about -- about a transaction involving the ELN Trust?

18 A I mean, we would write notes to each other, but doubtful.

19 Q Okay.

20 A I -- but I don't know for sure.

21 MR. KARACSONYI: Your Honor, I move to admit this
22 document as admission by a party opponent.

23 MR. CARMAN: Can I voir dire the witness really quick?

24 THE COURT: Absolutely.

25 /////

1 VOIR DIRE

2 BY MR. CARMAN:

3 Q Mr. Gerety, in the ordinary course of your business, do you
4 write on statements that are presented to you by clients in handwriting?

5 A We do.

6 Q Do you recognize this handwriting at all?

7 A No.

8 Q During the course of your appearance as an expert or during
9 the course of your retention as an expert, did you review statements that
10 were provided by opposing counsel?

11 A During the course of writing that -- repeat the question for
12 me, please.

13 Q Did you review statements that were provided by opposing
14 counsel as part of the litigation?

15 A Yes.

16 Q Could this have been a statement that was provided by
17 opposing counsel?

18 MR. KARACSONYI: Objection. Calls for speculation.

19 THE WITNESS: Yeah, I don't know where the statement
20 came from so I can't say -- yeah, it could -- so it could be, yes.

21 BY MR. CARMAN:

22 Q In the course of your dealings with Eric Nelson, do you often
23 hear Eric refer to himself in the third person?

24 A No.

25 Q Would it be extremely unusual for Eric to refer to himself in

1 the third person?

2 MR. KARACSONYI: Objection. Leading.

3 THE COURT: Overruled. He's doing voir dire. He can ask
4 him some questions.

5 THE WITNESS: No. I've never witnessed him refer to
6 himself in the third person.

7 BY MR. CARMAN:

8 Q Okay. And if Eric wrote a note that said he took it back,
9 referring to himself, would that be out of character for Eric?

10 A Yeah, yeah.

11 MR. KARACSONYI: Objection. Calls for speculation.

12 THE WITNESS: Yes, it would be.

13 THE COURT: Well, I'm not letting -- I'm not letting that note
14 in. If he doesn't know where it came from, you don't recognize it, I'm not
15 letting it come in unless we can get something who wrote that note
16 specifically. You don't recognize that note, the handwriting?

17 THE WITNESS: I do not recognize the handwriting.

18 THE COURT: So you don't have any idea who wrote that
19 note on the -- would that be accurate?

20 THE WITNESS: That is accurate.

21 THE COURT: You'd have to speculate just to -- pure
22 speculation on your part to who wrote the note?

23 THE WITNESS: I don't know. I don't know where it came
24 from. It wasn't addressed to me.

25 MR. KARACSONYI: Your Honor, if I could try to establish a

1 little more foundation then.

2 THE COURT: Sure.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. KARACSONYI:

5 Q Sir, isn't it true that you previously testified that you only got
6 documents and evidence from -- or documents and information from
7 ELN Trust or Eric?

8 MR. CARMAN: Objection. That mischaracterizes his
9 testimony.

10 THE WITNESS: That's where we requested all our
11 documents from. So I may have said that, yeah, because that's -- I
12 believe that's where most of our documents came from.

13 BY MR. KARACSONYI:

14 Q In the -- have you ever -- have you reviewed the decree of
15 divorce in this case?

16 A Yes. It's been a long time but looked at it a little bit.

17 Q Okay. And in the decree of divorce, it was stated that based
18 on his report, his -- you based his report on information, documentation
19 provided to him by Mr. Nelson. It appears that Mr. Gerety made no
20 effort to engage Mrs. Nelson or her counsel in the process. Do you recall
21 that?

22 A Yes. In the divorce decree, yes, I recall that statement.

23 MR. LUSZECK: Again, objection to that, Your Honor. I think
24 the -- that divorce decree --

25 THE COURT: We're trying to establish --

1 MR. LUSZECK: -- has been vacated --

2 THE COURT: You know, we're trying to establish the note.
3 He said he doesn't know where it came from so I'm not letting the
4 document if I don't know where the note came from.

5 MR. CARMAN: And I'll say -- I'll save it as an offer of proof,
6 Your Honor. On its face, it appears to be a document that
7 was -- contained a note from the opposing party in this case, not from
8 Mr. Nelson.

9 MR. KARACSONYI: That's not true, Your Honor. His prior
10 testimony is he never had any communications with the opposing --

11 THE COURT: It's not coming in until you say who wrote the
12 note. You guys can go through nine different people on that. It ain't
13 coming in until I know who wrote that note. He said he doesn't know. It
14 ain't coming in. You got other people. You can ask Eric if he wrote it.
15 You can ask Lynita if she wrote it. You can ask whoever testifies. But he
16 says he doesn't know it so it ain't coming in till they can establish who
17 wrote the note. Just that simple. If they can't establish it, he has no
18 idea, we're not going to let it in but -- unless you can establish who
19 wrote that. He said he has no idea. It's doubtful. He doesn't recognize
20 the handwriting.

21 So it can be written by -- I have no idea who wrote it but you
22 can ask other people, you can ask Eric if he wrote it, try to get it in that
23 way, you can ask other parties on that, Lynita, if she wrote it. So you
24 have other people, you can try to bring it in later with someone who may
25 recognize their handwriting, who wrote it.

1 MR. KARACSONYI: Court's indulgence?

2 THE COURT: Sure.

3 BY MR. KARACSONYI:

4 Q Can you please turn to Exhibit S? Do you have Exhibit S?

5 A S-R, is that the right one? Did you mean S-R?

6 Q Just --

7 MR. KARACSONYI: Can we go off the record, Your Honor?

8 Can we take a break?

9 THE COURT: Sure, absolutely.

10 MR. KARACSONYI: Can we take a quick --

11 MS. HAUSER: It is noon. Do we want to take a lunch break?

12 THE CLERK: Going off the record?

13 THE COURT: Yeah, yeah.

14 [Recess taken from 11:47 a.m. to 1:06 p.m.]

15 THE CLERK: Back on the record.

16 THE COURT: We're going back on the record in the matter of

17 Nelson and Nelson, Case No. D-09-411537. We took a lunch break.

18 We're ready for our afternoon session. I guess we'll just get our

19 appearances again for the record. We start with Mr. Dickerson.

20 Everyone can remain seated. Just go down the list if they
21 want.

22 MR. DICKERSON: Yes. Bob Dickerson, bar number 945.

23 MS. KARACSONYI: Natalie Karacsonyi, bar number 10579.

24 MR. KARACSONYI: Joseph Karacsonyi, 10634.

25 MR. LUSZECK: Jeff Luszeck, bar number 9619.

1 MS. HAUSER: Michelle Hauser, bar number 7738.

2 MR. CARMAN: Michael Carman, bar number 7639. I feel like
3 we're in a lineup.

4 THE COURT: It's like that. Exactly. There's got to be a joke
5 in how many lawyers does it take to do a trial. One, two, three -- there's
6 got to be a joke in there somewhere.

7 MR. KARACSONYI: Should we stand up and show our
8 height so they can pick us out of a lineup?

9 MS. HAUSER: Well, then we're in trouble, because if we
10 stand next to Jeff, we're all going to look tiny, itty-bitty.

11 THE COURT: Everyone will be short. Exactly.

12 You're still under oath, of course, Mr. Gerety. I hope you had
13 a good lunch. And if you need any water, just let us know, we'll refresh
14 your water, make sure on that. We're going to pick up, I think Mr.
15 Karacsonyi left off, I think, with Exhibit S, if I think is what --

16 MR. KARACSONYI: Yes.

17 BY MR. KARACSONYI:

18 Q Mr. Gerety, is it fair to say that, as you sit here today, you
19 can't recall exactly who you communicated with regarding the
20 information that you compiled for your expert report?

21 A I mean, I recall a couple people which I've already
22 mentioned. And Angelo did a lot of the digging, like I said, so he did
23 most of the speaking of, you know, questions and so forth.

24 Q But do you recall specifically whether you ever spoke with
25 Lynita?

1 A I do -- no. I do not believe I ever spoke with Lynita.

2 Q Okay. Do you recall whether you ever spoke with anyone
3 from Lynita's team of lawyers?

4 A I do not recall speaking to anyone from Lynita's team of
5 lawyers at the time.

6 Q Okay. Do you remember specifically who you gathered
7 documents from?

8 A I know through -- from Eric, Lanna, Rochelle, for the most
9 part.

10 Q Would you have had a better recollection of these things
11 back in 2012 when you testified the first time?

12 A Of course.

13 Q Okay. All right. And so do you think it would help you then
14 if we went through your testimony last time as to who you spoke with?

15 A That's fine but -- yeah.

16 Q Okay. All right. So then let's go to Exhibit S.

17 A Okay. I'm there.

18 Q Turn to page 3601.

19 A Maybe I'm not there.

20 Q Maybe I'm not there either.

21 A This goes to 35 --

22 Q Sorry. I'm in the wrong one. No, no, it's Exhibit S but I've
23 got the wrong pages. I apologize.

24 MR. CARMAN: What page we looking for?

25 MS. HAUSER: He hasn't -- he said 3601 but then he said it

1 might be the wrong number.

2 MR. KARACSONYI: Court's indulgence.

3 BY MR. KARACSONYI:

4 Q 3558. Okay. 3558. Okay. All right. You were starting on line
5 18. You're asked:

6 "Q And you indicated that there were gaps in your information.
7 What did you do to try -- if there were gaps in your information from
8 what you had been initially provided, what did you do to fill in those
9 sources?"

10 And your answer was:

11 "A We put together a list of what the gaps were. We worked
12 together with Lanna and Rochelle and, you know, here's what we need,
13 what is this. If we couldn't tell what it was, where did this come from,
14 give us the backup on it. They had to go back to the bank to get
15 statements. They had to -- you know, Eric didn't have all of the original
16 documents, is why we had to go back to the banks. So it was -- and then
17 once we got those questions answered, those gave us new questions.
18 So as each time we got your questions answered, we had more
19 questions, which caused us to keep asking for more information before
20 we got through it all."

21 Did I read that correctly?

22 A Yes.

23 Q And then you were asked:

24 "Q And besides bank statements, did you get transaction
25 statements?"

1 And your answer was:

2 "A We got deeds of trust, we got sales agreements, we got
3 closing documents, we got assignments, some minutes, not all of them,
4 we got spreadsheets on summaries of titles and summaries of what the
5 transactions were."

6 And the question was:

7 "Q And can you estimate how many transactions you had to
8 look up over the course of that time?"

9 "A Thousands, obviously, in transactions. I mean, each
10 year -- each year so what -- we were covering 9 years, 10. Yeah, 1
11 through 11 years. We had 11 years of transactions and each year had,
12 easily, 400 transactions going through it, just one checking account. So,
13 yeah, a lot."

14 MR. LUSZECK: Your Honor, I'm just going to lodge an
15 objection to this. My experience has been you generally ask the
16 question to the witness, and if they can't recall, then you potentially --

17 THE COURT: Then you refresh their memory.

18 MR. LUSZECK: -- have them read it to refresh their
19 recollection as opposed to just reading verbatim all of this. So I'll let you
20 decide, but that's my objection.

21 THE COURT: Yeah, so noted. Normally you have them
22 review that, see if it refreshes on that, but basically thousands of
23 transactions over 11 years, 400 transactions --

24 MR. KARACSONYI: This is former testimony, Your Honor.
25 I'm just trying to get to who he got information from.

1 MR. LUSZECK: Ask him a question.

2 THE COURT: Yeah, yeah.

3 UNIDENTIFIED SPEAKER: Doesn't even work that way.

4 MR. LUSZECK: And, once again, this is his former expert
5 witness testimony, Your Honor. And he said he's called today as a fact
6 witness. They're not paying him as an expert today but they're trying to
7 get his expert witness testimony.

8 MR. KARACSONYI: No. We're trying, Your Honor, just to
9 establish who he got information from for the record so that we can --

10 THE COURT: Overruled. You can go on with it. Let's get on
11 with it on there. As far as that, again, he's here as a fact witness this
12 time on that, not as the expert, as a fact of trying to identify properties
13 that was in the trust as of the dates in question. So let's move on with it.

14 MR. KARACSONYI: Okay.

15 BY MR. KARACSONYI:

16 Q And then if you move on, sir, to 3561, line 12, the question
17 was asked:

18 "Q And if you had questions with respect to the issues, who
19 would you discuss those with?"

20 The answer was:

21 "A With Rochelle, Lanna, and Eric, the three of them. Lanna
22 originally was made -- was kind of our main contact along with Eric."

23 MR. LUSZECK: Your Honor, and I go back to the same
24 objection. He's here as a fact witness. Then why are we reading in his
25 expert witness testimony that comports with his expert witness report?

1 MR. KARACSONYI: Because he's here -- Your Honor, he was
2 identified as somebody who has tax and financial information of the
3 parties, and we are establishing where his information came from. They
4 have tried to raise certain objections to certain of the documents that
5 were in his possession, which I have said are admissions of a party
6 opponent. So we're establishing where he got his information from for
7 the record.

8 THE COURT: However, I think he said it clear that he never
9 spoke to Lynita or didn't recall talking to attorneys. The information he
10 got was from Eric and other party --

11 MR. LUSZECK: And this is in the context of his report.

12 THE COURT: Exactly. Overruled. You can continue but let's
13 speed it up a little bit.

14 BY MR. KARACSONYI:

15 Q All right. I'd like to go to Exhibit D-R.

16 THE COURT: Does he have that volume in front of him?

17 MR. KARACSONYI: Yes, he should.

18 THE WITNESS: I should. Okay.

19 MR. KARACSONYI: Your Honor, again, before I move on, I'd
20 like to, with that foundation, offer again Exhibit YYYYYY-R.

21 THE COURT: Is that the one with the --

22 MR. KARACSONYI: Yeah.

23 THE COURT: -- note --

24 MR. KARACSONYI: Yeah.

25 THE COURT: -- note to Angelo?

1 MR. CARMAN: Same objection from us.

2 THE COURT: I'm concerned on that. I don't know what the
3 note said or the note to Angelo with the document itself, the bank
4 statement. I take it it's a bank statement that someone wrote a note on?
5 That's what I'm guessing.

6 MR. CARMAN: Correct. It's a bank statement with a
7 handwritten note on it.

8 MR. KARACSONYI: May I make an offer of proof, Your
9 Honor?

10 THE COURT: Sure.

11 MR. KARACSONYI: My offer of proof is that the document is
12 a document that shows and has an admission by a party opponent that
13 could have only been provided based on the foundation that Mr. Gerety
14 provided as to where he got information by the other side, that he
15 bought -- that the ELN Trust bought as a gift for Ellison [phonetic] Trust --

16 MR. CARMAN: Objection, Your Honor, to him admitting
17 unauthenticated information to try to prejudice this Court.

18 MR. KARACSONYI: I'm making an offer of proof.

19 THE COURT: Yeah, let him make his offer.

20 MR. KARACSONYI: Yeah. That it would -- that it would show
21 as an admission that Harbor Hills was bought as a gift for the Ellison
22 Trust and taken back by the ELN Trust.

23 THE COURT: I would note your offer of proof on that. I'm
24 not going to admit it at this time. They can get it through other evidence.
25 You've got Eric to testify. You can question him on that, Harbor Hills and

1 stuff on that, but when I got a note written on there that's not the original
2 document, someone wrote a note on it, well, and you can't recognize
3 that note, we're not going to let it in at this time but we'll note that you
4 can bring it through other ones. You can have -- Mr. Nelson will be here
5 to testify, Lynita will be here to testify, and your expert as well to try to
6 get it in that way, if you can establish who wrote the note.

7 BY MR. KARACSONYI:

8 Q All right. And Exhibit D. Did you find that volume, sir?

9 A Yes, I'm there.

10 Q Okay. And can you identify this document, sir?

11 A It is the Eric L. Nelson Nevada Trust general ledger for the
12 period January 1, 2005, through December 31st, 2005.

13 Q Okay.

14 MR. KARACSONYI: Move to admit, Your Honor.

15 MR. CARMAN: Same objection. Just so I'm clear, this is
16 from before the time period that Mr. Gerety was reviewing his books;
17 correct?

18 THE COURT: I believe he said he -- you said 2007. Do you
19 know if you had reviewed any ledger, the one from 2005 to -- 2005, were
20 you involved at that time or not? You said you thought 2007 you did
21 Eric's.

22 THE WITNESS: I don't believe I was working on the Nevada
23 trust at that time but, again, I'd have to look at my files to see when the
24 first return we did for the trust was. So it's been a while.

25 MR. CARMAN: It would be the same. I understand you

1 overruled the other objections on the pre-involvement general ledgers
2 but same objection from us.

3 THE COURT: Yeah. Well, overruled. We'll get going on that.
4 Let's cut through this and try to, at the end, we'll try everything together.
5 BY MR. KARACSONYI:

6 Q Okay. And then I'm going to turn to Exhibit E.

7 A I'm sorry, what was the --

8 THE COURT: Show it admitted with objections.

9 [Defendant's Exhibit D admitted into evidence]

10 BY MR. KARACSONYI:

11 Q Or Exhibit F, excuse me.

12 MS. HAUSER: Exhibit what, Josef?

13 MR. KARACSONYI: F.

14 MS. HAUSER: Okay.

15 THE COURT: Exhibit F-R or --

16 MR. KARACSONYI: Yeah, F-R.

17 BY MR. KARACSONYI:

18 Q All right. And this is the general ledger of the ELN Trust from
19 January 1, 2006, to December 31, 2006?

20 A Correct.

21 MR. KARACSONYI: I move to admit, Your Honor.

22 THE COURT: And same objection as --

23 MR. CARMAN: Same objection.

24 THE COURT: -- previous accounting?

25 MR. CARMAN: They haven't authenticated it.

1 MR. LUSZECK: Same. There's all this handwriting on here,
2 Your Honor --

3 MR. KARACSONYI: We're doing a different --

4 THE COURT: It's a different -- is there any writing on it?

5 MR. LUSZECK: It's a general ledger, 2005.

6 MR. KARACSONYI: We skipped --

7 MR. LUSZECK: Oh, you skipped it. Okay. Sorry. Okay.

8 THE COURT: We'll note the objection that it was prior to him
9 doing the tax returns for the trust. At least as far as your memory, you're
10 not sure if you were doing the trust in 2006 as well?

11 THE WITNESS: That's correct. I mean, it's easy for me to tell
12 because I provided all of the tax returns that we had in our file, and the
13 first one that was prepared by our firm would be -- that would be the
14 year after that we started working with --

15 MR. CARMAN: And just as a reminder as to the objection, it
16 is a hearsay document that hasn't been authenticated through someone
17 with personal knowledge.

18 THE COURT: And he's just relying on something else that
19 someone provided for him. The ELN Trust provided those documents.

20 You didn't do that ledger yourself. That was provided to you.
21 Is that correct?

22 THE WITNESS: That is correct.

23 THE COURT: We'll note the objection. It will be admitted.
24 We'll note the objection on that about the hearsay.

25 [Defendant's Exhibit F-R admitted into evidence]

1 MR. KARACSONYI: Okay.

2 BY MR. KARACSONYI:

3 Q And move to Exhibit G. And can you identify this document?

4 A It is the Eric L. Nelson Nevada Trust general ledger for the
5 period January 1, 2007, through December 31st, 2007.

6 Q And was this a document that was provided to you by a
7 representative of the ELN Trust?

8 A I believe it was, yes.

9 Q And that was true for all the other general ledgers we
10 discussed earlier?

11 A They came from my file. Yes.

12 Q Okay.

13 MR. KARACSONYI: I move to admit Exhibit G, Your Honor.

14 MR. CARMAN: And to the extent it was outside of the review
15 period of Mr. Gerety, we object on hearsay.

16 THE COURT: It will be so noted. It will be admitted with
17 objection of hearsay.

18 [Defendant's Exhibit G admitted into evidence]

19 BY MR. KARACSONYI:

20 Q Turn to Exhibit H. And can you identify this document?

21 A It is the Eric L. Nelson Nevada Trust general ledger for the
22 period from January 1, 2008, to December 31, 2008.

23 Q And was this provided to you by somebody associated with
24 the ELN Trust?

25 A I believe it was.

1 MR. KARACSONYI: Move to admit, Your Honor.

2 MR. CARMAN: It was during review period so no objection.

3 THE COURT: It will be admitted as Exhibit H-R without
4 objection.

5 [Defendant's Exhibit H-R admitted into evidence]

6 BY MR. KARACSONYI:

7 Q Moving to Exhibit I, can you identify this document?

8 A This is the Eric L. Nelson Nevada Trust general ledger for the
9 period from January 1, 2009, to December 31, 2009.

10 Q Okay. And you were involved with the preparation of this
11 general ledger?

12 A Yes, I believe I was.

13 MR. KARACSONYI: Okay. Move to admit --

14 THE WITNESS: Well, wait, wait. I was involved in the
15 preparation of the tax return. I was not involved with the preparation of
16 this general ledger.

17 BY MR. KARACSONYI:

18 Q This was something that was provided with -- to you by the
19 ELN Trust for preparation for the tax return?

20 A I'm not sure because my tax return files aren't there. This
21 was in my expert witness file. They would have provided us a trial
22 balance. They may have provided us this general ledger but I can't say
23 for certain if it was in the preparation of the tax return.

24 Q You received a copy of this general ledger from a
25 representative of the ELN Trust, correct?

1 A We did.

2 MR. KARACSONYI: Okay. Move to admit, Your Honor.

3 MR. CARMAN: Can I voir dire with just one really quick
4 question?

5 THE COURT: Sure, absolutely.

6 VOIR DIRE

7 BY MR. CARMAN:

8 Q Mr. Gerety, during that time period, even if you were not
9 necessarily involved with the preparation of the general ledgers, were
10 you review them and checking to ensure their accuracy?

11 A My tax managers and staff were, looking at the general
12 ledgers to --

13 Q Okay.

14 A -- pick up what tax items were on there. Again, the trial
15 balances, I know, they were looking at. Whether they were actually
16 looking at this general ledger, I can't say for certain. They may have just
17 given us a balance sheet income statement.

18 MR. CARMAN: Thank you. Just because we're not sure that
19 they've been properly reviewed, Your Honor, we're going to object on
20 the same hearsay grounds.

21 THE COURT: Note the objection on that. We'll admit it at
22 this time.

23 [Defendant's Exhibit I admitted into evidence]

24 THE COURT: You indicate on that the fact that you really
25 didn't prepare the general ledgers, those were given to you, and then

1 you may use them in income tax preparation. Is that accurate?

2 THE WITNESS: That is a correct statement.

3 THE COURT: So you would not have personally done those
4 ledgers, they would have come from the trust or whoever provided it to
5 you?

6 THE WITNESS: No, that -- we would not have.

7 THE COURT: Okay.

8 THE WITNESS: We may have made the journal entries that
9 they should post, but not -- we're never involved in the preparation of
10 these general ledgers.

11 THE COURT: Okay. Thanks.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. KARACSONYI:

14 Q And when you say journal entries that they would post, you
15 mean you would put an entry in that would show up in the general
16 ledger as a journal entry?

17 A After year end, yes. We would look at the balance sheet
18 income statement. If we saw something that wasn't posted right, we
19 would -- we'd give our clients journal entries to correct entries they may
20 have made, or if the balance is off, like we see a payable and we say, Is
21 that still here? No, it was a bad debt or whatever, we would have, you
22 know -- or we see expenses not classified right, like a personal expense
23 versus business.

24 Q Okay. Turn to Exhibit J, please. Oh, that's what we were on.
25 I move to admit it.

1 MR. CARMAN: Same objection. And I understand, Your
2 Honor, I think these are admissible. This is just not the witness that we
3 believe should be admitting.

4 THE COURT: The person -- the person who prepared them or
5 had actual knowledge of the information put in there and did it
6 themselves, I agree with you on that, but move forward on that. We'll
7 note the objection on there with the hearsay as he's not -- he clearly
8 testified he did not prepare those ledgers, they were just given to him,
9 and he would basically enter journal entries to correct anything he felt to
10 do that and you reviewed these in the preparation of your tax documents
11 for the trust. Is that pretty accurate?

12 THE WITNESS: That is accurate.

13 THE COURT: Okay.

14 BY MR. KARACSONYI:

15 Q Exhibit K, Your Honor -- or Mr. Gerety.

16 A You said K?

17 Q Yes. Are you there?

18 A Yeah, I'm there. Sorry.

19 Q All right. Can you identify this document?

20 A It's the Eric L. Nelson Nevada Trust general ledger for the
21 period January 1, 2011, to September 30, 2011.

22 Q Okay. And this was provided to your office by a
23 representative of the ELN Trust?

24 A That's -- I believe that's a correct statement.

25 MR. KARACSONYI: Okay. Move to admit, Your Honor.

1 MR. CARMAN: Same objection.

2 THE COURT: Got an objection about hearsay as they did not
3 prepare the general ledger documents themselves. So it will be
4 admitted with the objection of the hearsay.

5 [Defendant's Exhibit K admitted into evidence]

6 BY MR. KARACSONYI:

7 Q All right. And looking at the general ledger, the last one that
8 we looked at -- well, first of all, in reviewing them, does it look like the
9 numbering system that's used for general ledgers of all the years are the
10 same for the ELN Trust?

11 A I believe they are.

12 Q And then now going to --

13 A We're looking at an LLC, though, before. We weren't looking
14 at a trust but -- I thought when we were going through the accounts?

15 Q No, no, no. And I'm not referring to the individual LLC. I'm
16 talking about the general ledgers that we've reviewed for the trust,
17 meaning the general ledgers from 2001 to 2011, does the numbering
18 system appear to be the same during all the years?

19 A Let's just go back and see. I mean -- yes, it appears they're
20 using the same format.

21 Q And now turning back then to Exhibit K --

22 A Okay.

23 Q -- on the first page, on 1111, the very first entry shows a
24 beginning balance?

25 A Correct.

1 Q Do you see that? And that beginning balance should
2 correspond then with the ending balance of the year prior; is that
3 correct?

4 A That is correct.

5 Q With that account?

6 A It should.

7 Q And it appears that the ELN Trust is using the 10,000
8 numbers, anything in the 10,000s for assets; is that correct?

9 A Yes. 10,000, 14,000, 15,000, 16,000 --

10 Q Between 10 and 20,000; is that right?

11 A I'm sorry, what's -- I'm sorry, what was the question?

12 Q Between 10 and 20,000 is being used for assets?

13 A Yes. 19 -- yeah. Between 10 and 19. I think 2,000s is
14 payables.

15 Q On 20,000, though, there it shows a note receivable, Carlene
16 Gutierrez (phonetic), do you see that, on page 5582?

17 A Yes. And the last time we went through this, I think 2,000
18 was payables. And so this is a little different.

19 Q Okay. And then it looks like for the 21,000 through to 29,000,
20 it would be their liabilities?

21 A Correct.

22 Q And then you'd have that capital accounts from 30,000,
23 through to 39,000?

24 A Correct.

25 Q And then from 40,000, at least until it looks like all the way up

1 to 60,000, those look like revenue and income?

2 A That is correct.

3 Q And then starting -- well, actually, that's just the 40,000s.

4 Because if we look back at the prior year, if you look back at Exhibit J --

5 A Yes.

6 Q Oh, no. It's correct. So there we have more accounts in the
7 40 and 50,000s, and those all appear to be expenses; correct?

8 A Between the 40s and 60s --

9 Q Excuse me. So I apologize, I mixed things up. So the
10 40,000s are the income accounts?

11 A Correct. That's correct. 40,000 is revenue and 50,000s and
12 on are expenses.

13 Q 50,000 and on are expenses. Okay. Is that correct?

14 A That is correct.

15 Q And then here we have, at the end of this one, we have a
16 99,999 account. This is temporary distribution. Do you know what that
17 is?

18 A Not on this exhibit. I think you're on the next one.

19 Q Yeah, the next -- on the exhibit --

20 A K?

21 Q -- K, the very last page. 5888.

22 A Yeah, there's a 99,999 account.

23 Q And do you know what that is?

24 A Not sure. It says temporary distribution. Looks -- I don't
25 know.

1 Q Okay. You don't know what that's denoting?
2 A Nope. Just some real small entries running through there.
3 Q All right. If we can go back to Exhibit L, I want to turn to DG
4 129.
5 A Let's see, exhibit -- oh, L. I'm sorry. I'm in the wrong binder.
6 Q Excuse me. DJ 128.
7 A Okay.
8 Q If you look at entry 1019, these are the trial balance
9 worksheets you had previously mentioned?
10 A That's correct. So this is what was prepared by Angelo.
11 Q And this was based off the information that was provided to
12 your office?
13 A Yes.
14 Q And on 1019, you noted a Business Bank of Nevada CD, No.
15 2028117?
16 A 100 -- of 1019, you said. Sorry. Yes.
17 Q And that was a check from the LSN Nevada Trust, No. 1769;
18 is that correct?
19 A That is correct.
20 Q And that was in the amount of 350,000?
21 A Correct.
22 Q Go to Exhibit XXX. It would be volume --
23 A How many Xs?
24 Q Three Xs. It would be volume -- you should have it there.
25 Exhibit 14 -- or excuse me, exhibit --

1 A 14 only goes to RRR.

2 Q 14 goes to RRR.

3 A I don't think I have it, a XXX one.

4 Q Okay. Let me bring you Exhibit 15 then.

5 MR. KARACSONYI: May I approach the witness, Your
6 Honor?

7 THE COURT: Absolutely.

8 THE WITNESS: Thank you.

9 MR. KARACSONYI: Counsel was saying that iPads for
10 everybody would have probably been easier.

11 MS. HAUSER: Yeah.

12 THE COURT: A lot easier, yeah.

13 BY MR. KARACSONYI:

14 Q Sir, is this the --

15 MR. KARACSONYI: Well, first of all, Your Honor, I move to
16 admit this. This was part of the record on appeal. It was already
17 admitted in this court. In fact, it's stamped by my counterparts as a
18 document that was already admitted at the prior trial.

19 THE COURT: What is it?

20 MR. KARACSONYI: Exhibit XXX.

21 THE COURT: What is it entitled or title?

22 MR. KARACSONYI: It's a check, just a one-page check.

23 MR. CARMAN: This is not the right witness to authenticate it.

24 It's --

25 MR. KARACSONYI: There's no need to --

1 MR. CARMAN: We're objecting because it has to be
2 authenticated.

3 MR. KARACSONYI: It was already part of the record. This is
4 part of your record. This was admitted already. They gave this to the
5 Nevada Supreme Court.

6 MS. HAUSER: This is a new trial.

7 THE COURT: I will note your objection as being this is not
8 the right witness on that but let's get on with it and move forward and
9 see. And when we get done with everything, all the evidence, we'll go
10 through everything and make specific findings and everything. Let's try
11 to get through this. Otherwise, we'll never get done.

12 MR. LUSZECK: And I just go back, I guess, to the
13 overarching objection, which is he's a fact witness here today; right?
14 This is something from 2005. He wasn't preparing tax returns in 2005. I
15 can see that this came up in his expert report, but you made it clear he's
16 not testifying as an expert today. So I don't -- I don't see how this
17 is -- this is relevant. I think it's outside the scope of what he's testifying
18 here to today.

19 THE COURT: I'll overrule. We'll give him a chance to put
20 your case on and we'll get through all that stuff on that, but let's plow
21 through this and get done -- get done with Mr. Gerety so we can kind of
22 move on and see what the experts have to say.

23 MR. KARACSONYI: So was it admitted, Your Honor?

24 THE COURT: Yeah. It will be admitted. We'll note the
25 objection on it, it's not the right witness. Again, it's just a check, is all I

1 heard. It's a check to what?

2 [Defendant's Exhibit XXX admitted into evidence]

3 BY MR. KARACSONYI:

4 Q Is this the check, sir, that was referenced in the prior entry
5 1019, the trial balance sheet?

6 A I believe it is, but without going back and double-checking, I
7 can't be for certain.

8 Q Can you go back and double-check the number?

9 A What exhibit was that?

10 THE COURT: That was Exhibit L-R, I believe.

11 THE WITNESS: L?

12 THE COURT: R, entry 1019 and DG-128.

13 THE WITNESS: I'm sorry, Your Honor, you said what
14 number?

15 THE COURT: I think it was Exhibit L. Wasn't the L-R --

16 THE WITNESS: Yeah.

17 THE COURT: -- DG-128, entry 1019.

18 THE WITNESS: Okay. Okay. Based on this exhibit, it says it
19 was check 1769 on 11/17/02. It's the same check number. However, the
20 date of this check is December 7th, but it is the same check number and
21 it's the same dollar amount.

22 THE COURT: Is it \$350,000?

23 THE WITNESS: \$350,000, yes.

24 MR. LUSZECK: Your Honor, and once again, they're just
25 cherry-picking with certain transactions and certain things that they

1 believe benefits Lynita when, in the overall scheme of things, this was
2 utilized in Mr. Gerety's report, but he testified and his report shows this
3 was treated as a due to/due from. So even though it says what it does at
4 the bottom, this was treated as a loan on the report that Dan Gerety did.

5 So I feel like they're cherry-picking these things and using
6 these potentially to the ELN Trust detriment, but because you've said
7 he's only a fact witness, we're not going to be able to have the ability to
8 utilize him as an expert to explain these and how they interact in the
9 overall scope of why he was retained in 2012.

10 THE COURT: Well, I'll give you a chance to cross-examine
11 and explore that way and call him back as your witness as your case-in-
12 chief if you need. I just want to try to get everything out there so
13 everyone's got their day in court and the Court can go through and see.
14 But, again, he is stating a fact, not the expert -- the expert report was
15 from Anthem on that. But we'll let him go and then we'll give you guys a
16 leeway and call him back and --

17 MR. CARMAN: I just want to make sure that we're on the
18 same page, Your Honor. They noticed him as a witness after any
19 realistic -- with deadline as to we could have noticed him as a rebuttal
20 expert. So if he's going to be allowed to be called in our case in chief,
21 we should have some leeway to call him as an expert despite the timing
22 of things.

23 MR. KARACSONYI: Your Honor, if you look back at their
24 witness list that was filed in this case, it was filed on --

25 THE COURT: I'll give everybody leeway to put their case on

1 in chief. My issue on that is, from my history being on the bench on that,
2 if you keep -- the more you keep out, the more likely the Supreme Court
3 says, Oh, we don't know what that was so go back and see what it was. I
4 throw everything in. At the end, I'll say this thing shouldn't have come
5 in, it really didn't matter, has no probative value, and go through that
6 way. It's been my experience that you keep -- the more you keep out,
7 the more likely the Supreme Court says, We don't know what that would
8 have been so go back and do it again and then come back.

9 And I'm trying to finish this up for you guys because I
10 imagine everyone in the courtroom would like to get this case resolved
11 one way or the other just to get it done. So I'll give you some leeway,
12 but I'll give counsel some leeway on what they need to do, and if you
13 need to call him on that since you said he was not listed as a witness, it
14 will come back that they had people that weren't on their witness list, I
15 guess, is what you're coming up --

16 MR. KARACSONYI: Your Honor, what I'm saying is if you
17 look at their witness list that was filed on -- in this case post remand,
18 they listed him as a witness as to financial and tax issues with this vague
19 description. And so now they're saying that they're surprised that I'm
20 calling a witness that they designated? I mean, that's my concern.

21 And then the other part of my concern is that, you know, you
22 just ruled a week ago that you wanted to -- typically, we thought that
23 there was a record already established in this case. I'm referring to
24 documents that have already been admitted, even offered to the
25 Supreme Court of Nevada, and we were -- our intention was just to read

1 them back into the record, but Your Honor indicated that you wanted us
2 to call the witness again, which is what we've done.

3 THE COURT: A lot of these documents were submitted for
4 the original trial on that. This came back for tracing. So I don't know the
5 relevancy to the tracing. I'm letting you go that way since you're going
6 through the tracing period. I assume you're identifying the \$350,000,
7 that that was her property or community property or separate property,
8 got put in that, so I imagine that's where you're going.

9 So I'm giving leeway to establish what was in the trust. I'm
10 giving leeway on those issues. The reason we just didn't stipulate to
11 everything in, counsel had concerns that those documents were
12 submitted in cross-examination for different purposes, not the tracing
13 purposes. So I'm giving everybody a lot of leeway to get the case done
14 on that.

15 I'll give you guys a lot of leeway to call him back as a
16 witness, as rebuttal, whatever you need to do on that. Right now I'm just
17 trying to give Mr. Karacsonyi a chance to establish what he thinks was in
18 the trust during that period and then where that went to see if there's
19 any community property, where it came from on that. So overall, I'll
20 give you some leeway on that. But I'll give -- same side, I'll give them
21 their token to get their evidence together and recall Mr. Gerety if they
22 need to. So I'm sure you'd love to come back and see us again.

23 MS. HAUSER: I'm sure you'd love to be paid for being here
24 during tax season.

25 MR. KARACSONYI: Judge, I'd like to say, you know, his

1 report -- we're here on the exact thing his initial report was about. I
2 mean, the Supreme Court even said that that was what the subject of our
3 return is, was the same tracing that Mr. Gerety did. It's not like this
4 is -- I'm calling an expert that was called on, you know, 1993 to '98 and
5 asking him about 2001 to 2011. This is somebody they offered in a prior
6 trial. And for us not to be able to go back to what they offered as their
7 parties --

8 THE COURT: I think I've let you go back to everything except
9 the one with the note because I didn't know where it came from. It
10 wasn't established. Someone wrote something on a note. And I think
11 you've been given a chance to put the documents in and giving them a
12 chance to cross-examine.

13 MR. LUSZECK: The problem I have with that is he wasn't
14 listed as an expert rebuttal or as a fact witness. We didn't know he was
15 going to be called until last Wednesday. And I think there's other
16 evidentiary standards that apply with their expert and how it deals with
17 Mr. Gerety's report as well, whereas we should have had the ability to
18 file a rebuttal report if we were to utilize it but --

19 THE COURT: Yeah. So noted.

20 MR. LUSZECK: I understand you're going to give leeway and
21 I just --

22 THE COURT: Yeah. Noted. We just want to keep the record
23 clear on that for post-trial and give everybody a chance to make a clear
24 record so --

25 /////

1 BY MR. KARACSONYI:

2 Q And the check amount here is -- or the check here is made
3 payable to Eric Nelson; is that correct?

4 A That is correct.

5 Q And it's -- the memo notes "MGT fee"?

6 A That is correct.

7 Q All right. And if you go to Exhibit YYY, is this a receipt for
8 the --

9 THE COURT: Have you found it?

10 THE WITNESS: I'm sorry. Yes. I'm at 5230, GA 005230,
11 Bates stamp.

12 BY MR. KARACSONYI:

13 Q Okay. And this was a receipt that was in your records related
14 to a prime-time certificate of deposit; is that correct?

15 A I don't know -- I don't recall where this came from but --

16 Q Would you have received this -- if this business banking
17 record was in your file, would you have received this from the ELN
18 Trust?

19 A If it was in our file, we would have received it from, yeah,
20 somebody. I mean -- and most likely from, based on my prior testimony.

21 Q You wouldn't have created this document?

22 A We did not create this document.

23 MR. KARACSONYI: Your Honor, I move to admit Exhibit
24 YYY.

25 MR. CARMAN: Same objection, Your Honor. It hasn't been

1 authenticated. It contains handwritten notes whose source hasn't been
2 established.

3 THE COURT: I'm concerned about notes being written on
4 there because that's not an original document. If there's notes on it, I
5 don't know who wrote the notes on that but --

6 MR. KARACSONYI: Your Honor could admit it with limited
7 admissibility with -- to disregard the notes. We would stipulate to that.

8 THE COURT: Let's delete the notes from it on that and I'll
9 admit it at this time. We'll note the ongoing objection on that. And,
10 again, we hear all the testimony, the cross-examination, and all the other
11 witnesses, we can tie all the things together and see what should have
12 been, but I want to try to get through this. Otherwise, we'll never get
13 done with this trial. And I want to give everybody a chance to be heard
14 and give them a full chance to present their case. So be admitted with
15 the objection so noted.

16 [Defendant's Exhibit YYY admitted into evidence]

17 BY MR. KARACSONYI:

18 Q Okay. And in this top left corner, the receipt is issued to the
19 Eric L. Nelson Nevada Trust, dated May 30, 2001; is that correct?

20 A That is correct.

21 Q If you go back to Exhibit L.

22 A Okay.

23 Q Okay. And go to DG 140.

24 A Okay.

25 MR. KARACSONYI: Sorry. Court's indulgence.

1 BY MR. KARACSONYI:

2 Q And entry 109 states -- 1019, excuse me --

3 A Okay.

4 Q -- that the November Wells Fargo account 65 -- ending 6521
5 activity includes Business Bank of Nevada CD interest income; is that
6 correct?

7 A That's what it states there.

8 Q Okay. And that was in the -- is there an amount listed for
9 that?

10 A The -- well, that's the description of the journal entry. And
11 there's an amount posted to account 1019 of 250,000, a credit.

12 Q Okay. And then the next line says December 6, 005 activity
13 includes Business Bank of Nevada CD interest income?

14 A That is correct. And that would have also --

15 Q And those Wells Fargo accounts, those were accounts held in
16 the ELN Trust; is that correct?

17 A You said -- those are not Wells Fargo accounts, I don't
18 believe.

19 Q November WF is not Wells Fargo?

20 A This is a Bank of Nevada CD account but it -- the CD must
21 have been cashed on that -- in that year. So that's not a Wells -- it may
22 have gone to a Wells Fargo account, transferred, but that's a Bank of
23 Nevada CD account.

24 Q Right. And is this showing then where the adjustments, is it
25 showing where that account was deposited with --

1 A You have to go to the journal entry, which is -- should be
2 after the trial balance. Yeah, the journal entries start at 150.

3 Q Okay. And that would explain this notation?

4 A Well, the journal entry number 28.

5 Q Which one is that?

6 A 28 -- AJE28. It's on 00155.

7 Q Okay. And this shows -- what does this mean? What does
8 this show?

9 A It shows that there was \$44.38 of investment incomes --
10 probably interest on the CD; that the CD was cashed out for -- the
11 principle of the CD was 250,000; there are bank service fees of \$25; there
12 was a cash that -- distribution to Eric, of \$578.36; and cash went into
13 Wells Fargo account 6521 of \$267,848.15; and then there was another
14 additional interest, I believe -- it says investment income of 18,407.48.

15 Q All right. Can you turn to Exhibit ZZZ?

16 A Okay.

17 Q Okay. And this was a letter provided to you by Eric or ELN
18 Trust; is that correct?

19 A I don't know. I don't recall ever seeing the letter.

20 Q It was produced to us as part of your response to the
21 subpoena duces tecum GNA005234. Do you see that in the bottom right
22 corner?

23 A The G -- the Bates stamp, you mean?

24 Q The -- yes.

25 A I see the Bates stamp, yes.

1 Q Yeah. If this was in your file, this wouldn't have been
2 something you created, would it?

3 A No.

4 Q Okay. So this would've been provided to you by a
5 representative of the ELN Trust?

6 A I presume so.

7 MR. KARACSONYI: Your Honor, I move to admit Exhibit ZZZ.

8 MR. CARMAN: Objection, Your Honor. It's a letter from
9 Nelson & Associates, addressed to Katherine Provost. Neither the author
10 of the letter or the recipient of the letter is present to authenticate it. I
11 don't understand why they're trying to authenticate these documents
12 through a witness that doesn't have the basis for authentication.

13 THE COURT: I think the theory is they've been admitted in
14 the past on that.

15 MR. KARACSONYI: Well --

16 THE COURT: So [indiscernible] authenticated or not. But I'm
17 concerned if he said he doesn't even recall ever seeing that letter.

18 MR. CARMAN: Well, and it --

19 THE COURT: Yeah.

20 MR. CARMAN: -- attaches --

21 THE COURT: So --

22 MR. CARMAN: -- other information then.

23 THE COURT: Yeah. I don't know what's in it.

24 MR. KARACSONYI: Well, he said that every -- everything he
25 got for -- he got it from a representative of the ELN Trust.

1 MS. HAUSER: That's not what he --

2 MR. LUSZECK: I don't believe that was his testimony, but.

3 THE WITNESS: No.

4 MR. KARACSONYI: If he said he didn't -- he didn't make the
5 record. So, Judge, he's -- this is a document that was provided to him by
6 a member of the ELN Trust. This is an admission by a party opponent,
7 it's non-hearsay, and he's authenticated it.

8 THE COURT: Now, who's the party on that? Mr. Nelson
9 wrote the letter? I don't know who is the author of this letter. All I have
10 is "a letter from Nelson & Associates." If he's the one that wrote the
11 letter, ask Mr. Nelson.

12 MR. KARACSONYI: Well, if Mr. Nelson --

13 THE COURT: And if he --

14 MR. KARACSONYI: -- says he didn't write the letter, then
15 we'll have to call Dan Gerety back to say, "Well, I've got this letter in my
16 file."

17 THE COURT: Well, that's what you have to do. It's called
18 "rebuttal" on that, so. And if they do it on that, they need to do it on that.
19 The fact is I don't know what these letters are saying. He's saying he
20 doesn't recall ever even seeing that letter. I don't know what documents
21 were provided on that, where they came from. I don't know what this
22 letter is about.

23 So the fact is if the person wrote the letter, I have no idea
24 what the letter is about. It just says, "a letter from ELN & Associates."
25 He said he never recalls even seeing that letter --

1 MR. KARACSONYI: It was in his file --

2 THE COURT: -- so refresh his memory.

3 MR. KARACSONYI: -- Your Honor.

4 THE COURT: Well, see if he reads it, and see if it refreshes
5 his memory then. Go through it. I don't know what's in his file now. He
6 said he got documents from people on that. He's not sure who he got
7 them from. Some from the Trust, some from Eric, some from, was it,
8 McGowan, some from other people on that.

9 So I have no idea where he got the documents from. But you
10 need a little more basis on the documents. See if it refreshes his
11 memory by going through there and asking him. Right now he says it
12 didn't refresh. So you said, seeing that, you still don't recall --

13 THE WITNESS: I do not --

14 THE COURT: -- ever seeing --

15 THE WITNESS: -- recall --

16 THE COURT: -- that letter?

17 THE WITNESS: -- yeah. Looking, seeing it.

18 MR. LUSZECK: Exhibit ZZZ.

19 THE COURT: Okay. I'm going to admit it at this time, but
20 you have more time.

21 [Defendant's Exhibit ZZZ admitted into evidence]

22 THE COURT: You've got to get Mr. Nelson on that. You can
23 call him in here. You can use it for rebuttal. So you can ask him on that.
24 The document is provided and see where they got the documents and
25 use it to -- when -- if he denies it, you can go to his credibility. Say if he

1 did write that or didn't write it. Again, I don't know who signed it, if it's
2 signed by him or if it's signed by someone from the ELN Trust. I don't
3 know.

4 MR. KARACSONYI: Okay.

5 THE COURT: But --

6 MR. KARACSONYI: I'll move on, Your Honor.

7 THE COURT: Yeah, but we'll hold off at this time and try to
8 get it in later.

9 BY MR. KARACSONYI:

10 Q Okay. Exhibit L, DG-004.

11 A DG what?

12 Q 004.

13 THE COURT: Which exhibit was that, Mr. Karacsonyi? Which
14 exhibit?

15 THE WITNESS: L.

16 THE COURT: L. Okay. Back to L.

17 MR. LUSZECK: What was the Bates stamp on that? Sorry.

18 MS. HAUSER: On what?

19 MR. CARMAN: 4.

20 THE COURT: Yeah, 004.

21 BY MR. KARACSONYI:

22 Q And you state there, in the second to last paragraph, that
23 except for \$195,010 of joint federal income tax refunds from 2001 and
24 2002, which are deposited into ELN Nevada Trust, you found no
25 evidence that any of Lynita's assets were ever transferred to ELN Nevada

1 Trust? Did I read that correctly?

2 A That is a correct statement.

3 MR. CARMAN: Objection, Your Honor. This is -- again, he's
4 trying to get him to read in his expert opinion so they can pick and
5 choose what portions of his expert opinion they think helps their case at
6 this point.

7 MR. KARACSONYI: This was already offered by our
8 opponents at a whole 'nother trial and admitted completely, in its
9 entirety, offered by them, and now they're saying we can't use it?

10 MR. LUSZECK: Your Honor, the problem -- one of the
11 issues --

12 THE COURT: It's the same line --

13 MR. LUSZECK: -- is, is he was called as an expert ten years
14 ago. There's been nothing, until last Wednesday, do we know they
15 intended to call him as an expert or even as a fact witness.

16 MR. KARACSONYI: On the very --

17 MR. LUSZECK: So there's --

18 MR. KARACSONYI: -- same subject.

19 THE COURT: Well, let him finish.

20 MR. KARACSONYI: Oh, sorry. Yeah, yeah.

21 MR. LUSZECK: So it's been ten years. They call him as a
22 witness. They issue a subpoena a week ago, and they're asking to get in
23 his prior expert report, which I just think is improper, especially after you
24 indicated today that he's just a fact witness. And they're -- once again
25 they're picking and choosing parts in here that they want to utilize, as

1 opposed to the report as a whole.

2 Now, going back to that \$350,000 check, they talk about that,
3 but what they leave out is how it was treated on the expert report from
4 Mr. Gerety. I think it's inappropriate to pick and choose --

5 THE COURT: Yeah.

6 MR. LUSZECK: -- like that.

7 THE COURT: Yeah. Well, we'll give you a chance to fill in the
8 void on that and I don't know how that's helping, if you're saying except
9 for 195,000, there was nothing that you saw. Again, that was his expert
10 testimony, and the Court had concerns about expert testimony in my
11 findings because I felt he had not really got all the information from all
12 the sides when he did it on that. So that was my concern.

13 But, overall, at this time, at the same token, you guys have a
14 chance to fill that in there. Basically, your question was, is it true, except
15 for the 195,000.

16 MR. KARACSONYI: Well, my --

17 THE COURT: What was your --

18 MR. KARACSONYI: -- question is --

19 THE COURT: -- question again?

20 BY MR. KARACSONYI:

21 Q There was \$195,010 from 2001 and 2002 tax years that were
22 deposited in the ELN Trust in 2006; is that correct?

23 A Let me see. That is correct.

24 Q And the parties did file joint tax returns in 2001 and 2002?

25 A Yes.

1 THE COURT: And these were from 2001, 2002, that --

2 THE WITNESS: The refund checks were, yes.

3 THE COURT: From 2001, 2002, they were deposited in 2006;
4 is that --

5 THE WITNESS: They were --

6 THE COURT: Make sure I get this right.

7 THE WITNESS: -- net operating loss carry-backs from Eric's
8 separate -- his return -- separate property that generated the refunds.

9 MR. CARMAN: And, again, Your Honor, I'm objecting. This
10 is a fact witness that they've called him for. He's testifying to something
11 he has no personal knowledge of, outside of his expert retention, which
12 has been -- the Court obviously had issues with him testifying as an
13 expert. They can't now use that report to bolster their case where they
14 think it benefits them without calling him as an expert and paying him as
15 an expert for his opinion. A percipient witness cannot rely upon hearsay
16 in court.

17 THE COURT: That's why you have an expert because the
18 expert can state anything they relied on in reaching their conclusion on
19 that. He's affecting on that. So, basically, why don't we just take the --
20 your position -- money was deposited into an account in 2006; is that --

21 MR. KARACSONYI: That's it, Your Honor.

22 THE COURT: Is that --

23 MR. KARACSONYI: And this, again, for the record, he was
24 already admitted as an expert. You admitted his expert --

25 THE COURT: Yeah, well --

1 MR. KARACSONYI: -- testimony.

2 THE COURT: -- I'm not going to do expert at this point on
3 that. We did that. You had another expert. Anthem should've had --
4 you said had him as an expert as well. So people would've known what
5 was going on with Anthem and FILLit.

6 Now I've got one Anthem expert and I've got an expert from
7 the 2012 trial on that, so we're going back and forth. And the issue was
8 basically -- that's why we had Anthem. I assume that's why you had
9 your expert. So we should have had them as an expert, too, so we
10 would've known. I'm going through all the stuff again on that.

11 But I haven't reviewed his testimony. It was a decade ago. I
12 don't know what was in there. I don't know the basis of that being
13 admitted. So, again, I haven't looked at his thing and I think Mr. Gerety's
14 memory is kind of -- a little bit -- ten years ago. It's hard to remember all
15 the stuff on that, but.

16 MR. CARMAN: And I'll assure you --

17 THE COURT: But --

18 MR. CARMAN: -- if Anthem had relied upon this and
19 included it in their report, these -- we wouldn't be making --

20 THE COURT: Is that --

21 MR. CARMAN: -- all these objections.

22 THE COURT: Absolutely. Yeah. Yeah. And Anthem's going
23 to testify, and we'll see exactly what they relied or didn't rely on and get
24 those issues on that with -- the whole issue on that and get it done.

25 So that's overruled. Let's go -- let's move on, otherwise

1 we're never going to get done. Let's get on there and get your stuff
2 there, so you get Mr. Gerety done. And he may have to come back again
3 for their Case in Chief.

4 I'll give you a chance to cross-exam him, or you can wait and
5 do it in Chief, whatever you guys determine is appropriate, so you can
6 prepare more for to cross-exam and give you leeway for cross and direct
7 if you want. I'll leave it up to you guys, whatever you think is best. I'll
8 give you time to prepare for your examination of him. It will be admitted
9 with the objection. But just so I've got the testimony right, that \$195,010
10 was deposited in 2006; is that correct?

11 THE WITNESS: Correct.

12 THE COURT: Into the Trust -- ELN Trust?

13 THE WITNESS: It was -- yeah, Eric's Trust, correct.

14 THE COURT: Okay. And that was from tax refunds of 2001
15 and 2002?

16 THE WITNESS: Correct.

17 THE COURT: Okay. We'll just -- I know it was -- Eric's tax
18 returns or ELN's tax returns?

19 THE WITNESS: They were joint tax returns -- individual tax
20 returns --

21 THE COURT: From Eric --

22 THE WITNESS: -- because --

23 THE COURT: -- and Ms. Lynita?

24 THE WITNESS: -- the trust -- yes.

25 THE COURT: Okay.

1 THE WITNESS: So the -- all the trust income of both trusts
2 flow to their individual returns --

3 THE COURT: Okay.

4 THE WITNESS: -- because they're grantor trusts.

5 THE COURT: Okay. All right. I'll list --

6 MR. KARACSONYI: I don't have any further questions for
7 this witness, Your Honor.

8 THE COURT: Okay. As a reminder, you have to take a break
9 at 2:30, Mr. Carman; is that correct, for your --

10 MR. CARMAN: Yeah.

11 THE COURT: -- hearing?

12 MR. CARMAN: I'm sorry. Yes, I still have a 2:30 hearing.

13 THE COURT: Okay. Now, as far as Mr. Gerety's testimony,
14 you're done with the testimony of Mr. Gerety?

15 MR. KARACSONYI: Yes.

16 THE COURT: Do you guys want to do cross now? Did you
17 want to save it for your Case in Chief, since you indicated you really
18 weren't prepared for Mr. Gerety at this time?

19 So I want to give you guys a full chance. You can do your
20 cross now and also call him back as needed, or I can let you hold off to
21 do your cross and your direct, your Case in Chief, whatever works out
22 best. So that way there -- it gives you guys plenty of time to prepare
23 since you felt you were not expecting the testimony, whatever. But I
24 give you guys a chance. Whatever you guys want to do.

25 MR. CARMAN: I would like to ask a few questions just --

1 THE COURT: Absolutely.

2 MR. CARMAN: -- directly within the scope of this direct.

3 THE COURT: Absolutely.

4 MR. KARACSONYI: We can take a break.

5 MR. CARMAN: I'm fine, too. If we can take a quick break,

6 Your Honor, that'd be great.

7 MS. HAUSER: Just so --

8 THE COURT: Okay.

9 MS. HAUSER: -- we want to get this moving.

10 THE COURT: I just -- remember, we've got -- Mr. Carman at

11 2:30. Right, Mr. Carman, you've got -- is that today, the other hearing?

12 MR. CARMAN: Yeah, and I'll go -- maybe I'll run right now, if

13 we're taking break, and see what's going on in that department --

14 THE COURT: Okay. And you'll --

15 MR. CARMAN: -- and see if there's --

16 THE COURT: -- let us know on that, because I don't want to

17 come back five minutes and break up again, all right?

18 MR. CARMAN: All right. Thank you --

19 THE COURT: Why don't we take --

20 MR. CARMAN: -- Your Honor.

21 THE COURT: -- a recess.

22 MS. HAUSER: Your Honor --

23 THE COURT: And let us know.

24 MS. HAUSER: -- on the same thought process, I have

25 hearings next week that are JALs. Could I just do them BlueJeans, like

1 outside?

2 THE COURT: Absolutely.

3 MS. HAUSER: Okay.

4 THE COURT: We've got the side room that we use all the
5 time --

6 MS. HAUSER: Okay.

7 THE COURT: -- when we do trials with people on BlueJeans,
8 so, yeah.

9 MS. HAUSER: Okay. I just wanted to --

10 THE COURT: All right.

11 MS. HAUSER: -- make sure because nobody can cover those.

12 THE COURT: Yeah.

13 [Recess from 2:04 p.m. to 3:02 p.m.]

14 THE COURT: We're going back on the in the matter of
15 Nelson v. Nelson; D-09-411537. We took a brief recess. We'll pick up
16 where we left off with Mr. Gerety. I think we're ready for cross-
17 examination. I think, Mr. Carman, you said you wanted to -- again, as I
18 indicated earlier before we took a break, I'll give you some time if you
19 want to call back Mr. Gerety for your case-in-chief or do your cross-
20 examination in your direct case-in-chief, whatever your reference is,
21 since you had some concerns that you weren't -- or testifying to last
22 Wednesday.

23 So I'll give you guys some leeway so everyone feels they got
24 a fair chance. So, Mr. Carman, you said you want to --

25 MR. CARMAN: Fair enough. Yeah, I said --

1 THE COURT: -- ask a few questions and defer to --

2 MR. CARMAN: Reserve the rest for our case-in-chief. That's
3 fair, Your Honor.

4 THE COURT: All right. Okay.

5 CROSS-EXAMINATION

6 BY MR. CARMAN:

7 Q During your direct testimony, there was a discussion about
8 the categories in the general ledgers, specifically a management fee
9 category. Do you recall that?

10 A I do.

11 Q I just want to make sure that it's understood what that
12 category means. That's a category that's placed into an accounting
13 software program, correct?

14 A Correct. It's an accounts. Yeah. It's basically the -- the name
15 of the account was management fees.

16 Q Okay. And it doesn't necessarily mean that it is management
17 fees, that's just a category that certain income is placed under, correct?

18 A That's -- yeah. I mean, well, it's what it is -- the account
19 name was called management fees, but it could be -- yeah, you have to
20 go back to the source documents, what's generating that revenue to
21 really know what it is.

22 Q It's essentially a label that's in the --

23 A Correct.

24 Q -- accounting software?

25 A That is correct.

1 Q If an entity under ELN Trust was receiving from management
2 of another property, before it could result in income to the actual trust, it
3 would have to exceed the expenses related to the management of the
4 property, correct?

5 A Correct.

6 MR. KARACSONYI: Objection. It calls for speculation and
7 asks for an expert position outside the scope of [indiscernible].

8 THE COURT: I'll overrule it. He can answer.

9 THE WITNESS: That's correct. I mean, with any revenue,
10 management fees, you have expenses and it's what your net income is
11 for that entity.

12 BY MR. CARMAN:

13 Q And just so we're clear for the record, Dynasty Development
14 was an entity held within the ELN Trust, correct?

15 A That's my recollection, yes.

16 Q They showed you a check too that had a memo for MGT FEE.
17 Do you recall that check?

18 A Yes.

19 Q I just want to make sure that I'm -- I understand. When
20 someone puts a notation in a check memo, it's not always accurate,
21 correct?

22 MR. KARACSONYI: Objection. Calls for speculation.

23 THE COURT: Overruled. I think, common sense, people
24 know the memo on that, we write memos in there sometimes --

25 /////

1 BY MR. CARMAN:

2 Q Well, you're a --

3 THE COURT: -- whether they're more accurate or not.

4 BY MR. CARMAN:

5 Q -- CPA, correct?

6 THE COURT: But as a CPA, would you -- okay.

7 THE WITNESS: It's -- no, it's not always correct what
8 somebody writes in the memo section of a check.

9 BY MR. CARMAN:

10 Q Okay. And as a CPA, to determine what the check was
11 actually for, you'd have to investigate, correct?

12 A Correct.

13 Q As a CPA, you've rendered expert opinions in the past,
14 correct?

15 A Correct.

16 Q Do you agree that it would be irresponsible to enter -- to
17 render an expert opinion without investigating the nature of a check just
18 in -- and just rely upon a memo line?

19 A Yes. You need to go back to what the contract was, what
20 it's -- where it originated from.

21 Q All right. Now, you are aware of the judge's credibility
22 determinations that were made at the last trial, correct?

23 A I am aware of that, yes.

24 Q You've read the decision?

25 A I did.

1 Q To the extent the judge may have had the impression that
2 Eric was your only client, would that have been accurate?

3 MR. KARACSONYI: Objection. Exceeds the scope.

4 THE COURT: Overruled. You'll get a chance. And let's get
5 this out. If they're going to call him back anyways, let's get this done on
6 that. There was a decision issued on that, but let's kind of cut through it
7 and get to where we are on that. And I'll give you a chance on redirect, if
8 you want to rehabilitate on that. But the order speaks for itself.

9 THE WITNESS: No, it's not correct at all.

10 BY MR. CARMAN:

11 Q Has there ever been a time when Eric was your only client?

12 A Never.

13 Q You indicated that when you met Eric -- I believe you
14 indicated you were at RSM?

15 A Correct.

16 Q And RSM, and I think --

17 A RSM. McGladrey & Pullen, which is RSM today.

18 Q Thank you for helping me on that.

19 When you were at RSM during that time period, how many
20 clients did you serve?

21 A Oh, we had easily 3,000 or more clients.

22 Q Okay. And what about you personally?

23 A Personally, I would have had, oh, probably three to -- three to
24 400 clients that I worked on.

25 Q Okay. And then you left RSM at some point?

1 A I did. In 2004.

2 Q And in 2004, did you start your own practice?

3 A I did.

4 Q And how many clients did you have at the time you started
5 your new practice?

6 A In the first -- I had probably 30 or 40 that initially followed me
7 on day one. It was about 300,000 revenue. And by the year end, by --
8 within 12 months, it was about 600,000 of work. Probably at least 100
9 clients maybe.

10 Q Do you know what percentage of your revenue Eric
11 constituted at that time?

12 A Not in '04. I didn't look. I looked at -- I did look yesterday at
13 '11 and -- and '12. 2011, 2012, when I testified and did some of this work,
14 Eric made up -- in '9 -- no, in 2010, 2011, Eric was right -- just under or
15 right about one percent of my total revenue that my firm brought in.

16 Q As -- do you have any client --

17 A And I had close to -- it was almost 500 clients at that time,
18 480, 490. Client groups. Tax returns, we probably had about 2,000
19 returns.

20 Q Do you have any client that you're willing to compromise
21 your integrity for?

22 A No. Nobody's worth my license.

23 Q That you're willing to trade your reputation for?

24 A No.

25 Q To the extent that have talked about adjusting journal entries

1 in books -- well, first of all, what is the -- what is your essential role as a
2 CPA in examining books from companies?

3 A We're looking at do we have all the proper balances to
4 support journal, support that, has bank -- have the bank accounts been
5 reconciled, has everything been posted, do we have depreciation posted,
6 have all the accruals, payables been booked? So we look at the year-end
7 balances on the balance sheet. And, generally -- I mean, my method and
8 my firm's method is a balance sheet approach; is looking at what the
9 ending balances are in each account on the balance sheet, making sure
10 it's accurate, and adjusting accordingly, if we need to.

11 Q And, I guess, my ultimate question on that line of
12 questioning is, essentially, your job is to make the books more accurate,
13 correct?

14 A That is correct.

15 Q Is there ever a time as a CPA that you have made your
16 clients' books less accurate?

17 A Never. That -- hopefully never.

18 Q And --

19 A Not that I know of.

20 Q Yeah. Okay. Certainly it's not anything you ever do
21 intentionally, correct?

22 A No.

23 MR. CARMAN: I don't have any other questions.

24 THE COURT: Mr. Luszeck, any question to ask this time?

25 MR. LUSZECK: Yeah, I do.

1 CROSS-EXAMINATION

2 BY MR. LUSZECK:

3 Q All right. With respect to Mr. Nelson being a client, could you kind
4 of break it down percentagewise, maybe what he accounted for for your
5 overall revenue for your firm?

6 A Yeah. So I did look at, like I said, 2010, '11. 2010 and '11 --
7 2010, he was less than one percent of the total revenue when I billed
8 Eric. 2010 -- or 2011, he was right at one percent to my total revenue. In
9 2012, there was a lot more revenue because of the time on the expert
10 report, on the trial time, witness time, and that. And that was just --
11 rounded up, it was four percent of the total revenue that year. And that's
12 the biggest year. Today, it's less than half of a percent of my total
13 revenue that comes from all of his businesses.

14 Q Okay. Earlier today Mr. Karacsonyi had gone through
15 Exhibit, oh, L, which is in Volume 2, and specifically he went through
16 some of the assignments in Exhibit 3. Do you remember that?

17 A Let me see. What was Exhibit 3? I do remember what I went
18 through. What was Exhibit 3? It was the beginning May 31st trial
19 balance.

20 Q No. It was --

21 A Oh, that's 2. That's Exhibit 2.

22 Q -- assignments, like on page 45 --

23 A Yes. Right. All --

24 Q -- things like that.

25 A -- of the assignments.

1 Q And it appears there that the implication that you were
2 reading was the assignment was perhaps being made from Eric Nelson
3 to the Eric Nelson Nevada Trust, dated May 30th, 2001 --

4 A That's --

5 Q -- correct?

6 A -- correct.

7 Q Okay. Do you ever recall Ms. Nelson's counsel taking the
8 position before today that somehow these assignments into the ELN
9 Trust were being made by Eric Nelson individually as opposed to by Eric
10 Nelson's separate property trust?

11 MR. KARACSONYI: Objection. Relevance. Calls for
12 speculation.

13 THE COURT: You can answer, if you -- if you feel you can.

14 THE WITNESS: I don't -- I do not recall that position ever
15 being taken.

16 BY MR. LUSZECK:

17 Q Because in -- well, you were actually called as a witness on
18 what I'd like to call as round one, which was the trial in 2010, and then
19 round two, which was the trial in 2012, correct?

20 A Correct.

21 Q Okay. And you were questioned by Ms. Nelson's counsel
22 extensively at both of -- well, at least with respect to the 2012 trial,
23 correct?

24 A That's correct.

25 Q Okay. And, once again, that position was never taken before

1 today?

2 A Not that I recall.

3 Q Okay. With respect to the management fees that were being
4 discussed earlier today that had showed up on the general ledgers, I just
5 want to be clear, those, if anything, show that management fees were
6 being paid to the ELN Trust, correct?

7 A They were actually paid to an entity I believe. The ones of
8 the accounts we were looking at were actually paid to an LLC owned by
9 the ELN Trust.

10 Q Okay. Thank you. You also testified too about how
11 documents -- well, let me start with this: You were initially retained by
12 my office, correct, in conjunction with this case?

13 A I believe that's -- yes.

14 Q Okay. Do you recall when that was?

15 A I don't. Not the exact year. It was right after the 2010 --

16 Q Okay.

17 A -- trial, I believe.

18 Q Okay. And what was the scope of your retention at that
19 time?

20 A If I recall properly, I believe it was to do a trust accounting.

21 Q Okay. And in conjunction with preparing that trust
22 accounting, you testified today that you utilized documentation that was
23 provided to you, correct?

24 A Correct.

25 Q And you indicated that some of the documentation likely

1 came from the ELN Trust, such as Lanna [phonetic] or Rochelle or some
2 other employee of the ELN Trust, correct?

3 A That is correct.

4 Q Okay. Do you know -- during that time frame, are you aware
5 if any documents that were provided to you by my office?

6 A I don't recall. I don't recall.

7 Q Okay. And you've served as an expert in other cases before,
8 correct?

9 A Correct.

10 Q Okay. And is it common practice in cases that you served as
11 an expert in to receive documents from counsel for the party that you're
12 representing?

13 A All the time.

14 Q Okay. And is it also common in those engagements for
15 some of the documentation that's provided to you to, in fact, come from
16 opposing counsel?

17 A Yes, because -- yes. Through the other counsel, yes.

18 Q Okay. You recently received a subpoena for documentation
19 that you have in your file, correct?

20 A Correct.

21 Q And Mr. Karacsonyi went through that earlier today?

22 A Correct.

23 Q Okay. Do you recall whether or not you had previously
24 provided Mr. Karacsonyi's office with a copy of your work file?

25 A I believe I did.

1 Q Okay.

2 A I know I provided it Larry Burch, and I thought I provided it at
3 my prior testimony.

4 Q Okay. So let's break that up into two different areas. So you
5 said you believed you provided it to Larry Burch?

6 A I know I did.

7 Q You know you did. Okay.

8 A I sat down and went over it with him.

9 Q Okay. And that would have been -- what year would that
10 have been?

11 A As Larry was -- it was the year Larry was appointed
12 Special Master.

13 Q Okay.

14 A So that same year.

15 Q Okay. So --

16 A Whatever that year was.

17 Q Okay. So is it your understanding then that Mr. Burch
18 utilized some of the documentation information provided by you to
19 prepare his reports?

20 A I'm sure he did.

21 Q Okay. Now, with respect to the documentation you
22 believed -- you indicated you provided to Ms. Nelson's counsel
23 previously, when did that occur?

24 A I believe it was during trial. I forget which one though.

25 Q Okay.

1 A But -- well, it would have been the, I believe, 2012 trial.

2 Q Okay. And, in fact, do you recall providing that -- your file to
3 them on a CD?

4 A Yes.

5 Q Okay. And that was -- that was while you were on the stand,
6 correct?

7 A Yes.

8 Q Okay. And do you recall, after you provided a copy of that
9 CD, whether any of the documentation that had been provided to you
10 was utilized during your cross-examination during that trial in 2012?

11 A Yeah, based -- and I looked over the -- I don't recall, you
12 know, that particular time, but I did look at some of the transcripts, and
13 there was questions on what I had provided. So, yes.

14 With respect to the documents -- the general ledgers that we went
15 through earlier today -- you recall that line of questioning, correct?

16 A Yes.

17 Q -- were those general ledgers -- did they come from the
18 Peachtree file that you mention throughout your report?

19 A Yes.

20 Q Okay. And walk me through that. So those are essentially
21 just a print-off of the documents that you got from Peachtree?

22 A That's correct.

23 Q Okay. And, once again, these are the same documents that
24 you would have provided to Ms. Nelson's counsel back in 2012?

25 A Oh, yeah. It was --

1 Q Okay.

2 A -- part of the file.

3 Q Okay. Earlier there was some discussion about a tax return.

4 Do you -- do you recall that? Sorry. Earlier today there was some
5 discussion about a tax return in the amount of \$195,010.

6 A I remember looking at the return. Refresh my memory --

7 Q Okay.

8 A -- on that one.

9 Q If you go -- if you pull your report up, which was Exhibit L at
10 Bates label 4, and it's the second from bottom paragraph that starts with,
11 "Except for \$195,010."

12 A Yes.

13 Q Okay. So you specifically identified in this your -- this in your
14 report. Do you recall how you treated -- well, let's take a step back. You
15 were retained by my firm to conduct a tracing of the ELN Trust, correct?

16 A Correct.

17 Q Okay.

18 A Well, yeah, to do the --

19 Q Yeah.

20 A -- accounting for the -- yeah.

21 Q Yeah. And the tracing that you conducted in your work
22 product is otherwise what's included in Exhibit L, which --

23 A Correct.

24 Q -- we've been going through today?

25 A [No audible response.]

1 Q Okay. And on Bates label 4 of your report, you discuss this
2 \$195,000 federal tax refund that was received. How did you -- how did
3 you treat that in your report? Because on Exhibit 7 of your report --
4 maybe pull up that first, please.

5 A What Bates number is that?

6 Q That is Bates number 73. And maybe to start off with, would
7 you remind me of what Exhibit 7 purports to do?

8 A Let's see. It's Bates number 173?

9 Q Oh, sorry. Just 73.

10 A Oh, 73.

11 Q Yeah.

12 A Excuse me. Okay. Exhibit 7 is tracking the -- on the client's
13 GL, they kept track of if Eric's trust spent money for the benefit of
14 Lynita's trust and vice versa. If money was borrowed between the trusts,
15 there was some notes between the trusts, written notes, et cetera. And
16 so the cash transactions on here was what was posted in the GL, which
17 is, okay, this money went into this account, however it belongs to this
18 particular trust. So it was due to due froms between the two trusts.

19 So they accounted for the -- and kept it kind of segregated what
20 was due between the trusts. In other words, there's no -- you know, they
21 weren't commingling, they were keeping track of a due to due from. And
22 this schedule here is to track what properties were transferred, what
23 cash was transferred between all of the -- between the trust that should
24 have been paid back to the other trust to correct any miss -- you know,
25 money going -- being deposited --

1 Q Okay.

2 A -- versus, you know, where it should have gone.

3 Q And when you say, "they were keeping track of the money
4 that was due to due from each trust," what do you mean by that?

5 A They actually kept on the books -- now, they didn't have
6 everything posted. And when I say "they," I meant Lanna and Rochelle.

7 Q Thank you. That was going to be my follow-up question.

8 A Okay. Who I believe were the people posting everything, you
9 know, the Peachtree, the account. They didn't have everything and
10 sometimes they posted stuff like a distribution, which should have been
11 a due to due from, and, you know, we adjusted that. But we kept track of
12 every transfer in between the trusts and recorded what was due back to
13 one trust or the other. It went back and forth.

14 Q And it's -- and based upon your review of the file, that was
15 actually something that they did on the ELN Trust books?

16 MR. KARACSONYI: Objection. Leading. Exceeds the scope.

17 MR. LUSZECK: Well, he's actually a --

18 THE COURT: I'll overrule it.

19 MR. LUSZECK: I'm actually cross-examining right now, but --

20 THE COURT: He can ask.

21 MR. KARACSONYI: Well, asking him as an expert. He's --
22 he's asking now for his expert opinion that he objected to. So as his
23 expert, he shouldn't be able to -- to lead his expert.

24 THE COURT: Overruled. He can ask the question. We'll get
25 through this. Now, we gave a lot of leeway to get to his reports. We

1 spent a lot of time on Exhibit L, so I'll give him some chance to explore it
2 a little bit more. Did you remember the question or -- do you remember
3 the question?

4 THE WITNESS: Yes. They were -- they were keeping track of
5 money that has transferred between the two trusts.

6 BY MR. LUSZECK:

7 Q So when you received the Peachtree files, which
8 encompassed the general ledgers then, you already had kind of a
9 running list of the due to due froms that were on the books of the ELN
10 Trust?

11 A We did.

12 Q And just running through Bates number 73, so this was the --
13 the top says, "Summary of Transfers between the ELN NBT and the LSN
14 NBT." So I'm not going to go through this whole thing, but I just want to
15 go through like for 2001 just so you can hopefully refresh all of our
16 recollections regarding what this did. So in the year 2001, it says, "cash
17 only transactions," correct?

18 A Correct.

19 Q And under that there's a \$268,301, it looks like, cash only
20 transaction.

21 A Well, it -- it says, "cash transactions," is what it says, but --

22 Q Okay.

23 A -- the word only isn't there.

24 Q Okay.

25 A But it's cash transactions.

1 Q Okay. And that cash transaction from 2001 would have been
2 from which trust to which trust?

3 A So those cash transactions, if it's a debit balance, it's a
4 payable. It really would be money owed to Lynita's trust. All right?

5 Q Okay.

6 A And if it's -- the credits are receivables back from Lynita's --

7 Q Okay.

8 A -- trust. So the 268,301 of cash was transferred. Then that's
9 a net number, because there was money going both ways. There's
10 multiple transactions that were in the GL --

11 Q Yeah.

12 A -- and this is just the sum of those numbers. It's what's on
13 the schedule.

14 Q Understood. Yeah. So there wasn't necessarily a check
15 issued for \$268,301, it was a culmination of transactions --

16 A Which --

17 Q -- which resulted going from LSN Trust to the ELN Trust,
18 which culminated at the end of the year the ELN Trust owing the LSN
19 Trust \$268,301?

20 A Correct.

21 Q Okay. And then if you go down to the year 2002, there's
22 \$440,000 there, correct?

23 A Correct.

24 Q Okay. And what does this entry mean in the overall picture
25 of Exhibit 7?

1 A At the end of -- well, there's cash transactions also. But
2 there's -- the first 440,000, Eric's trust, the ELN Trust, transferred and
3 note receivable from Lucky Lucky Lucky Inc. to Lynita's trust. So that
4 resulted in Lynita's trust, after the 2001 transactions, owing Eric's trust
5 back 171,699 as far as the net transfers. But there was also additional
6 cash transactions that took place in 2002 going from Lynita's trust to
7 Eric's trust, which was a net of \$24,634 that Eric's trust owed Lynita's
8 trust at the end of 2002.

9 Q And I'm not going to go through the rest, but that -- that's the
10 gist of it, right? And so every year you broke it down with cash only -- or
11 cash transactions, and then ultimately you began including pieces of real
12 property, correct, and that started in the year 2004?

13 A Correct.

14 Q Okay. And ultimately, based upon the tracing that you
15 conducted, will you just summarize what you ultimately found at the end
16 of Exhibit 7? Who actually owed -- which trust owed which trust money?

17 A Well, after all of the --

18 MR. KARACSONYI: I'm just going to object, Your Honor.
19 They're asking him now for the expert opinion that they objected to
20 before.

21 MR. LUSZECK: Well, they've opened the door.

22 THE COURT: I'll overrule it. Assuming there was account --
23 through all accounting of what he got in there. He can say as an
24 accounting standpoint whether it's accurate or not. It's his account.
25 We'll hear from experts what's coming on. But basically he's saying that

1 he was marking the trust on that. So he can get there as far as the
2 probative value. The Court would determine it after hearing all the
3 evidence. But you can answer the question, sir.

4 THE WITNESS: Okay. And then after all the cash and
5 property transfers and -- Lynita's trust actually received 28,731 more
6 than would have owed Eric's trust back, based on that.

7 BY MR. LUSZECK:

8 Q Okay. So with -- with that explanation in mind, what I
9 wanted to go to next is back to page 4. You said, second to the last
10 paragraph, "Except for the \$195,010 of joint federal income tax refunds
11 from 2001 and 2002, which were deposited into the ELN NBT in 2006, we
12 found no evidence that any of Lynita's assets were ever transferred to
13 the ELN NBT." Do you recall how you posted that --

14 A Let me find where --

15 Q -- on the due to due from --

16 A -- you were just reading first. "Except for the 195 in federal
17 refunds, we found that" -- "no evidence that any of Lynita's assets were
18 ever transferred to Eric's trust."

19 Q Okay.

20 A And so your question?

21 Q Do you recall how you treated that on this due to due from
22 analysis?

23 A The 195,000?

24 Q Yeah.

25 A I think it's spelled out in my report that we split that

1 between them. I treated it as half of that that -- half of that was owed
2 back to Lynita.

3 Q Okay. And why did you do that?

4 A Because I didn't have all -- I didn't go back and try to
5 determine -- even though I had a belief -- it was kind of being
6 conservative, actually, because I had a belief -- my belief is is that those
7 refunds were generated from Eric's separate property losses, and
8 therefore Eric could have filed a return by himself and just applied for his
9 portion of the joint return and they would have been -- those refunds
10 could have been -- probably should have been -- Eric's separate
11 property. But to be conservative, and since I didn't have all the facts at
12 the time, we just split it 50/50.

13 Q Okay. And that's what I --

14 A And I think that's what --

15 Q -- wanted to --

16 A -- my report says too.

17 Q Yeah. And that's what I wanted to confirm, was even though
18 it was your understanding that it was the separate property --

19 A Refund, yeah.

20 Q -- of the ELN Trust, you still treated it conservatively as a
21 50/50 split on the due to due from?

22 A Correct.

23 Q Okay. Also, if you recall earlier today, there was some
24 questioning regarding -- if you go to page 128 of your report --

25 A Okay.

1 Q Okay. And this is in conjunction with the check that you were
2 showed [sic] earlier today to -- regarding that notation that said
3 management fee --

4 A Yes.

5 Q -- I believe? Okay. Despite the fact that it said management
6 fee on the notation, how did you treat that in your report?

7 A I looked at it just, you know, last night, and we treated that as
8 if it was an asset that belonged to Lynita's trust 100 percent.

9 Q Uh-huh.

10 A And we treated it as that money that was owed back to
11 Lynita's trust, accounted for it that way.

12 Q So despite the fact that it said -- that the notation said it was
13 a management fee, you actually treated it as a loan?

14 A Because -- yeah. It came from a transaction related to
15 Lynita's trust. So we took the position that it, yeah, belonged back to
16 Lynita's trust.

17 Q Okay. With respect to this due to due from analysis, why
18 was it important to you to keep track of that or to analyze that in your
19 report?

20 MR. KARACSONYI: I'm just going to object that it exceeds
21 the scope again and that they're calling for his expert opinion.

22 THE COURT: I'll note the objection. Overruled. You can --
23 you can answer it.

24 THE WITNESS: Because -- my prior advice to Eric on any
25 transfers, that they should be of equivalent value. They should always --

1 if there's a transfer between trusts, you should be paying for them, you
2 know, one way or the other. And keeping track of that is just making
3 sure that they balance out. Plus, there -- you know, there were written
4 notes we needed to keep track of. And when there are payments on
5 those notes, what the remaining balance is and so forth. But I mean, the
6 main reason is my advice all along had been to make sure that there
7 were transfers for value.

8 MR. KARACSONYI: Objection. Nonresponsive. Move to
9 strike.

10 THE COURT: Overruled.

11 BY MR. LUSZECK:

12 Q Earlier you previously testified you had reviewed the divorce
13 decree that was -- that was entered by Judge Sullivan, correct?

14 A Correct.

15 Q Okay. And in there, I think one of the issues that Judge
16 Sullivan may have taken with your credibility is the fact that you didn't
17 necessarily engage Ms. Nelson or her counsel in preparing your report.
18 Do you recall that?

19 A I do.

20 Q Okay. In the times that you've served as an expert in cases,
21 have you ever engaged or communicated with an adverse party and in
22 which you've been serving as an expert?

23 MR. KARACSONYI: Objection. Relevance.

24 THE COURT: Overruled. I'll give him some leeway. Let's get
25 this done.

1 THE WITNESS: I don't recall ever getting -- yeah, talking to
2 the --

3 MR. LUSZECK: Okay.

4 THE WITNESS: -- other counsel --

5 MR. LUSZECK: Okay.

6 THE WITNESS: -- regarding that.

7 BY MR. LUSZECK:

8 Q Are you aware in this matter whether or not Ms. Nelson has
9 retained an expert witness?

10 A I believe she has.

11 Q Okay.

12 A Yes. I seen the report.

13 Q Okay. And you're aware that in 2009 and 2010 Ms. Nelson
14 had retained Anthem Forensics; is that correct?

15 A I'm not sure about the year, but --

16 Q Okay.

17 A -- yes, Anthem Forensics is the expert.

18 Q Did Anthem Forensic ever reach out to you at any time
19 during this proceeding to request information?

20 A No.

21 MR. KARACSONYI: Objection. Relevance. Exceeds the
22 scope.

23 THE COURT: I'll overrule it. I'll note the objection.
24 Overruled.

25 /////

1 BY MR. LUSZECK:

2 Q Did Anthem Forensics ever reach out to you to discuss the
3 opinions contained within your report?

4 A No, they did not.

5 Q Do you know the principles of Anthem Forensics?

6 A Yeah.

7 Q Okay.

8 A I do very well.

9 Q Okay. I am going to slaughter the names, at least in one of
10 them, so I apologize --

11 A I believe one of them I slaughter too.

12 Q -- in advance. Are you -- are you familiar with -- well, who
13 are the principals of Anthem Forensics?

14 A Well, Joe's a head partner there.

15 Q Okay.

16 A And --

17 Q And how long have you known Joe?

18 A I'm trying to -- Joe and I met at Nevada State Board of
19 Accountancy, a public hearing, on changing the requirements for
20 licensing the CPAs, and got to know each other from then. We've been
21 experts opposite of each other, and I've worked with him on cases.

22 Q Okay. Has Joe ever referred cases over to you?

23 MR. KARACSONYI: Objection. Relevance.

24 THE COURT: I'll overrule it. He -- there's some leeway. You
25 can follow-up. You can answer.

1 THE WITNESS: Yes.

2 BY MR. LUSZECK:

3 Q Okay. Are you familiar with Jennifer Allen?

4 A Yes.

5 Q Okay. And the same thing. How long have you known her?

6 A We sat on the -- a board together with the Southern Nevada
7 CPA Society. So we're co-board members of the Southern Nevada's
8 chapter. And that's been -- you asked how long. At least six years I
9 think.

10 Q And the same thing. Just -- I guess just to confirm.
11 Throughout your -- your tenure as an expert in this case, I guess starting
12 in 2012 and thereafter, they had never reached out to you to discuss the
13 facts and circumstances regarding this matter?

14 A Not that I recall.

15 Q Thank you.

16 MR. LUSZECK: That's all I have, Your Honor.

17 THE COURT: Any redirect?

18 MR. KARACSONYI: Yes, Your Honor. May I take a quick
19 break? Just real --

20 THE COURT: Sure.

21 MR. KARACSONYI: -- quick?

22 [Recess taken from 3:37 p.m. to 3:40 p.m.]

23 REDIRECT EXAMINATION

24 BY MR. KARACSONYI:

25 Q Mr. Gerety, you had testified about the label MGT fees and

1 the general ledger. Do you recall that?

2 A Yes.

3 Q And the label that's attached to the entry in the general
4 ledger, is that's something that's selected by the person inputting the
5 data, correct?

6 A That's -- yes. That's the person who set up the chart of
7 accounts, which not necessarily the person that inputs the data, but the
8 person who set up the chart of accounts originally.

9 Q Yeah. But there's a chart of accounts. And when somebody
10 makes an entry into QuickBooks or Peachtree, they have to select from
11 the chart of accounts which one is applicable for that entry, correct?

12 A That's correct. They're selecting what account it goes into.

13 Q Okay. So when somebody enters into that general ledger
14 under MGT fees, they chose MGT fees from the chart of accounts,
15 correct?

16 A I think it was management fees in the ledger, but --

17 UNIDENTIFIED SPEAKER: Objection. Speculation.

18 THE WITNESS: Yes. But normally --

19 THE COURT: I'll overrule it. He --

20 THE WITNESS: -- yeah, that would be --

21 THE COURT: -- can answer.

22 THE WITNESS: -- the case. They select what account
23 number -- if they're writing a check or they're depositing a check, they're
24 going to post it to cash and then what income or expense account it
25 should go to.

1 BY MR. KARACSONYI:

2 Q And, in your experience -- well, you had talked about your
3 experience as a CPA in memos and checks. Do you recall that?

4 A You were asking me about what the columns meant on the --

5 Q Mr. --

6 A -- I believe.

7 Q -- Carman had asked you if you're -- in your as a CPA if
8 people have written the wrong things in the check memos?

9 A Check -- oh, yes. I --

10 Q Okay.

11 A -- recall.

12 Q Okay. You would agree though that it's the maker who
13 selects -- the maker of the check who selects the memo to be written,
14 correct?

15 A It's usually the same person, yes.

16 Q Now, you've indicated that you went and you looked just this
17 weekend at your revenue your firm revenue, related to Eric Nelson?

18 A Yes.

19 Q And did you conclude in all that revenue any entity
20 associated with Mr. Nelson where or ELN Trust?

21 A Yes.

22 Q Okay. And what caused you to look at that?

23 A Jeff had asked me what -- how much Eric's account made of
24 my total, you know, what we did.

25 Q And did he inform you that the judge had made a comment

1 about that?

2 A He did.

3 Q Okay. And what did he say about that?

4 A He said it -- the judge had thought that Eric was my only
5 client.

6 Q All right. And what else did you guys discuss?

7 MR. LUSZECK: Well, objection, Your Honor.

8 THE COURT: You got to give more specifics in asking --

9 MR. LUSZECK: Well, it's calling for --

10 THE COURT: -- questions of him.

11 MR. LUSZECK: -- potential attorney privileged
12 communication, depending on the circumstances.

13 MS. HAUSER: He's not even your witness.

14 MR. CARMAN: With him.

15 MS. HAUSER: He's not your witness.

16 THE COURT: Well, he's not -- I don't see attorney-client on
17 that privilege. He's been called by your witness [sic] on -- the same the
18 retention. He was retained back in -- as the expert back in the prior trial.
19 But I don't see it now as this point on then. So --

20 MR. KARACSONYI: I mean, if he's an expert --

21 THE COURT: -- overruled.

22 MR. KARACSONYI: -- I understand. If he is their expert, then
23 he --

24 THE COURT: He's not --

25 MR. KARACSONYI: -- then I agree that the -- then they can --

1 under the rules, especially the new rules, that that would be --

2 THE COURT: Well, I think --

3 MR. KARACSONYI: -- privilege, Your Honor.

4 THE COURT: -- the argument was that he's not the expert,
5 just fact --

6 MR. LUSZECK: Well, he hasn't been --

7 THE COURT: -- question on that.

8 MR. LUSZECK: -- designated as an expert in --

9 THE COURT: Yeah.

10 MR. LUSZECK: -- this case by us, but that doesn't mean he's
11 not providing consulting or expert services.

12 THE COURT: Well, I don't see it at this point on that. We
13 can't have it both ways. He's an expert here and not an expert. So, no.
14 Overruled. You can answer it.

15 BY MR. KARACSONYI:

16 Q I mean, what else did you discuss with Mr. Luszeck?

17 A He asked me to reread the divorce decree, he asked me to
18 reread the other expert's report, and reread my report to be prepared.
19 We went over that Exhibit 7 on what -- whether a positive or negative
20 was a receivable or a payable. What else? Yeah, I don't recall
21 everything. We -- he did send me transcripts of my testimony in the
22 prior trial, which I did not even look at. I -- he kind of wanted me to read
23 that. I said, ah, there's no way I'm going to get that done Sunday night.
24 He sent me a copy of my report because I didn't have the actual final full
25 copy anymore. Just that Word paper file -- file that I sent you.

1 We talked about -- we talked about --he gave -- he told me about
2 some of the questions in my prior testimony though regarding --
3 because he asked if I had previously given that file to you guys -- to Bob
4 before, Mr. Dickerson, which I said I thought I did. I thought they had it.
5 But I couldn't recall. And then he read me some testimony, questions
6 that were in those transcripts that verified that I had. I said, "Yeah, I have
7 it right here," according to the testimony transcripts.

8 THE COURT: That --

9 THE WITNESS: That's about basically --

10 THE COURT: Okay.

11 BY MR. KARACSONYI:

12 Q And when you looked at the -- when you talked about the
13 percentages of revenue for your firm, how many people are in your firm?
14 How many attorneys or -- excuse me, accountants?

15 A Today there's about 45 --

16 Q Okay. How many were there back --

17 A -- total people. That's people and not -- that's not
18 accountants, but total.

19 Q Do you remember how many there were in '12 or '10 or '11?

20 A Probably 25.

21 Q Okay. And did you do any analysis as to what percentage of
22 the total -- well, let me back up. You bill hourly --

23 A I bill hourly.

24 Q -- for your services?

25 A I do.

1 Q Did you look up what percentage of your billable time
2 Mr. Nelson or his related entities comprised during the years that you
3 previously testified about?

4 A The one year that it was almost four percent, because I was
5 in trial for a couple days and -- but Angela wrote -- who worked on the
6 report put more hours in it than I did. On the tax returns, I have other
7 people preparing them and reviewing them, and I'm signing them. So of
8 the total time on Eric's stuff, my time is minor. It's the smallest percent
9 of anybody's other than '12, 2012, because of working on this expert
10 report and the time I had in trial. My time is, you know.

11 Q Did you look at what percentage --

12 A I did not --

13 Q -- of your time --

14 A -- look at the percentages. So I can't tell you exactly.

15 Q Okay. And you did get a copy of the decree of divorce and
16 you reviewed it, correct?

17 A I did.

18 Q But the --

19 A Quickly.

20 Q -- decree of divorce never said that Eric Nelson was your --
21 was your only client, did it?

22 A I did not see that there, no.

23 Q And -- okay. Now, you had been asked about -- by
24 Mr. Luszeck about your scope of retention in the prior proceedings,
25 correct? Do you recall that?

1 A Repeat the question, please.

2 Q Mr. Luszeck asked you about the scope of your retention in
3 the prior proceedings, and you said you were -- I believe you said, and
4 correct me if I'm wrong, that you were hired to do a trust accounting?

5 A That's right.

6 Q And your accounting was of the ELN Trust from May 30, 2001
7 to September 20, 2011, correct?

8 A That's correct.

9 Q September 30. Sorry. I misstated.

10 A Well, yes. Yes, September 30th was the --

11 Q Ending --

12 A -- last day of that accounting.

13 Q Okay. And you did do that? You analyzed all the trust
14 accounting during that time period?

15 A Correct.

16 Q Okay. Now, let's go to then your Exhibit 7. Page 73. And
17 this was actually a summary prepared by you as part of your services
18 back in 2011 and '12, correct?

19 A Correct.

20 Q This wasn't something that was maintained -- this document
21 wasn't maintained on the books and records of the ELN Trust prior to
22 your retention, correct?

23 A No. It's taking numbers from that GL and everything else
24 that we pulled together.

25 Q Okay. And you had testified previously during the prior

1 proceedings that you actually made adjustments based on the transfers
2 between trusts, correct?

3 A That's correct. We did.

4 Q And you actually prepared a due to due from to account for
5 those transfers, correct?

6 A Well, the account was already there. We just made
7 adjustments to the account.

8 Q Now, in your experience -- you do forensic accounting work?

9 A No, I don't consider -- we do some. It's not my -- what I do
10 all the time, no, but have.

11 Q But you had mentioned to -- you had answered one of
12 Mr. Carman's questions that when you're analyzing a transaction in an
13 accounting record or general ledger, you like to see the source
14 documents?

15 A Yes. If I can get them, yeah. Yes.

16 Q And if you were analyzing due-tos or due-froms between
17 parties, you would like to see the source document to show the
18 agreement between the parties; is that correct?

19 A Yes.

20 Q And you would agree that for somebody to owe another
21 party money, there would have to be an agreement between them that
22 money is owed, correct?

23 A That is correct.

24 Q Now, looking at your Exhibit 7, the cash-only transactions,
25 this is money paid. On this column going down, this is money or

1 property that you saw transferred from one -- from LSN Trust to ELN
2 Trust, correct?

3 A I believe, at times it went both ways.

4 Q I'm asking about that column only.

5 A Which? Well --

6 Q Which column is -- which column is transfers from LSN Trust
7 to ELN Trust? And which one is ELN Trust to LSN Trust?

8 A They're combined.

9 Q Okay.

10 A So you see positives and negatives in the cash-only
11 transactions.

12 Q Okay.

13 A So for instance there was, in 2007 -- you just take the big
14 ones, right? In 2006, Eric's Trust received proceeds from Tierra Del Sol,
15 which we showed it needed to be paid back to Lynita's Trust.

16 And in 2007, we show that was a million thirty-seven dollars four
17 hundred and forty-six dollars.

18 And in two -- the following year, there was a 1,481,545 -- more than
19 that amount -- paid from Eric's Trust to Lynita's. So you -- these
20 transactions are going both ways.

21 Q Which line are you on for -- you're at 2006?

22 A 2007.

23 Q You're at '07?

24 A Yeah.

25 Q Okay. So --

1 A It says "cash transactions (1,481,545)" with parentheses
2 around it.

3 Q Okay. One million one forty-five -- one million one forty-five?

4 A \$1,481,545 in the --

5 Q Oh, yeah.

6 A -- cash-only --

7 Q I see it. Okay. I see it.

8 A -- transactions.

9 Q I see it. And that's 2007?

10 A Correct.

11 Q And which trust is that?

12 A That's, Eric's Trust paid Lynita's Trust that -- a million four, or
13 a million five almost.

14 Q Okay. And how do we know which trust goes where?

15 A As I explained that if it's a positive number here, it means
16 that Eric's trust owes Lynita's trust that money. If it's a negative number,
17 that means Lynita's Trust would owe Eric's Trust that money back.

18 Q Okay. So on two -- so I've got it. So the right -- the far right
19 column, right?

20 A The far right column is a running balance, yes.

21 Q And it's what you determined was either owed to LSN Trust
22 or owed by LSN Trust, depending on whether it's a positive or a
23 negative, right?

24 A Correct.

25 Q And if it's a positive, it means that ELN Trust owes that

1 money to LSN Trust, correct?

2 A Correct.

3 Q And if it's a negative, you determine that the LSN Trust then
4 owes the ELN Trust?

5 A Correct.

6 Q So, in 2001, there were \$268,301 net positive that was
7 transferred from Lynita's Trust to Eric's Trust, correct?

8 A 268,301, yes.

9 Q Okay. And -- okay. And at that time, there was no money
10 actually owed by LSN Trust to ELN Trust, correct?

11 A At that -- I don't recall.

12 Q Let's look at -- you prepared -- we talked about, earlier, the
13 first exhibit -- Exhibit 2, excuse me. You created a balance sheet.

14 MR. LUSZECK: Your Honor, I'm just going to object to the
15 scope here. I think this is outside of my cross, one. And, two, the reason
16 why I looked at Exhibit 7 was to give some context regarding two
17 transactions which came up in their case-in-chief, which is the \$195,000
18 transaction and the \$350,000 transaction. That was it. That's what I
19 discussed, and this is going well outside the scope of that.

20 MR. KARACSONYI: Judge, respectfully, he went on for 15
21 minutes --

22 THE COURT: Well, that --

23 MR. KARACSONYI: -- about this to show --

24 THE COURT: Well --

25 MR. KARACSONYI: -- that she owed money to him.

1 THE COURT: Let's -- overruled. Otherwise, they're going to
2 crawl back and do them again on rebuttal. So let's get it all out there and
3 see whether he has testified long enough. I'm trying to prevent him
4 from having to come back, if you don't have to, Mr. Gerety. So we'll give
5 him a little leeway on that. You can ask the question on that.

6 BY MR. KARACSONYI:

7 Q If you go to page 16.

8 A Page --

9 Q Or excuse me --

10 A -- 16.

11 Q -- page 16. These are the liabilities and capital of the ELN
12 Trust, as of May 30th, 2001 -- May 31st, 2001, on the balance sheet you
13 created, correct?

14 A Correct.

15 Q Okay. And do you see a liability here?

16 A You're not matching the right dates.

17 Q Well, this is May 30th, 2001.

18 A Right. But this -- that schedule is 12/31 --

19 Q Right.

20 A -- 2001.

21 Q Okay.

22 A So those transactions happened between May and
23 December.

24 Q No, I understand what you're -- they happened during the
25 year 2001?

1 A Right.

2 Q Okay.

3 A They happened after the -- yes.

4 Q I understand that. But, at least as of May 31st, 2001, okay --
5 and if you look here, assets -- it's actually assets -- there is nothing owed
6 by the -- by Lynita's separate property trust, or Lynita listed as an asset
7 of the ELN Trust, as of May 31st, 2001. Do you agree with that?

8 A Just looking.

9 Q Yeah. Take your time.

10 A There is not, no.

11 Q No. Okay. And do you recall any documentation going back
12 to your Exhibit 7? I'm just going to try and find it. A lot of flipping here.
13 Sorry.

14 MR. KARACSONYI: Do you remember what page it was?

15 MR. LUSZECK: Oh, yeah. 73.

16 MR. KARACSONYI: Okay. Thank you.

17 MR. LUSZECK: You're welcome.

18 BY MR. KARACSONYI:

19 Q As you sit here today and having looked through your report,
20 were there any documents that showed monies owed by the LSN Trust,
21 to the ELN Trust, during 2001?

22 A I don't recall about 2001, other than the GL showed those
23 transactions.

24 Q Okay. But you don't recall if there's any --

25 A There were notes.

1 Q -- actually any loan documentation?

2 A There were notes, but I don't recall what years -- the dates of
3 those notes, without, you know, looking at the documents.

4 Q Okay. Did you -- you would agree that for a lot of these
5 transfers you didn't actually observe any written agreements between
6 LSN and ENL Trusts, did you?

7 A We -- yeah, I don't recall if -- there were some documents on
8 the transfers, not all of them.

9 Q Yeah, but do you recall, as you sit here today, specific written
10 agreements between the two trusts?

11 A Yeah, there were notes, agreements, on some of them, with
12 interest and payments.

13 Q Okay. So was there a written agreement with respect to
14 Tierra Del Sol?

15 A No, not that I recall.

16 Q Okay. Do you recall any written agreements for the 2001
17 cash transactions?

18 A I do not recall any agreements.

19 Q Okay. Do you recall a written agreement related to Lucky,
20 Lucky, Lucky, Inc.?

21 A Again, I don't recall without going through the file.

22 Q Okay. Now, do you recall any agreements with respect to the
23 Mississippi houses that were transferred?

24 A You mean -- on the Lucky Lucky? was that the note?

25 Q It says, "This note was paid off in 2002 with Mississippi real

1 estate from Lucky Lucky."

2 MR. LUSZECK: Can we break really quick, Your Honor?

3 THE COURT: Yeah. Sure.

4 MR. LUSZECK: I just had a runner from my office --

5 THE COURT: Yeah.

6 MR. LUSZECK: -- drop [indiscernible].

7 THE COURT: Sure. You want to take -- yeah, we'll take --

8 [Recess taken from 4:00 p.m. to 4:01 p.m.]

9 THE COURT: Now, has --

10 THE WITNESS: So repeat the question, please.

11 BY MR. KARACSONYI:

12 Q Okay. Do you know if there was any written agreement
13 between -- and I don't want to get confused. I'm referring to written
14 agreements between ELN and LSN Trusts, both parties, rather than just
15 -- as opposed to a trust minute notation or signed by one party. Do you
16 understand that distinction?

17 A Yes. And --

18 MR. LUSZECK: And, I guess, can I object --

19 THE WITNESS: I'd have to --

20 MR. LUSZECK: -- real quick, Your Honor?

21 THE WITNESS: -- go through the file because I don't recall
22 which -- I mean, it's been so long ago.

23 THE COURT: Are you asking him if he saw source
24 documents to the --

25 MR. KARACSONYI: Yeah, to --

1 THE COURT: -- to [indiscernible]?

2 MR. LUSZECK: And I guess that's my point. We're talking
3 about a report that's ten years old, that -- you know, that has I don't
4 know how many thousands of pages of source documents that went into
5 it. And he's trying to pin him down on something right now that he
6 hasn't looked at --

7 THE COURT: Yeah.

8 MR. LUSZECK: -- in a while, so.

9 THE COURT: And he said he doesn't recall. So let's leave it
10 at that. He doesn't recall. And as far as any -- you said there were some
11 notes you recall -- notes?

12 THE WITNESS: Yeah, I remember some notes, payables, that
13 were signed. And --

14 THE COURT: Okay.

15 THE WITNESS: -- there was also -- when the transfers were
16 made, there were -- Lynita signed those -- a lot of those documents if
17 they're going one way, and Eric would sign them if they're going the
18 other way.

19 THE COURT: And when you say "notes," you're talking about
20 promissory notes --

21 THE WITNESS: Well, promissory notes --

22 THE COURT: -- with payment then?

23 THE WITNESS: -- real estate transfers.

24 THE COURT: Okay. That's -- okay. All right. But you don't
25 recall specifically as to Tierra --

1 THE WITNESS: Each one, no.

2 THE COURT: -- Del Sol, or Lucky Lucky Lucky?

3 THE WITNESS: No.

4 THE COURT: Okay.

5 BY MR. KARACSONYI:

6 Q And correct me if I'm wrong, but you testified that Mr.
7 Luszeck asked you to review this Exhibit 7, correct, before today?

8 A We just went over -- he just asked questions about it. I didn't
9 go back to source documents on anything.

10 Q All right. And do you recall if there were any written
11 agreements with respect to the Mississippi properties transferred in
12 2004?

13 A Yeah, you know, it's just -- I don't -- it's been so long. I don't
14 -- I thought there was, but I can't tell you for sure because it's been too
15 long.

16 Q Okay. Now, the 2006 Tierra Del Sol proceeds were -- you
17 listed as one thousand thirty-seven four forty-six, correct?

18 A Correct.

19 Q And that's a positive number, meaning it was given from the
20 LSN Trust to the ELN Trust, correct?

21 A The property belonged to the -- Lynita's Trust, so we booked
22 it that that should be paid back.

23 Q Okay. And the Lindell Office Building and Brian Head Cabin,
24 do you recall if there was any written agreement with respect to those
25 properties?

1 A I don't recall.

2 Q Now, you had mentioned -- you said, We took the position
3 that that money should be paid back," correct?

4 A That's correct.

5 Q And that was the position that you took during your expert
6 testimony, correct?

7 A It is.

8 Q But that may not reflect -- you're not saying that your report
9 actually reflects what were the agreements of the parties at the times
10 that these transactions were done, are you?

11 A I'm saying we looked at all the documentation and
12 determined, if money was a transfer from one trust to the other, we
13 wanted to record it as such.

14 Q Yeah. Okay. So you took all of the transactions between
15 both trusts, regardless of whether there was any written agreement or
16 not, and logged them on this Exhibit 7, correct, during the time period?

17 A That's correct.

18 Q Okay.

19 A Every transaction we saw.

20 Q Okay. And now the 350 management fee that you said -- that
21 Mr. Luszeck asked you about, that you said you classified as a loan, what
22 source documents did you rely upon to make that --

23 A We looked at -- that came from -- and, again, I shouldn't even
24 -- because it's -- because my memory is vague on that. But it came from
25 a transaction on property that, if my memory is correct -- and it could be

1 wrong -- that it was in Lynita's Trust, and because the transaction was
2 part of that, we showed that that money should have gone into Lynita's
3 trust.

4 Q All right. So let me see if I can refresh your recollection. A
5 piece of property was sold, right?

6 A That's what I recall.

7 Q Right. And it was held by the LSN Trust, correct?

8 A Correct.

9 Q And 350,000 of the proceeds were written as a check to Eric
10 Nelson for MGT fees, correct?

11 A Right. And we --

12 MR. LUSZECK: Object to foundation.

13 THE WITNESS: That's --

14 THE COURT: I'll overrule that.

15 THE WITNESS: It's --

16 THE COURT: If that's the best you remember.

17 THE WITNESS: The memory is vague, but that's why we
18 ended up pulling it back and showing that it was due to Lynita.

19 BY MR. KARACSONYI:

20 Q Okay. And --

21 A It's Trust, not to Lynita --

22 Q -- but there was no loan --

23 A -- but the difference, to her trust.

24 Q But there was no loan document associated with that
25 transaction at that time; do you agree?

1 A I don't recall that there was. I believe that's correct. But,
2 again, it's too long ago.

3 Q And the check that Mr. Nelson -- that we looked at earlier for
4 the 350,000 -- we looked at that check earlier, right? The MGT fees?

5 A Yes.

6 Q It didn't note in the memo that this was a loan, correct?

7 A On the check, no.

8 Q Best practice, you, as an accountant, if your client is writing a
9 check, you would want them to make sure the memo is accurate,
10 wouldn't you?

11 A We would, yeah. Of course.

12 Q All right. And you said, "My advice all along to Eric has been,
13 you know, 'Make sure there's fair consideration'" --

14 MS. HAUSER: Objection.

15 BY MR. KARACSONYI:

16 Q -- right?

17 MR. LUSZECK: Yeah. Objection.

18 THE WITNESS: Not exactly.

19 MS. HAUSER: Misstates his --

20 THE COURT: I'm not -- yeah.

21 MR. LUSZECK: Misstates testimony. Misstates the --

22 MS. HAUSER: Misstates the --

23 THE COURT: I'm not certain --

24 MR. KARACSONYI: If I did, then let me understand it, please.

25 THE COURT: I'll give you --

1 THE WITNESS: I said --

2 THE COURT: -- some leeway.

3 THE WITNESS: -- if there's transfers, if you believe that you
4 need to transfer property between the trusts, that you should make sure
5 that it's of equivalent value --

6 BY MR. KARACSONYI:

7 Q Okay. And --

8 A -- is what my statement was, I believe.

9 Q Oh, okay. That's -- oh, okay. So that wasn't actually specific
10 -- you're not talking about specific advice you gave to Mr. Nelson.
11 You're just saying that that's your belief that there should be
12 something --

13 A No. No.

14 Q -- equivalent?

15 A No. I specifically gave Eric that advice --

16 Q Okay. And --

17 A -- prior to any of this all happening.

18 Q Okay. And -- but you didn't start doing actual -- well, when
19 did you start dealing with his books and records?

20 A I wasn't --

21 Q In 2007?

22 A It wasn't about doing the books and records. It was, he was
23 asking about just the trust advice.

24 Q Do you recall when this was?

25 A It was prior to any knowledge of any divorce.

1 Q Okay. But you can't recall the specific date?

2 A No.

3 Q Okay. And would you have also advised him at that time that
4 he should document any transaction?

5 A Yes, I would've.

6 Q And you would agree that the best practice for documenting
7 a transaction would be to have a written agreement between the parties,
8 correct?

9 MR. LUSZECK: Objection.

10 THE WITNESS: I would agree --

11 MR. LUSZECK: Calls for a --

12 THE WITNESS: -- with that --

13 MR. LUSZECK: -- legal conclusion.

14 THE COURT: Well, I think that's one way to document it, but
15 --

16 THE WITNESS: Yeah.

17 THE COURT: -- it's not the only way to document it.

18 MR. KARACSONYI: All right. I have no further questions.

19 MR. LUSZECK: Could we take a two-minute break?

20 THE COURT: Yeah. You want to take about -- take about --

21 MR. KARACSONYI: Actually, are you going to -- Your Honor,
22 do you want to save him from coming back again?

23 THE COURT: Yeah, I would, if we could get it done --

24 MR. KARACSONYI: Because --

25 THE COURT: -- by 5:00. What do you think?

1 MR. KARACSONYI: Yeah, I just had one question. If you'll
2 allow me just one?

3 MR. LUSZECK: Oh, sure.

4 MR. CARMAN: Okay.

5 MR. LUSZECK: We'll hold you to that.

6 MR. KARACSONYI: No, no, no. I don't know. And I'm not
7 waiving my right if it has -- if it's necessary for rebuttal. No, no.

8 MR. CARMAN: You said, one question.

9 MR. KARACSONYI: But I'm going to at least endeavor, Your
10 Honor, to try to make sure that I don't leave something for later.

11 THE COURT: Okay.

12 MR. KARACSONYI: Okay. That I know that --

13 THE COURT: And --

14 MR. KARACSONYI: -- he has knowledge about.

15 THE COURT: And then we'll take a break. Okay.

16 BY MR. KARACSONYI:

17 Q You said you were involved with the Wyoming Downs
18 transaction -- this was during when I was questioning you earlier -- the
19 first one, in 1998?

20 A Yes.

21 Q Okay. And you even talked about that in your report, that
22 transaction?

23 MS. HAUSER: That's two questions.

24 MR. KARACSONYI: Well, I meant one subject.

25 THE COURT: One area.

1 MR. KARACSONYI: Sorry.

2 THE WITNESS: Actually, I don't recall --

3 BY MR. KARACSONYI:

4 Q Can you go to Exhibit L --

5 A -- if it's in my report --

6 Q -- real briefly?

7 A -- or not.

8 MS. HAUSER: I thought he had one question.

9 MR. LUSZECK: Definitely said --

10 THE COURT: It's a lawyer's one question.

11 MR. LUSZECK: He definitely said --

12 MS. HAUSER: Yeah, he said --

13 MR. LUSZECK: -- one question.

14 MS. HAUSER: -- one question.

15 MR. LUSZECK: No doubt.

16 MR. KARACSONYI: I did. I apologize. My credibility's been
17 impugned.

18 BY MR. KARACSONYI:

19 Q Can you go to page DG-00003?

20 A Sure. Okay.

21 Q And so does this refresh your recollection as to the
22 transaction in 1998?

23 MR. LUSZECK: And, Your Honor --

24 THE WITNESS: Well --

25 MR. LUSZECK: -- I guess I'm going to object to that, to some