

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS GROUP,
INC. d/b/a/ PAR FUNDING, et al.,**

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S RESPONSE TO
MOTION TO EXCLUDE EXPERT TESTIMONY AND REPORT OF MELISSA DAVIS**

I. Introduction

The motion of Defendants Joseph LaForte, Lisa McElhone, and Joseph Cole Barleta to exclude part of the expert report and testimony of Plaintiff’s expert witness Melissa Davis (“Motion”) is fundamentally flawed because it attempts to disqualify Davis for an analysis she did not do and an opinion she did not give. The Motion is replete with accusations that Davis’ analysis and opinions are flawed because she did not use Generally Accepted Accounting Principles (“GAAP”) to analyze the profitability of Par Funding. *See, e.g.*, Motion at 1, 2, 5, and 6.

However, the Defendants either evince a complete lack of understanding of Davis’ analysis and opinions, or are attempting to mislead the Court, because Davis never analyzed whether Par Funding as an entity was profitable, and has offered no opinion on that issue. Rather, Davis’ comprehensive report analyzed whether the cash Par Funding actually received from its merchant cash advances was sufficient to pay the company’s ongoing interest payments to investors and operations expenses, a completely different analysis that has nothing to do with how a company keeps its books and records under GAAP. *See, e.g.*, Report of Expert Melissa Davis, attached as

Exhibit 1, at 6-8, ¶12-13. The Court should deny the Defendants' Motion on that basis alone.

In addition to an irrelevant factual premise for their Motion, the Defendants have misstated its legal basis. While *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), and its progeny state that District Courts should act as “gatekeepers” to ensure expert testimony is based on reliable methodology, the Defendants have overlooked or ignored the law that Federal Rule of Evidence 702 favors admission of expert testimony. They furthermore fail to mention that in the Eleventh Circuit, “rejection of expert testimony is the exception rather than the rule” (*City of Tuscaloosa v. Harcross Chemicals, Inc.*, 158 F.3d 548, 562 n.16 (11th Cir. 1998)), and that disagreements over expert witnesses' methodologies go to the weight and credibility of the testimony, not its admissibility. Furthermore, there is ample case law indicating a GAAP analysis is not always appropriate to determine segments of a company's finances.

In reality, Davis is a highly qualified and experienced accountant and Certified Fraud Examiner who has conducted hundreds of fraud examinations over the course of her 23-year career. Even the Defendants admit Davis is qualified. Motion at 1. In addition, federal and state courts, including courts in the Southern District of Florida, have qualified Davis as an expert witness in forensic accounting and allowed her to testify as an expert witness about the exact kind of analysis she performed here. This Court should follow suit and deny the Defendants' factually baseless and legally flawed Motion.

II. Factual And Procedural Background

A. Relevant Procedural History

Plaintiff Securities and Exchange Commission filed its eight-count complaint against Laforte, McElhone, Cole, and several other Defendants on July 24, 2020, and later an amended complaint, alleging the Defendants had raised nearly \$500 million from 1,200 investors nationwide

through a series of unregistered, fraudulent securities offerings. Amended Complaint, DE 119, at ¶1. The amended complaint alleged that Defendant Complete Business Solutions Group (“CBSG”), doing business as Par Funding, had issued promissory notes to investors, either directly or through related “agent funds,” from August 2012 through the date of the complaint to finance Par Funding’s merchant cash advance business. *Id.* at ¶¶2-7.

Most relevant to this motion, the amended complaint further alleged the Defendants had made a series of misrepresentations and omissions to investors, including about: (1) the true nature of Par Funding’s loan practices; (2) Par Funding’s track record of issuing loans and the default rates of the loans; (3) the safety of investing in Par Funding’s loans, and (4) the use of investor funds. *Id.* at ¶8. The complaint alleged the Defendants violated the registration and anti-fraud provisions of the federal securities laws as a result. *Id.* at ¶¶268-294.

Simultaneously with filing the original complaint, the Commission filed two emergency, *ex parte* motions seeking temporary restraining orders and asset freezes against all Defendants, and the appointment of a Receiver over the entity Defendants. DE 4, 14. The Court granted both motions. DE 36, 42. Later, after a hearing, the individual Defendants consented to the Commission’s request for preliminary injunctions. DE 181, 182, 195, 201, 202, 230, 256. Extensive litigation has followed the initial proceedings.

B. Davis’ Qualifications And Report

1. Davis’ Qualifications

On August 13, 2021, in conjunction with the pre-trial deadlines in the case, the Commission disclosed Davis as an expert witness pursuant to Federal Rule of Civil Procedure 26(a)(2) and Federal Rule of Evidence 702. The Commission further produced to the Defendants pursuant to Rule 26 a 63-page report and supporting exhibits containing a complete statement of Davis’

opinions, the bases for them, and her extensive qualifications. Exhibit 1. Davis was already known to the Defendants, as she had signed three declarations in support of the Commission's motions for temporary restraining orders and preliminary injunctions that contained analyses and opinions similar to those in her report.

As noted in an attachment to her report (attached here for the Court's convenience as Exhibit 2), Davis is a highly experienced forensic accountant and fraud examiner. She is a partner at Kapila Mukamal ("KM"), a well-known and respected South Florida accounting firm, and has worked at KM for 23 years. During that time she has participated in hundreds of investigations and court actions involving fraudulent and preferential transfers, solvency and liquidation analyses, asset tracing, tracing of commingled funds, corporate conduct, and damages valuations. Exhibit 2. She has worked for a variety of clients in a number of industries, including health insurance, real estate, retail businesses, hospitalities, nursing homes and assisted living facilities, stevedoring, hedge funds, and waste management. *Id.*

Davis has represented debtors, creditors, receivers, assignees, bankruptcy trustees, examiners, liquidating trusts and government agencies, including the Commission, the Federal Trade Commission, the FBI, and multiple U.S. Attorneys Offices. *Id.* She has served as both a bankruptcy trustee and a court-appointed assignee for the benefit of creditors. Furthermore, she has compiled an impressive resume of speaking engagements and publications (Ex. 2 at 2), and testified at least 19 times in trials, other court hearings, and depositions, including occasions where courts qualified her as an expert in forensic accounting after she performed identical or similar analyses to her work in this case. Ex. 2 at 3-5.

For example, Judge Hurley twice allowed Davis to testify as a forensic accounting expert. Exhibit 3, Transcript of Trial Testimony of Melissa Davis in *USA v. Hipp*, Case No. 14-cr-80081

(S.D. Fla. March 10, 2015), at 8 (expert in accounting and fraud examination); Exhibit 4, Transcript of Trial Testimony of Melissa Davis in *USA v. Signore*, Case No. 14-cr-80081 (S.D. Fla. Nov. 12, 2015), at 7-8 (expert in forensic accounting). In neither case did the Defendants challenge Davis' qualifications. Ex. 3 at 8; Ex. 4 at 8. In both instances, Davis did what she did in this case – performed an extensive analysis of the Defendants' financial accounts to reconstruct cash flow activity over a lengthy period of time to determine the sources of the Defendants' cash and how they spent those funds. Ex. 3 at 9-15; Ex. 4 at 8-19. The transcripts show that neither case involved conducting any analysis under GAAP.

There is a good reason the Defendants have not challenged Davis' qualifications – because they are impeccable. Davis has never had a Court exclude any of her testimony under *Daubert* or Rule 702 for any reason,¹ and as far as she and the Commission are aware, has never previously had a defendant even file a *Daubert* motion against her. Those qualifications and background are a factor the Court should consider in determining whether to exclude Davis' report and testimony.

2. Davis' Report

Davis' report contains two opinions, both related to the flow of funds into and out of Par Funding and its numerous financial accounts from 2012 until July 2020: (1) the actual cash flow from Par Funding's merchant cash advances was not sufficient to pay returns to investors and Par Funding's operational expenses; and (2) the amount of money Par Funding paid to various individuals and entities. Ex. 1 at 7-8, ¶13. Those are precisely the two issues the Commission asked her to analyze and render opinions on. *Id.* at 6-7, ¶12. The Defendants' Motion only attempts to exclude Davis' first opinion concerning the cash flow to and from Par Funding's merchant cash advances. Motion at 1. Notably, the Commission did not ask Davis to analyze the

¹ Exhibit 5, Testimony Transcript of Melissa Davis, *In re Woodbridge Group of Companies, LLC*, Case No. 17-12560, Bankr. D. Del. (Jan. 10, 2018), at 253.

profitability of Par Funding, and correspondingly Davis did no such analysis nor offered any opinion on that issue. *Id.* at 6-8, ¶¶12-13.

Davis broke down her first opinion into two distinct parts. In the first, she determined the *actual* net cash Par Funding received from its merchant cash advances was not enough to pay the *actual* amounts the company spent on interest payments to investors and operational expenses. *Id.* at 20-41, ¶¶46-88. In the second, she analyzed the cash flow into and out of individual merchant cash advances, rather than in the aggregate as in the first part, to again determine whether the merchant cash advances yielded enough money (which Davis' report termed profitability) to pay the investor returns and operational expenses that Par Funding paid during the same time period. *Id.* at 40-59, ¶¶89-125.

As Davis concluded at the end of the second part: "This analysis further demonstrates that the cash flow generated from the Par Funding Merchant Advances was not sufficient to pay the promised investor returns and operational expenses because the Merchant Advances did not yield sufficient profit to Par Funding." *Id.* at 59, ¶125. Davis' analysis concluded that because Par Funding did not make enough from its merchant cash advances, it had to use investor funds to make the interest and operations payments. *Id.* at 39-41, ¶¶87-89. The Defendants did not disclose to investors they were using investor funds to make interest payments to other investors and pay operations expenses. Again, nowhere in either section of her first opinion did Davis purport to analyze or opine on whether Par Funding as an entity was profitable.

Davis' report is clear that her analyses and findings only concerned analyzing Par Funding's historical cash flow and whether the merchant cash advances the company made generated enough cash for the company to pay its operational and investor interest bills. *See, e.g., Id.* at 6, ¶12. Davis repeats this fact throughout:

- “The Commission requested me to determine: a. If the cash flow from Par Funding’s Merchant Advances was sufficient to pay the promised investor returns and operational expenses” (6, ¶12);
- “My opinions are: a. The cash flow from Par Funding’s Merchant Advances was not sufficient to pay the promised investor returns and operational expenses” (7, ¶13);
- “The conclusions reached in this report are based on my analysis of Par Funding’s historical cash activity” (10, ¶20);
- “To evaluate the cash activity of Par Funding . . .” (11, ¶24);
- “Utilizing these categories, I determined the cash inflows and outflows for each KM category” (13, ¶34);
- “I reviewed the data . . . for purposes of selecting the appropriate data sources to analyze the cash profitability of the Merchant Advances” (16, ¶39);
- “One objective of my analysis is to analyze the profitability of the MCA Advances on a cash basis” (18, ¶41);
- “I utilized this database to quantify the amount of cash paid to and received from the Merchants for each MCA Advance...” (20, ¶45);
- “I analyzed the actual cash flow generated from the Merchant Advances Receivables using two methodologies. First, I analyzed the overall cash activity of Par Funding to determine if the cash flow from the Merchant Advances was sufficient to cover the operating expenses and Investor interest payments” (32, ¶70);
- “Based on my analyses, it is my opinion that the Par Funding Merchant Advance activity did not generate sufficient profit in the form of cashflow to pay the operating expenses and Investor returns” (32, ¶72);

- “I determined that on an overall basis, the cash flow generated from the MCA Activity for the period from 2011 to July 27, 2020 was approximately \$39.9 million. This was not sufficient to cover the \$118 million in interest payments made to the investors during this same period” (32, ¶73).

Not a single one of these analyses and findings addressed whether Par Funding was profitable. Davis’ report was equally thorough in explaining her methodology. *Id.* at 10-32, ¶¶20-69. The report goes painstakingly through which Par Funding accounts, ledgers, financial reports, and financial statements she considered, and how and why she considered each particular ledger, statement, document, or account. *Id.* Most importantly for purposes of this Response, Davis explained that Par Funding kept its books and records on an accrual accounting basis under GAAP. *Id.* at 22-25, ¶¶51-57. This meant the company recognized revenue when it was entitled to receive payment, not when it actually received payment. *Id.*

Davis also carefully explained in her report the differences between accrual accounting and cash accounting and how that affected her analysis. *See, e.g., id.* at 25, ¶56: “The difference between cash and accrual accounting is that cash accounting recognizes revenue when the cash is collected or paid. Accrual based accounting recognizes revenue when it is earned and expenses when they are incurred, in accordance with GAAP.” Finally, Davis explained in great detail why she did not use accrual-based accounting in her analysis of Par Funding’s actual cash flow:

66. Par Funding’s business model was to raise funds from investors to fund the Merchant Advance Receivable transactions. The cash flow generated from the Merchant Advance Receivable transactions would be utilized to pay the operating expenses and to pay Investors the promised returns.

68. The ability of Par Funding to repay investors was dependent on the profitability of the Merchant Advance Receivables. To determine if Par Funding’s Merchant Advance Receivables generated sufficient cash to pay the Investors, I determined that it is appropriate to assess profitability of the Merchant Advances Receivables on a cash basis, rather than an accrual basis.

69. There is no argument with the fact that Par Funding maintained its accounting records on an accrual basis as to be compliant with GAAP . . . If I analyzed accrual-based income and profitability, it would be overstated because it would not account for the fact that Par Funding had not yet collected more than \$419 million of its accounts receivable. To adopt an analysis of profitability based on accrued income rather than actual cash flow may result in an analysis that includes a significant amount of income that might never be collected. To overcome that dilemma, I analyzed the Merchant Advance Receivables profitability based on actual cash transactions.

The last three paragraphs are simply a common-sense explanation that anyone who has ever had to balance a checkbook can understand – if you are figuring out how much cash you have to pay bills *now*, you look at the cash you have, not the cash you might get in a month, next year, or maybe never. Accounts receivable don't pay bills. The Defendants and Par Funding were not making interest payments to investors and paying operational expenses with accounts receivable. They were using cash from somewhere, and the purpose of Davis' report, as she states repeatedly, was to determine whether that somewhere was the merchant cash advances. And so Davis' report logically and correctly analyzed actual cash, not hypothetical cash Par Funding had not yet collected. Her report also did not analyze whether Par Funding as a company was profitable.

C. The Defendants' Motion

The Defendants' Motion addresses *none* of the information and analysis from Davis' report set forth in the foregoing section. Rather, seizing on Davis' use of the term "profitability," the Defendants falsely assert that Davis used an unreliable methodology in analyzing whether Par Funding was a profitable company. As explained in the preceding section, Davis made clear in her report she used the terms "profitable" and "profitability" to describe cash flow. However, that did not stop the Defendants from wrongly claiming Davis was analyzing Par Funding's overall profits. In at least nine separate places in their Motion, they accuse Davis of analyzing Par

Funding's profitability.²

The Defendants plainly are attempting to exclude portions of Davis' report and testimony based on an analysis she did not do. As we showed conclusively in the preceding section, Davis did not analyze or opine on Par Funding's profitability as a company. Furthermore, the Defendants disingenuously take Davis' answers to questions about why she performed a cash flow analysis to analyze Par Funding's merchant cash advances and falsely portray them as answers to why she used cash flow to assess Par Funding's profitability.³ The Defendants' Motion therefore raises an issue not in question and argues against an analysis Davis did not do. The arguments and the Motion are therefore irrelevant.

III. Memorandum Of Law

A. Daubert Standards

Federal Rule of Evidence 702 states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Valencia v. Sanborn Manufacturing Co., Case No. 04-21416-CIV, 2005 WL 5957819 at *4 (S.D.

² See, e.g., Motion at 1: "However, GAAP makes clear that a cash flow analysis alone is not appropriate to determine a company's profitability" and "In explaining why she undertook a cash analysis rather than an accrual-based analysis to assess profitability;" 2: quoting GAAP as stating that accrual accounting "provides a better basis for assessing the entity's past and future performance" and GAAP prefers accrual-based accounting "as the only accurate way of assessing a company's profitability;" 5: "GAAP principles should be applied in any reliable assessment of Par Funding's profitability," "Davis has chosen to conduct a cash flow analysis to assess Par Funding's profitability," and "Davis' use of a cash-flow based assessment of Par Funding's profitability;" and 6: "her use of a cash flow analysis to assess a company's profitability."

³ Similarly on Page 5, the Defendants falsely assert the Receiver has agreed that Davis' methodology was improper. The quoted passage from the Receiver's filing states that accrual-based accounting is the correct way to assess *a company's profitability*, not cash flow, which is of course what Davis analyzed.

Fla. Aug. 11, 2005). Rule 702 requires that district courts act as gatekeepers and allow only expert testimony that is both reliable and relevant. *Daubert*, 509 U.S. at 589. Therefore, the Court must determine whether: (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable; and (3) the testimony will assist the trier of fact to understand the evidence or determine a fact in issue. *City of Tuscaloosa*, 158 F.3d at 562 (reversing District Court’s exclusion of portion of expert testimony). The party seeking to admit the expert testimony bears the burden of laying the proper foundation for its admissibility by a preponderance of the evidence. *Allison v. McGhan Medical Corp.*, 184 F.3d 1300, 1306 (11th Cir. 1999).

Although the Court must conduct a *Daubert* inquiry, *Daubert* itself stresses the inquiry envisioned by Rule 702 “is a flexible one.” *Maiz v. Varani*, 253 F.3d 641, 665 (11th Cir. 2001) (affirming District Court admission of expert testimony). “Many factors will bear on the inquiry, and there is no definitive checklist or test.” *Id.* Furthermore, Rule 702 generally favors the admission of expert testimony. *Daubert*, 509 U.S. at 588 (the general approach is one “of relaxing the traditional barriers to opinion testimony”); *Arcoren v. U.S.* 929 F.2d 1235, 1239 (8th Cir. 1991) (“Rule 702 is one of admissibility rather than exclusion” and affirming District Court admission of expert testimony); *Miles v. Gen. Motors Corp.*, 262 F.3d 720, 724 (8th Cir. 2001) (“doubts regarding whether an expert’s testimony will be useful should generally be resolved in favor of admissibility” and finding District Court properly admitted expert testimony over *Daubert* challenge to qualifications and reliability); *SEC v. Johnson*, 525 F. Supp. 2d 70, 73 (D.D.C. 2007) (*Daubert* envisions a “limited gatekeeper role” for trial judges, admitting expert testimony over *Daubert* challenge).

Furthermore, “[a] district court’s gatekeeper role under *Daubert* is not intended to supplant

the adversary system or the role of the jury.” *Maiz*, 253 F.3d at 666. Rather, “[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means” of addressing expert testimony. *Id.* The Eleventh Circuit has observed that “in most cases, objections to the inadequacies of [expert evidence] are more appropriately considered an objection going to the weight of the evidence rather than its admissibility.” *Rosenfeld v. Oceania Cruises, Inc.*, 654 F.3d 1190, 1193 (11th Cir. 2011) (internal quotation marks omitted) (reversing District Court ruling excluding expert testimony).

B. Davis’ Report And Testimony Are Admissible Under Daubert

As discussed above, the Defendants’ Motion attacks Davis’ methodology for determining whether Par Funding was profitable - an analysis Davis did not perform and an opinion she did not give. As such, the Defendants do not set forth any basis for the Court to exclude any of Davis’ opinions or testimony because they have not presented one iota of evidence that her methodology of analyzing the *cash flow* of Par Funding’s merchant cash advances was incorrect.

To the extent the Court interprets any of the Defendants’ arguments as challenging Davis’ chosen methodology to analyze cash into and out of Par Funding’s merchant cash advances, the challenge amounts to nothing more than a disagreement with Davis’ methodology because their own expert witness, Joel Glick, performed a different analysis. *See, e.g.*, Motion at 5: “Only the Defendants have offered . . . a GAAP compliant assessment well-rooted in what the parties agree are verifiable numbers.”⁴ *See also Id.*: “The Court’s view of the issue at the core of this

⁴ Although not at issue in resolving this Motion, the Commission will show at trial that Glick’s analysis was flawed in numerous respects and anything but GAAP-compliant. The reason the Commission did not file a *Daubert* motion exposing the flaws in Glick’s methodology and analysis is because the case law we cite in this Response demonstrates that such disagreements among experts go to the weight and credibility of the testimony, not its admissibility, so such motions are time wasters.

disagreement was prescient. This is a methodology problem” (emphasis added).⁵

Clearly the Motion sets forth a disagreement between experts on methodology. However, case law is clear that a *Daubert* motion is not the appropriate venue to decide factual disagreements among experts. That goes to the weight of the evidence and any doubts as to the usefulness of the testimony should “be resolved in favor of admissibility.” *United States v. Finch*, 630 F.3d 1057, 1062 (8th Cir. 2011) (District Court properly admitted expert testimony); *Hangarter v. Provident Life and Acc. Ins. Co.*, 373 F.3d 998, 1017 n. 14 (9th Cir. 2004) (“The factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and it is up to the opposing party to examine the factual basis for the opinion in cross-examination” and finding District Court correctly allowed testimony of expert based on qualifications and experience); *Packard v. City of New York*, Case No. 15-cv-7130, 2020 WL 1479016 at *3 (S.D.N.Y March 25, 2020) (“Disputes as to the strength of [an expert’s] credentials, faults in his . . . methodology, or lack of textual authority for his opinion, go to the weight, not the admissibility, of his testimony”) (rejecting defendants’ *Daubert* challenge to plaintiff’s expert on qualification, reliability, and helpfulness grounds) (quoting *McCulloch v. H.B. Fuller Co.*, 61 F.3d 1038, 1044 (2nd Cir. 1995) (affirming admission of expert testimony)); *United States v. Lawton*, 84 F. Supp. 3d 331, 339-40 (D. Vt. 2015) (denying defendants’ motion *in limine* and noting that “the rejection of [expert testimony]

⁵ The Defendants’ citation to a single Court statement at the December 15, 2020 hearing is misleading and out of context. The Court did not request a GAAP analysis in that statement. In fact, the Court predicted the issue before it now in the next breath when it discussed the idea of the Defendants setting forth a *competing* affidavit to that of the Receiver’s representative. Exhibit 6, Transcript of Dec. 15, 2020 Hearing at 37 L.2-14. As discussed in this Response, the Court’s role as a *Daubert* gatekeeper is *not* to weigh competing expert opinions, decide which is more worthy of consideration, and exclude the other. *Quiet Technology DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1341 (11th Cir. 2003) (“[I]t is not the role of the district court to make ultimate conclusions as to the persuasiveness of the proffered evidence”) (affirming District Court decision to admit expert testimony). Furthermore, the Court at the same hearing highlighted the issue in the case of whether the Defendants were using investor funds to make payments to other investors - the exact issue Davis’ report addresses. Ex. 6 at 14 L.25 to 15 L.15.

is the exception rather than the rule”); *Synergetics v. Hurst*, 477 F.3d 949, 956 (8th Cir. 2007) (“mere disagreement with the assumptions and methodology used does not warrant exclusion of expert testimony” and holding District Court did not abuse discretion in admitting expert testimony on damages where expert was qualified and explained his methodology, and defendants were able to challenge the methodology on cross-examination).

Under this clear and overwhelming case law, there is no basis for the Court to exclude any portion of Davis’ report, opinions, or testimony. Davis clearly has the qualifications to opine on matters of forensic accounting and fund tracing. To determine cash flow in and out of Par Funding’s merchant cash advances, as set forth in Section II.B.2 above, Davis analyzed a number of Par Funding accounts, ledgers, financial reports, and financial statements, explained how and why she considered each particular ledger, statement, document, or account, explained how Par Funding kept its books and records, undertook a cash flow analysis to trace funds in and out of the merchant cash advances, and explained in great detail why she used the method she did. The Defendants’ Motion does not challenge any of this methodology used to conduct a cash flow analysis; thus the Court can only conclude it is a reliable methodology under the case law.

The Defendants’ Motion claims a cash flow analysis was the wrong methodology to use. But as explained immediately above, that amounts to nothing more than a disagreement with Davis’ methodology, which the law makes clear is not cause to exclude Davis’ opinions. Rather, it is a subject for cross-examination and for the jury to determine what weight and credibility to give Davis’ opinions.

Finally, given the factual dispute between the Commission and the Defendants over Par Funding’s finances, it is obvious that Davis’ testimony will be helpful to the jury in understanding accounting and finance terms and concepts, and in parsing through the competing claims about the

import and meaning of various financial statements and books and records. Thus, the Commission has met its burden of demonstrating that Davis is qualified, used reliable methodology, and will be helpful to the jury. The Court should deny the Defendants' Motion and allow Davis to testify about the opinions in her report.

C. The Defendants' Ipse Dixit Claim That Only A GAAP Analysis is Appropriate

The Defendants' Motion is based on the assumption – without any supporting law – that every accountant must use GAAP to analyze every financial situation. However, the Defendants have cited to no law or accounting literature that supports their position. None of the three cases the Defendants cite hold that only GAAP is appropriate for all financial or accounting analyses. Motion at 4-5. First, the main case the Defendants rely on, *ABS Global, Inc. v. Inguran, LLC*, Case No. 14-cv-503, 2015 WL 1486647 (W.D. Wis. March 31, 2015), has nothing to do with expert witnesses or GAAP, and is therefore inapplicable. In that case, the court was ruling on motions to intervene and dismiss, and there is no mention of expert witnesses or GAAP. See Exhibit 7. The remaining two cases concern whether the use of GAAP is proper in addressing entities' financial conditions, which as discussed extensively above has no application to the present situation because Davis did not purport to analyze Par Funding's profitability as the Defendants claim.

In contrast, there are many situations where an analysis under GAAP is not appropriate. For example, in *SEC v. Torchia*, 183 F. Supp. 3d 1291 (N.D. Ga. 2016), the Commission sought a preliminary injunction against the operators of a life insurance settlement company for, among other things, misrepresenting the company's financial condition to investors. That determination came down to an analysis of the company's cash flow as well as the value of its insurance settlement policies. *Id.* at 1295, 1301-02.

An accountant hired by the defendants to rebut the Commission's charges analyzed the books and records of the company and determined, without resort to GAAP, that the company was operating at a loss during the years in question. *Id.* at 1301-02. The defendants challenged their own accountant's analysis on the basis that it did not comply with GAAP. *Id.* at 1316-19. The court rejected that challenge, found that the accountant was qualified and had used sound methodology in her analysis, and was not required to use GAAP in her analysis in part because GAAP would have skewed the company's actual financial condition in the way it required the recording of unearned revenue. *Id.* at 1319. The court stated: "Ms. Hartman's analysis properly presents sufficient evidence of Defendants' finances based on Defendants' own bank statements and internal accounting records. Ms. Hartman's Financial Snapshots are a credible, accurate presentation of Defendants' finances, and are reliable." *Id.*

In similar fashion, the Court should reject the Defendants' claim that a GAAP analysis is appropriate here. Davis explained in detail why she did not analyze under GAAP whether Par Funding had sufficient cash from its merchant cash advances to pay its bills. As in *Torchia*, Davis' report shows an analysis using GAAP's accrual accounting method would present an inaccurate picture of the company's actual cash situation. Ex. 1 at 31-32, ¶69. As in *Torchia*, the Court should find Davis' methods accurate and reliable, and admit her testimony and opinions.

In other, similar situations, it is settled law in bankruptcy actions that a GAAP analysis is not appropriate to determine a company's solvency. *In re ECB I, Inc.*, 380 B.R. 348, 358 (Bankr. D. Del. 2008) (GAAP not appropriate to analyze whether company insolvent for purposes of determining fraudulent transfers because GAAP did not deal with the true market value of assets as opposed to book value); *In re Lids Corp.*, 281 B.R. 535, 540 (Bankr. D. Del. 2002) ("balance sheet test" for determining solvency in bankruptcy proceedings not based on GAAP, but instead

on fair market value).

Thus, the Defendants' reliance on GAAP to challenge Davis' opinions and report is misplaced. As the aforementioned cases demonstrate, while GAAP is a uniform set of principles to apply in preparing financial statements, it is not the only accepted method of analyzing finances among accountants. Here, Davis has articulated a coherent and financially sound methodology for analyzing Par Funding's merchant cash advances, and similarly explained why a GAAP analysis is not appropriate under these circumstances. The Court's gatekeeper role under *Daubert* requires no more. Any further analysis of whether Davis or Glick is correct in their methodology would be going beyond what *Daubert* countenances, and would involve the Court weighing in on which method is preferable. The abundance of case law we have cited above demonstrates the Eleventh Circuit has determined that courts should not undertake that kind of analysis under *Daubert*, and instead leave such issues of weight and credibility for the adversary process and the jury at trial.

IV. Conclusion

For all of the foregoing reasons, there is no justification for excluding any of Davis' opinions, her report, or her testimony at trial. The Court should deny the Defendants' Motion.

October 19, 2021

Respectfully submitted,

Robert K. Levenson
Robert K. Levenson, Esq.
Senior Trial Counsel
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
Email: levensonr@sec.gov

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1950
Miami, Florida 33131

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case 9:20-cv-81205

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP,

INC. d/b/a/ PAR FUNDING, et al.

Defendants, and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

REPORT OF EXPERT

Submitted by

Melissa Davis, CPA, CIRA, CFE

August 13, 2021

EXHIBIT

1

Table of Contents

Report

Exhibits

Exhibit A	Select Definitions Used in This Report
Exhibit B	Documents Utilized
Exhibit C	Account Classification
Exhibit D	Related Parties
Exhibit E	CBSG Funding Analysis as of June 30, 2020
Exhibit F	Comparative Financials
Exhibit G	Investor Activity
Exhibit H	Annual Cash Reconstruction Summary
Exhibit I	Annual Cash Flow Summary
Exhibit J	Summary of Net MCA Activity by Funding Year
Exhibit K	Summary of CBSG MCA Suites Activity
Exhibit L	Category A Merchants MCA Suites Activity
Exhibit M	YGM Factoring Agreement
Exhibit N	Category B Merchants MCA Suites Activity
Exhibit O	Category C Merchants MCA Suites Activity
Exhibit P	Transfer Schedules
Exhibit Q	Equity Distribution Schedule
Exhibit R	August 26, 2020 Declaration

QUALIFICATIONS

Resume
Case Experience

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case 1:20-cv-23071

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP,

INC. d/b/a/ PAR FUNDING, et al.

Defendants, and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

REPORT OF EXPERT

I. RETENTION

1. KapilaMukamal, LLP (“KM”) was retained by the Securities and Exchange Commission (“the Commission”) as forensic accountants in this matter. I, Melissa Davis, a Partner of KM, have directed this engagement and am being offered as an expert witness.

II. LIMITATIONS OF REPORT

2. In conducting my investigation and analyses, I was assisted by other KM professionals with extensive experience in insolvency and forensic investigations

working under my direct supervision. Any references to “I”, “my”, “KM” or “Kapila” within the report incorporate my efforts with the assistance of my co-professionals.

3. Additional documents and information may be made available or reviewed, and certain facts currently not available may come to light, which may impact the conclusions and opinions reflected herein.

4. This report was prepared solely for use in this litigation matter. The information and conclusions reached should not be relied upon by any other person nor should any statement in this report be used for any other purpose without written consent from KM.

III. PROCEDURAL BACKGROUND¹

5. On July 24, 2020, the Commission filed a Complaint for Injunctive and Other Relief (“SEC Complaint”) against Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”), Full Spectrum Processing, Inc. (“Full Spectrum”) ABetterFinancialPlan.Com, LLC d/b/a A better Financial Plan, ABFP Management Company, LLC, ABFP Income Fund, LLC, ABFP Income Fund 2, LLC, United Fidelis Group Corp., Fidelis Financial Planning, LLC, Retirement Evolution Group, LLC, Retirement Evolution Income Fund, LLD f/k/a RE Income Fund, LLC, RE Income Fund 2, LLC, Lisa McElhone (“McElhone”), Joseph Cole Barleta, a/k/a Joe Cole, Joseph W. LaForte (“LaForte”), a/k/a Joe Mack a/k/a Joe Mackie, a/k/a Joe Mcelhone, Perry S. Abbonizio, Dean J. Vagnozzi (“Vagnozzi”), Michael C. Furman,

¹ The information contained within the Procedural Background section of this report provides my understanding of the background information of this matter based upon pleadings and other sources referenced herein and is not intended to represent any expert opinions.

and John Gissas as Defendants and L.M.E. 2017 Family Trust as Relief Defendant.²

6. The Commission also filed a Motion for Appointment of Receiver.³

7. On July 27, 2020, the Court entered an Order Granting the SEC's Motion for Appointment of Receiver ("Receivership Order").⁴

8. The Commission filed the Amended Complaint on August 10, 2020. The Amended Complaint corrected the name of the L.M.E. 2017 Family Trust to The LME 2017 Family Trust a/k/a LME 2017 Family Trust ("LME Family Trust").⁵

9. The SEC Complaint alleged that McElhone and LaForte operated an investment scheme whereby they raised more than a half billion in funds from 1,200 investors across the country by offering unregistered securities to investors in the form of promissory notes issued by Par Funding.⁶

10. Par Funding is a Delaware company formed in 2011 which operated from its main office in Philadelphia until 2017 when it moved its offices to Palm Beach Gardens, FL.⁷ Since August 2013, Complete Business Solutions Group has operated using the fictitious name Par Funding.⁸ The LME Family Trust is the sole owner of Par Funding.⁹

² D.E. No. 1

³ D.E. No. 4

⁴ D.E. No. 36

⁵ D.E. No. 119

⁶ SEC Complaint, ¶1-2.

⁷ SEC Complaint, ¶11.

⁸ Id.

⁹ Id.

11. McElhone is the sole employee of Par Funding.¹⁰ McElhone is the sole owner of Full Spectrum.¹¹ Since 2017, Full Spectrum operated Par Funding.¹²

IV. SCOPE

12. The Commission requested me to determine:

a. If the cash flow from Par Funding's Merchant Advances¹³ was sufficient to pay the promised investor returns and operational expenses.

b. The amount of funds Par Funding paid to:

- i. Joseph LaForte
- ii. Lisa McElhone
- iii. LME Family Trust 2017
- iv. Heritage Business Consulting
- v. Eagle Six
- vi. Dean Vagnozzi
- vii. ABetterFinancialPlan.com
- viii. ABFP Income Fund
- ix. ABFP Income Fund Parallel
- x. ABFP Income Fund 2
- xi. ABFP Income Fund 3
- xii. ABFP Income Fund 3 Parallel LLC
- xiii. ABFP Income Fund 4
- xiv. ABFP Income Fund 4 Parallel LLC
- xv. ABFP Income Fund 6

¹⁰ SEC Complaint ¶11.

¹¹ SEC Complaint ¶15.

¹² Joseph Barleta, deposition testimony June 2, 2021 Pages 8-9.

¹³ As defined in ¶14 below.

- xvi. ABFP Income Fund 6 Parallel
- xvii. Michael Furman
- xviii. United Fidelis
- xix. Fidelis Financial Planning
- xx. Joseph Cole Barletta
- xxi. Beta Abigail Inc
- xxii. New Field Ventures, LLC
- xxiii. Recruiting & Marketing Resources, Inc.
- xxiv. Full Spectrum Processing

V. OPINIONS

13. My opinions are:

- a. The cash flow from Par Funding's Merchant Advances was not sufficient to pay the promised investor returns and operational expenses.
- b. The amount of funds Par Funding paid to the following parties is:

Payee	Disbursements	Exhibit
ABetterFinancialPlan.com	\$ 1,914,045	P.1
ABFP Income Fund	32,633,720	P.2
ABFP Income Fund 2	10,671,546	P.3
ABFP Income Fund 3	6,313,406	P.4
ABFP Income Fund 3 Parallel LLC	233,992	P.5
ABFP Income Fund 4	2,049,440	P.6
ABFP Income Fund 4 Parallel LLC	172,472	P.7
ABFP Income Fund 6	356,945	P.8
ABFP Income Fund 6 Parallel	143,338	P.9
ABFP Income Fund Parallel	153,206	P.10
Beta Abigail Inc	4,878,350	P.11
Dean Vagnozzi	743,137	P.12
Eagle Six Consultants	47,143,509	P.13
Fidelis Financial Planning	6,476,557	P.14
Full Spectrum Processing	10,689,472	P.15
Heritage Business Consulting	42,451,249	P.16
Joseph Cole Barletta	160,715	P.17
Joseph LaForte	-	N/A
Lisa McElhone	11,310,598	P.18
LME Family Trust 2017	14,300,000	P.19
Michael Furman	-	N/A
New Field Ventures, LLC	11,739,902	P.20
Recruiting & Marketing Resources, Inc.	7,933,228	P.21
United Fidelis	-	N/A
Total	\$ 212,468,829	

VI. PAR FUNDING BUSINESS MODEL¹⁴

Merchant Advances

14. Par Funding provided financing for small and medium sized businesses (“Merchants”) in the form of advances (“Merchant Advances”). The Merchant

¹⁴ **Exhibit A** contains a list of key defined terms that I reference throughout this Report.

Advances were documented by agreements called Factoring Agreements which included the terms of the advance and repayment.

15. Par Funding advanced funds to Merchants through the purchase of a portion of the Merchant's future income stream, at a discount. The difference between the amount advanced by Par Funding to the Merchant and the amount repaid by the Merchant is referred to as a "factoring fee" or "finance fee".¹⁵ The factoring fees charged by Par Funding averaged around 33%.¹⁶ These types of advances are also commonly referred to as merchant cash advances ("MCA").

16. Funds advanced to Merchants were recorded as accounts receivable ("Merchant Advance Receivables") in Par Funding's accounting records based on the amount that the Merchant would repay ("Repayment Amount").¹⁷

17. Repayment of the factoring advances from the Merchants were made in the form of periodic ACH withdrawals from the Merchant's bank account by Par Funding.¹⁸

18. Par Funding participated in certain MCA transactions with syndicate partners ("Joint Funders"). Par Funding would sell a participation interest in the factoring advance to the Joint Funder. In these syndicated transactions, the amount of Advance Receivable recorded by Par Funding is net of the participation interest.

¹⁵ For example, if the merchant received \$100,000 and had to repay \$133,000 per the Factoring Agreement, the factoring fee would be \$33,000 (33%).

¹⁶ Factor Average Rate per CBSG Funding Analysis dated June 30, 2020. (*Exhibit E*)

¹⁷ Par Funding's general ledger reflects that in 2016 it began recording a deferred income component and a corresponding deferred revenue liability for unearned factoring fee in the form of periodic adjustments referenced as GAAP adjustments. See footnote 15.

¹⁸ Some merchants paid by wire transfer or check.

Par Funding Investors

19. Par Funding raised funds from investors (“Investors”) to fund the Merchant Advances in exchange for Promissory Notes that Par Funding issued to Investors (“Investor Loans”). The Investor Loans are recorded as “investor loans payable” by Par Funding.¹⁹ Interest was paid to investors. The terms of the Investor Loans were from one to five years and interest rates generally ranged from 12% to 44% per year.²⁰ In April 2020, Par Funding modified the existing terms of the promissory notes to offer less interest and for the return of principal at a later period of time.²¹

VII. METHODOLOGY AND INFORMATION CONSIDERED

20. The conclusions reached in this report are based on my analysis of Par Funding’s historical cash activity and the profitability of the Merchant Advances. To conduct my analysis, I utilized accounting records and related information that was provided by the Receiver which was derived from Par Funding’s business records. A complete list of the documents I considered and the data I relied on is listed at **Exhibit B**. The following sections describe the sources of information that I analyzed and how I incorporated those data sources into my analysis.

¹⁹ There was a separate liability account for each investor so Par Funding could track the liability due to each Investor.

²⁰ CBSG Creditor Agreement List.

²¹ Joseph Barleta deposition testimony June 2, 2021, Page 101. Joseph Barleta testified at Page 107 that the renegotiation of the interest rate to 5% annually was the best plan to protect investor capital.

Par Funding QuickBooks General Ledger

21. Par Funding was incorporated in 2011 and maintained a general ledger in QuickBooks. A general ledger contains all of a company's financial transactions and is the underlying source of the financial statements. The first transaction in the Par Funding general ledger was recorded on November 2, 2011.

22. I analyzed the QuickBooks general ledger for the period from November 2, 2011 to July 27, 2020, the date of the appointment of the Receiver.

23. I understand the QuickBooks accounting records were maintained in the ordinary course by Par Funding's accounting personnel. I obtained an electronic copy of the QuickBooks file which had been reconciled by the Receiver's financial consultants as of July 27, 2020.²²

Cash Reconstruction

24. To evaluate the cash activity of Par Funding, I analyzed and prepared a database of the transactions that occurred in the general ledger cash accounts ("Cash Reconstruction"). The cash accounts included Par Funding operating bank accounts and the ACH accounts used to process the fundings for MCA Advances and the repayments from the Merchants ("Cash Accounts"). During this period Par Funding maintained 38 bank and merchant accounts and recorded the transactions for these accounts in the QuickBooks general ledger.

²² The Receiver's financial consultants observed Par Funding's QuickBooks general ledger omitted bank activity for select bank accounts and ACH Processors in 2020. The missing bank statements and ACH account statements were obtained by the Receiver and provided to Par Funding's accounting team who input such missing bank statements into the QuickBooks general ledger.

25. I prepared the Cash Reconstruction utilizing the transactions from the QuickBooks electronic file. I extracted the data for the cash accounts from the general ledger in the form of deposit detail reports, check detail reports, and journal entry data.²³ The Cash Reconstruction is a database that contains each transaction (receipts and disbursements) that occurred in the Cash Accounts.

26. I excluded transactions recorded in the general ledger Cash Accounts that were not actual cash transactions. For example, when Par Funding wrote off the Merchant Advance Receivable to account for factoring losses, the entry was as follows:

Figure 1
Example of Non-Cash Transaction

Trans #	Type	Date	Name	Memo	Account	Debit	Credit
203011	Deposit	07/30/2015		Deposit	TD Bank - Operating 9790	0.00	
			BLAC003	Deposit	Undeposited Funds		9,626.14
			CARG003	Deposit	Undeposited Funds		18,777.30
			TRIS006	Deposit	Undeposited Funds		40,466.18
			CRMI001	Deposit	Undeposited Funds		28,858.94
				07/30/15 bad debt	Factoring Losses	97,728.56	
						97,728.56	97,728.56
TOTAL						97,728.56	97,728.56

27. The effect on the actual cash activity was zero so I excluded these types of transactions from the Cash Reconstruction.

28. The Cash Accounts included transactions which were noted as returned accounts receivable. The memo in these transactions was “returned payments”

²³ I determined that the most meaningful source of data to analyze the Par Funding cash activity was the general ledger because it contained the underlying detail of how the transactions were accounted for by Par Funding. I relied on this source of information to formulate my opinions.

and they were recorded as disbursements. These transactions inflated the total amount of receipts and disbursements because the transactions represented a payment from a Merchant that was reversed. I treated these transactions as a reduction to receipts rather than a disbursement.

29. Par Funding recorded the payments to Merchants (advances) in the “funding receivables” general ledger account. In some instances when Par Funding advanced the funds to the Merchant, the funds were returned, and Par Funding recorded these as a credit (reduction) to the “funding receivables” general ledger account. These transactions inflated the total amount of receipts and disbursements recorded in the general ledgers because the transactions represented an advance to the Merchant that was reversed.²⁴ I treated these transactions as a reduction to disbursements rather than a receipt.

30. After preparing the Cash Reconstruction database, I verified the data in the Cash Reconstruction was consistent with the data in the general ledger. I reconciled the quarterly ending balances in the Cash Reconstruction to the quarterly ending balances in the Cash Accounts in the Par Funding general ledger.

31. The Cash Reconstruction includes the following fields of information:

- a. Transaction identification number
- b. Date
- c. Reference number
- d. Name
- e. Memo
- f. General ledger account²⁵
- g. Transaction amount

²⁴ As opposed to payments paid by a Merchant over time to repay the Merchant Advance, these transactions appear to be “automatic” reversals.

²⁵ This is referred to as “split” in QuickBooks.

h. KM Category

32. I assigned each transaction to a KM Category listed below based on the general ledger account classification.²⁶

- a. MCA Activity²⁷
- a. Investor Activity
- b. Business expenses²⁸
- c. Commissions²⁹
- d. Related Party Receivable/Payable
- e. Other Note Receivable/Payable
- f. Other Related Party Payments³⁰
- g. Equity Distributions

33. I classified the parties listed in **Exhibit D** as Related Parties. **Exhibit D** also includes an explanation for the basis of the classification as Related Parties.

34. Utilizing these categories, I determined the cash inflows and outflows for each KM Category.

Merchant Advance Activity Data Sources

QuickBooks

35. Par Funding's general ledger contained the Merchant Advance and Repayment transactions and reflected the balance due as "accounts receivable".

Par Funding recognized the income from the Merchant Advances on an accrual

²⁶ A complete list of general ledger accounts assigned to the KM Transaction Category is at **Exhibit C**.

²⁷ MCA Activity includes the cash transactions with Merchants and Joint Funders. Par Funding recorded activity with Joint Funders in notes receivable/payable general ledger accounts. I included the transactions in those general ledger accounts as MCA Activity.

²⁸ Includes other operating expenses such as credit card payments, advertising & promotions, insurance expense, legal fees, payroll, and utilities.

²⁹ This includes commissions and consulting fees.

³⁰ This includes the purchase of a plane, officer wages, and interest payments to Related Party.

basis which means that it recorded income even if the actual cash had not yet been collected. This resulted in the “accounts receivable” or Merchant Advance Receivables. Par Funding made periodic adjustments to the Merchant Advance Receivables to reduce it for Merchant Advances that it deemed were in default and likely not collectible. These transactions were recorded as factoring losses expense, (“Factoring Loss”) on Par Funding’s profit and loss statement and resulted in a reduction to the Merchant Advance Receivables.

MCA Suites

36. Par Funding utilized a customer relationship model software called MCA Suites to record and track the Merchant Advance fundings, repayments and rollover transactions. It contains transactions going back to 2012. MCA Suites contains the data for all Par Funding Merchant Advances regardless of whether Par Funding had considered the Merchant Advance in default.³¹

Spreadsheets Maintained by Par Funding with Merchant Advance Activity

37. Par Funding also maintained Merchant Advance transactional activity in the following databases (“Deposit Logs”):

- a. Daily Deposit Log Excel Spreadsheets –Par Funding maintained an excel spreadsheet called a “daily deposit log” which included the following tabs:

³¹ MCA Suites includes all advances and repayments activity for merchants regardless of Par Funding’s participation percentage in such deals.

- i. Deposits Log tab³² - this tab was created each day and includes data related to the funds received from the Merchants.
- ii. Funding tab – contains data beginning in March 2012 regarding the Merchant Advance transactions funded.
- iii. Default tab – contains data beginning in January 2013 regarding the Merchants that Par Funding deemed to be in default.

38. Par Funding summarized the Merchant Advance transactional activity in spreadsheets titled “CBSG Funding Analysis” reports.³³ The CBSG Funding Analysis reports³⁴ contained Merchant Advance transactional data summarized by time periods. A sample of the CBSG Funding Analysis report as of June 30, 2020 is included as ***Exhibit E***.

39. I reviewed the data in these spreadsheets to compare it to the data recorded in Par Funding’s QuickBooks and to the data recorded in MCA Suites for purposes of selecting the appropriate data sources to analyze the cash profitability of the Merchant Advances.

MCA Cash Activity Database

40. Par Funding recorded each Merchant Advance in MCA Suites and updated the customer balances in MCA Suites to record payments, assess fees or apply credits. I reviewed the historical Merchant Advance transaction data from MCA Suites for purposes of analyzing the cash profitability and associated remaining

³² The Deposit Log tab is labeled for the relevant day.

³³ James Klenk deposition testimony July 26, 2021, Pages 99 – 101.

³⁴ Also referred to as Key Performance Indicators or “KPI Reports.”

balance of the MCA Advance receivables. I created a database of the Merchant Advance transactional data using the following source data:

a. "Portfolio Report by Funded Date" – I utilized these reports of data obtained from MCA Suites for each year from 2012 through 2020 which contains the following information and serves as the basis for analyzing cash profitability of each individual Merchant Advance:

- i. Merchant name
- ii. Owner name – individual owner of Merchant³⁵
- iii. Deal ID – a unique identifier for each deal and funding, also referred to as a "primary key".³⁶
- iv. Advance Amount – Gross amount to be advanced to a merchant before consideration of fees or amounts applied to previous deals (rollovers).
- v. Funded date – the date the merchant was to receive the Advance Amount.
- vi. Expected Payback Amount ("Repayment Amount") – The amount the merchant must repay – also referred to as Right to Return ("RTR") or Merchant Advance Receivable.
- vii. Factor Amount – Markup on each deal which is calculated as Payback Amount divided by Advance Amount. For example, a factor of 1.3 indicates the merchant must pay back 30% more than advanced.
- viii. Net Advanced Amount – Net amount of cash funded to the Merchant after deducting for fees. In the case of a rollover deal, the Advance Amount would be reduced by cash applied to a previous deal.³⁷

³⁵ KM has not validated this information and assumes that this name represents the owner of the Merchant.

³⁶ This is a unique identifier which serves as the primary key for each unique MCA deal and funding.

³⁷ On a sample basis I tested the net advance amount per MCA Suites to the QuickBooks bank reconstruction. I did not note material variances.

b. A/R Balance Report – this report contained the Merchant Advance Receivable balances for all MCA deals regardless of whether they had been deemed in default by Par Funding.³⁸

c. MCA Transactional Database³⁹ - a database of all Merchant Advance transactions contained in MCA Suites. Each transaction is classified in MCA Suites as one of the following:

- i. Upload – Payments uploaded to MCA Suites from sources such as ACH processors.
- ii. Discount – Credits that decrease the balance due from the merchant including write offs and reloaded transactions.
- iii. Fees – Additional assessment above the Payback Amount which increase the balance due from the Merchant, including NSF fees, stopped payment fees, and other fees assessed when the Merchant is unable to make their scheduled payment in accordance with the terms of the Factoring Agreement.
- iv. Manual – Manual adjustments which can increase or decrease the balance due from the merchant. I reviewed the descriptions included in the manual adjustments to determine their nature. They included cash payments, reload transactions, write-offs and fees.

41. One objective of my analysis is to analyze the profitability of the MCA Advances on a cash basis. Utilizing the sources of data referenced above, I created a database of the cash related transactional data as recorded in the MCA Transaction database (“MCA Cash Database”). I utilized the data from MCA

³⁸ MCA Suites contained the full balance of Joint Fundings regardless of whether Par Funding was entitled to the entire Repayment amount.

³⁹ TransPar report from MCA Suites

Suites as opposed to the data from QuickBooks and the Deposits Logs for this purpose for the following reasons:

- a. MCA Suites tracks the Merchant Advances and repayments on a more detailed level than QuickBooks. For example, in some instances Merchant Advance transactions are comprised of multiple rounds of funding. MCA Suites tracks each individual funding and associated repayments by funding as opposed to QuickBooks that tracks at the deal level.
- b. Not all deposits were initially recorded to a customer in QuickBooks. This means QuickBooks identifies the purpose of each receipt without identifying the corresponding customer. In MCA Suites, each repayment, credit and fee is associated with a specific deal and funding. This specific association facilitates analysis of profitability from a database perspective.
- c. The Daily Deposit Logs include wire amounts which are overstated. See discussion in ¶¶65.⁴⁰

42. The MCA Cash Database includes the cash receipts and repayments allocable to each Merchant Advance based on the following sources of information:

- a. Net Advance Amount – I obtained the net amount of cash advanced to each merchant from the “Portfolio Report by Funded Date”.

⁴⁰ The Daily Deposit Log contains a cumulative schedule of Fundings. This report serves as an input for the KPI report as further detailed below at ¶¶64 . The Deposit log reflects that approximately 1,700 of 17,400 (10%) CBSG Fundings were adjusted.

b. Payback amount – I assumed all transactions classified as Upload per ¶40.c.i above represented cash transactions. Additionally, I reviewed the descriptions of the Manual transactions per ¶40.c.iv above to determine which transactions represented merchant cash repayments or refunds.

43. In preparing this database, due to the large number of repayment transactions, I grouped repayments by month for each MCA deal.⁴¹

44. I included the Merchant Advance Receivable amount that was derived from the A/R Balance Report.

45. I utilized this database to quantify the amount of cash paid to and received from the Merchants for each MCA Advance and to determine the unpaid balance for each Merchant Advance Receivable.

VIII. ANALYSIS

ACCOUNTING METHODS

46. I obtained annual balance sheets and profit and loss statements for Par Funding for the years 2011-2021 from the electronic QuickBooks file. A comparative summary of the balance sheets and profit and loss statements is at **Exhibit F**. I utilized the data from the balance sheets and the profit and loss statements to evaluate the income and expenses reported by Par Funding.

47. General purpose financial reporting provides information to users who are outside a business enterprise and lack the power to require the entity to supply the

⁴¹ This data is maintained daily, and I used monthly totals of payment data.

accounting information they need for decision making; therefore, they must rely on information provided to them by the entity's management.⁴² Par Funding prepared periodic CBSG Funding Analysis Reports that contained their accounting information in the form of financial reporting. This information was also referred to as key performance indicators, or "KPI Reports" which were shared with the Par Funding investors.⁴³

48. Generally accepted accounting principles ("GAAP") are a common set of accounting principles and standards that are issued by the Financial Accounting Standards Board ("FASB"). There are several key GAAP concepts associated with Par Funding including the revenue recognition and matching principle.

49. Statement of Financial Accounting Concept No. 1 ("SFAS No. 1) governs the concept of accrual based accounting and states that "*receivables and the related effects on earnings must often be accrued before the cash is received, or obligations must be recognized when cash is received and the effects on earnings must be identified with the periods in which goods or services are provided.*"⁴⁴ This concept is generally referred to as the "matching principle".

50. Statement of Financial Accounting Concept No. 5 ("SFAS No. 5) governs recognition and measurement in financial statements of a business enterprise. Recognition is the process of formally incorporating an item into the financial

⁴² FAS Special Report – the Framework of Financial Accounting Concepts and Standards.

⁴³ Joseph Barleta deposition testimony June 2, 2021, Page 39, Page 111, Page 127.

⁴⁴ Statement of Financial Accounting Concepts No. 1 – Objectives of Financial Reporting by Business Enterprises at ¶45.

statements of an entity as an asset, liability, revenue or expense. SAFS No. 5 states that revenue should be recognized when it is earned.

2017 GAAP Audit

51. Par Funding retained independent accountants, (“CPA Firm”) to perform GAAP-based audits of their 2017 financial statements. Par Funding maintained its accounting records on the accrual basis of accounting to comply with GAAP, which is required for Par Funding to obtain an unqualified audit opinion. In accordance with GAAP, Par Funding recognized revenue when it deemed it had been earned, but not yet necessarily collected. GAAP required that Par Funding consider the collectability of the Merchant Receivables and to record a Factoring Loss for Merchant Receivables it deemed would be uncollectible based on reasonable estimates.

52. The CPA Firm prepared a version of the 2017 Financial Statement that was presented in accordance with GAAP and included a Factoring Loss of \$20,293,950⁴⁵ to account for the estimated uncollectible Merchant Advance Receivables. Par Funding disagreed with the amount of Factoring Losses in the GAAP Financial Statement⁴⁶ and represented that the correct amount of Factoring Losses was \$10,783,452.⁴⁷

53. The CPA Firm issued a final 2017 Financial Statement and audit report with an adverse opinion because Par Funding had not accounted for its provision for

⁴⁵ Refer to *Figure 2*.

⁴⁶ James Klenk deposition testimony July 26, 2021, Page 71-73.

⁴⁷ Refer to *Figure 3*.

credit losses in accordance with GAAP and recognized only approximately 50% of the estimated Factoring Losses.⁴⁸

54. GAAP requires that Par Funding recognize a provision for credit losses on the Merchant Advance Receivable in an equal amount to the estimated probable loss. This means that Par Funding needed to record a reduction to the Merchant Advance Receivables to account for any receivables they estimated they would not be able to collect. Although Par Funding did maintain its accounting records on an accrual basis, it did not record a sufficient allowance for uncollectible accounts which resulted in an overstated amount of Merchant Advance Receivables in accordance with GAAP. Following are snapshots from the two versions of the 2017 Profit and Loss Statement that shows the different Factoring Loss amounts and the effect it had on Par Funding's income.

⁴⁸ Friedman LLP Independent Auditors' Report to the Board of Directors and Stockholder for Complete Business Solutions Group, Inc dated January 18, 2019, within the 2017 Consolidated Financial Statements.

Figure 2

2017 Profit and Loss Statement – Unqualified Opinion

Net revenues	
Factoring fees, net	\$ 60,586,745
Program fees	1,837,702
Processing fees	758,367
	63,182,814
Operating expenses	
Consulting expense	33,115,219
Provision for credit losses, net of recoveries	20,293,950
Selling, general and administrative expenses	4,263,019
	57,672,188
	Income from operations 5,510,626

Figure 3

2017 Profit and Loss Statement – Adverse Opinion

Gross revenues	
Factoring fees	\$ 66,609,332
Program fees	1,837,702
Processing fees	758,367
	69,205,401
	Amortization of contract acquisition costs 6,022,587
	Net revenues 63,182,814
Operating expenses	
Consulting expense	33,115,219
Bad debt, net of recoveries	10,783,452
Selling, general and administrative expenses	4,263,019
	48,161,690
	Income from operations 15,021,124

55. In 2017, Par Funding adopted ASU 2016-13, Measurement of Credit Losses on Financial Instruments (Topic 326) as a move toward adopting GAAP in its financial reporting process.⁴⁹

Par Funding Utilized Accrual Based Accounting

56. Par Funding employed accrual-based accounting in its general ledger. The difference between cash and accrual accounting is that cash accounting recognizes revenue and expenses when the cash is collected or paid. Accrual based accounting recognizes revenue when it is earned and expenses when they are incurred, in accordance with GAAP.

57. Par Funding recognized the income from the Merchant Advance Receivables on an accrual basis which means that it recorded income when it was considered to be earned, even if the actual cash had not yet been collected. This resulted in “accounts receivable”.

Recognition of Factoring Losses

58. Par Funding made periodic adjustments to the Merchant Advance Receivables to reduce it for Merchant Advance Receivables it deemed were uncollectible. These transactions were recorded as Factoring Losses expense on Par Funding’s profit and loss statement and resulted in a reduction to the Merchant Advance Receivables.

59. Par Funding determined when a Merchant Advance Receivable became uncollectible by considering the date of the last payment from the merchant and

⁴⁹ Joseph Barleta deposition testimony June 2, 2021, Page 157.

whether or not there were negotiations in place for the repayment or a modification to the Factoring Agreement.⁵⁰ As a general rule, if a Merchant did not make a payment for six weeks, Par Funding considered the Merchant Advance Receivable in default unless there were negotiations or agreements in place addressing the amount in arrears.⁵¹ Par Funding used discretion when deciding to recognize a factoring loss and the policy was fluid.⁵²

60. In some instances when Merchants did not repay their advance, Par Funding sued the Merchant to recover the Merchant Advance Receivable due. This did not necessarily mean that the Merchant Advance Receivable was considered uncollectible and written off by Par Funding as a Factoring Loss if there were ongoing negotiations with the Merchant.⁵³ Even if a Merchant had filed bankruptcy the Merchant Advance Receivable may not be considered uncollectible.

61. Par Funding utilized different methods for calculating Factoring Losses, or defaults.⁵⁴ **Table 1** summarizes the comparative data to demonstrate the methods of calculating Factoring Losses.⁵⁵

⁵⁰ Joseph Barleta deposition testimony June 2, 2021, Page 156.

⁵¹ Joseph Barleta deposition testimony June 2, 2021, Pages 156-158.

⁵² Joseph Barleta deposition testimony June 2, 2021, Pages 164 – 165, 168, 170-171.

⁵³ Joseph Barleta deposition testimony June 2, 2021, Page 163.

⁵⁴ Joseph Barleta deposition testimony Jun 2, 2021, Page 188-189.

⁵⁵ The data in columns 1 and 2 were obtained from the CBSG Funding Analysis as of June 30, 2020. The data in columns 3 and 4 was obtained from the Par Funding QuickBooks and Tax returns, respectively

Table 1
Factoring Losses Comparison

Year	Funding Exposure on KPI Report	Factoring Losses on KPI Report	Factoring Losses per Profit & Loss Statement	Factoring Losses Per Tax Returns
<i>Column Ref</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
2013	\$ 468,013	\$ 1,300,266	\$ 1,264,466	\$ 1,456,227
2014	354,874	1,622,535	1,696,035	-
2015	(169,805)	3,041,476	3,262,495	302,129
2016	203,272	5,541,535	8,713,601	5,667,149
2017	2,357,051	12,564,295	20,580,713	12,624,610
2018	4,745,846	33,534,407	33,944,059	33,976,158
2019	1,146,728	38,734,454	36,684,346	Note 1
Jan - Jun 2020	5,179,832	51,838,303	-	Note 1
Total	\$ 14,285,812	\$ 148,177,270	\$ 106,145,715	\$ 54,026,273

Note 1) No tax returns were filed for Par Funding in 2019 and 2020.

62. For illustrative purposes of describing the differences in the default calculations I will utilize the data from the following hypothetical deal:

- Advance Amount \$100,000
- Repayment Amount \$130,000
- Merchant repayments to date \$70,000
- Merchant Advance Receivable \$60,000

a. Cash default, or “funding exposure” was included in the CBSG Funding Analysis (KPI Report) as a key performance indicator reported to investors. This is calculated as the amount of cash paid out on a deal, less the amount of cash paid back.⁵⁶ In my example, if Par Funding advanced \$100,000 to a

⁵⁶ James Klenk deposition testimony, July 26, 2021, Pages 107 – 108.

merchant and received back \$70,000 and did not anticipate receiving any additional funds from the Merchant and recognized a Factoring Loss, the cash exposure is \$30,000 or 30%.

b. GAAP default– this represented the Factoring Losses reported in financial statements. Assuming that Par Funding made a determination to write off the accounts receivable as uncollectible and recognized a Factoring Loss, it would recognize a reduction to Merchant Advance Receivables of \$60,000 and a Factoring Loss of \$60,000.

63. My hypothetical example assumes that Par Funding made the decision that this Merchant Advance Receivable was no longer collectible. However, Par Funding recognized Factoring Losses only if a Merchant had not made a payment in six weeks unless there were ongoing negotiations with the Merchant or other reasons at Par Funding's discretion. This means that even if a Merchant had not made any payments for more than a year if there were ongoing negotiations with the Merchant, the Merchant Advance Receivable may remain at \$60,000 and no factoring loss was reported.

CBSG Funding Analysis - KPI Reports

64. The KPI Reports prepared by Par Funding purport to identify key metrics summarizing the actual cash and accrual performance of the MCA Portfolio including:

a. Wire Total – The alleged amount of cash funded to the merchant per the factoring agreement.

b. Factoring Losses – The amounts of Merchant Advance receivables Par Funding deemed to be uncollectible and recognized as Factoring Losses.

c. Funding Exposure - The difference between the Advance Amount and the actual repayments received from the Merchant encompassing all deals of a merchant.

d. Exposure % - Calculated as the Funding Exposure (¶64c) divided by the Wire Total (¶64a). This metric identifies the amount of principal loss on each deal.

65. The amounts in the KPI report are not accurate and may present a misleading picture of the key performance indicators for the following reasons⁵⁷:

a. Wire Total – This amount is overstated in the KPI report due to the following:

i. The wire total is overstated because Merchants are not always fully funded based on the funding amount in the factoring agreement. The merchant may not be fully funded if they fail to honor the repayment terms of the Factoring Agreement with several funding tranches or the full funding may not have been consummated due to the Receiver ceasing fundings upon commencement of the Receivership. The Deposit Log reflects approximately 1,700 Wire Totals were overstated.

⁵⁷ James Klenk deposition testimony July 26, 2021, pages 260 to 263.

- ii. Joint funders may participate in deal sourced by Par Funding. If Par Funding sent \$100,00 to a merchant, and \$50,000 was sourced from a Joint Funder, the Deposit Log would reflect a disbursement of \$100,000 without consideration the \$50,000 paid by the Joint Funder.
- b. Factoring Losses – The Merchant Advance receivables considered uncollectible by Par Funding are judgmentally determined by management as opposed to uniform policies regarding collectability in accordance with the terms of the Factoring Agreement. The Factoring Losses are understated because they do not include Merchant Advance Receivables with historical cash losses and millions of dollars in Merchant Advance Receivables remaining to be collected. See ¶’s 58-60 for additional discussion.
- c. Funding Exposure – this amount is understated for the same reasons as Factoring losses because it only includes the Merchant Advance Receivables that Par Funding deemed to be uncollectible.
- d. Exposure % - Funding Exposure (the numerator in the calculation) is understated as discussed in ¶65c. Wire total (the denominator in the calculation) is overstated as discussed in ¶65a. Adjusting these calculations would result in an increase to the Exposure %.

CASH FLOW ANALYSIS

Cash Flow is Correct Method of Analysis

66. Par Funding’s business model was to raise funds from Investors to fund the Merchant Advance Receivable transactions. The cash flow generated from the

Merchant Advance Receivable transactions would be utilized to pay the operating expenses and to pay Investors the promised returns.

67. During the period from January 6, 2012⁵⁸ to July 27, 2020, Par Funding raised \$547.2 million from Investors and made principal payments of \$178.7 million, leaving a remaining principal balance due to Investors of \$368.5 million.⁵⁹ See **Exhibit G** for a list of the investors and these amounts.

68. The ability of Par Funding to repay investors was dependent on the profitability of the Merchant Advance Receivables. To determine if Par Funding's Merchant Advance Receivables generated sufficient cash to pay the Investors, I determined that it is appropriate to assess profitability of the Merchant Advances Receivables on a cash basis, rather than an accrual basis.

69. There is no argument with the fact that Par Funding maintained its accounting records on an accrual basis as to be compliant with GAAP. However, inherent in the accrual-based income is Par Funding's use of estimates in accounting for potentially uncollectible Merchant Advance Receivables. If the estimate of uncollectible Merchant Advances were understated, the accrual-based income as recorded in the financial statements is overstated. If I analyzed accrual-based income and profitability, it would be overstated because it would not account for the fact that Par Funding had not yet collected more than \$419 million of its accounts receivable. To adopt an analysis of profitability based on accrued income rather than actual cash flow may result in an analysis that includes a significant

⁵⁸ The date of the first investor receipt.

⁵⁹ In addition, Par Funding made interest payments to Investors totaling \$118.3 million during this period.

amount of income that might never be collected. To overcome that dilemma, I analyzed the Merchant Advance Receivables profitability based on actual cash transactions.

Summary of Analysis and Findings

70. I analyzed the actual cash flow generated from the Merchant Advances Receivables using two methodologies. First, I analyzed the overall cash activity of Par Funding to determine if the cash flow from the Merchant Advances was sufficient to cover the operating expenses and Investor interest payments. Second, I analyzed the cash activity of the actual Merchant Advances on an individual basis to determine profitability.

71. I also evaluated the Merchant Advance Receivables remaining as of July 27, 2020, to determine if they were comprised of Merchant Advances with large amounts of reloads, and if, on a historical basis, those Merchants generated positive cash flow for Par Funding.

72. Based on my analyses, it is my opinion that the Par Funding Merchant Advance activity did not generate sufficient profit in the form of cashflow to pay the operating expenses and Investor returns.

73. I determined that on an overall basis, the cash flow generated from the MCA Activity for the period from 2011 to July 27, 2020 was approximately \$39.9 million.⁶⁰ This was not sufficient to cover the \$118 million in interest payments made to the investors during this same period. See ¶87.

⁶⁰ Refer to **Table 6** below.

74. When I evaluated the Merchant Advances on a deal-by-deal basis to determine the cash profits generated on the MCA Advances as of July 27, 2020, I found that the actual percentage of return that Par Funding was realizing on a cash basis was substantially less than the Factor Rates anticipated in the Factoring Agreements. See ¶96.

75. I also determined that the Merchant Advance Receivables remaining as of July 27, 2020, totaling approximately \$419 million will likely not be sufficient to pay the remaining amounts due to Investors totaling approximately \$366 million because many of the Merchants with large Merchant Advance Receivable balances include significant amounts rolled forward and those Merchants were not historically profitable to Par Funding on a cash basis. See ¶125.

Par Funding Cash Activity

76. Utilizing the Cash Reconstruction, I analyzed the Par Funding cash activity for the period from November 2, 2011, to July 27, 2020. This analysis is summarized by KM Category in **Table 2** and **Exhibit H** summarizes the analysis by year for the years 2011 through 2020.

Table 2
Cash Reconstruction by Category

Category	Receipts	Disbursements	Net Funds
Investor Activity			
Receipts from Investors	\$ 547,230,160	\$ -	\$ 547,230,160
Principal Repayments	-	178,682,344	(178,682,344)
Interest Paid to Investors (Note 1)	3,095,426	121,425,773	(118,330,348)
Investor Activity Total	550,325,586	300,108,117	250,217,469
MCA Activity			
MCA Disbursements to Joint Funders	-	139,012,050	(139,012,050)
MCA Disbursements to MCA Clients	-	1,183,362,123	(1,183,362,123)
MCA Receipts from Joint Funders	155,563,318	-	155,563,318
MCA Receipts from MCA Clients	1,206,708,236	-	1,206,708,236
MCA Activity Total	1,362,271,554	1,322,374,173	39,897,382
Business Expenses			
Consulting/Commission Fees to Other Entities	1,663,433	45,663,370	(43,999,937)
Consulting/Commission Fees to Related Entities	757,581	94,143,096	(93,385,514)
Other Operating Expenses	9,748,606	59,461,871	(49,713,266)
Business Expenses Total	12,169,620	199,268,337	(187,098,717)
Other Receipts / Disbursements			
Other Note Receivable/Payable	213,667	645	213,022
Other Related Party Payments	1,213,500	8,622,403	(7,408,903)
Related Party Receivable/Payable	4,873,279	27,668,771	(22,795,493)
Equity Distribution	-	49,971,790	(49,971,790)
Other Receipts / Disbursements Total	6,300,446	86,263,610	(79,963,164)
Account Activity Total	\$1,931,067,205	\$1,908,014,237	\$ 23,052,969
Note 1) Receipts in the Interest Paid to Investor category represent returned payments, as such the net interest paid to investors is \$118,330,348.			

77. I compared the annual cash flow from Merchant Advances with the Factoring Fee Revenue recognized by Par Funding. **Table 3** summarizes this by year.

Table 3
Factoring Fee Revenue vs MCA Cash Flow

Year	Factoring Fee Revenue Per Profit & Loss Statement	Cash Receipts from Merchant Advances Per Cash Reconstruction	Net Cash Flow After Making MCA Advances Per Cash Reconstruction
2012	\$ 772,499	\$ 1,158,950	\$ (1,167,358)
2013	5,452,417	10,246,777	330,675
2014	8,373,426	23,011,741	2,992,526
2015	13,427,522	36,679,271	3,094,574
2016	21,598,989	69,536,208	(6,270,442)
2017	66,609,332	180,223,338	(11,928,562)
2018	123,378,492	350,473,410	14,875,920
2019	169,211,488	428,811,494	3,115,070
1/1/2020 - 7/27/2020	69,508,241	262,130,367	34,854,979
Total	\$ 478,332,407	\$ 1,362,271,555	\$ 39,897,382

78. The Factoring Fee Revenue recognized by Par Funding is far less than the amount of funds it collected from the Merchants and far exceeds the actual amount of cash flow generated from the Merchant Advance transactions.

79. The Factoring Fee Revenue recognized by Par Funding is representative of the difference between the Merchant Advance amount and the amount of funds the Merchant must repay to Par Funding, the Factor Fee. In my hypothetical example discussed in ¶62, the fee is \$30,000 or 30%. In **Table 3**, the cash receipts from Merchants includes all cash collected from Merchants and is not limited to the factoring fee. In other words, it includes the return of the original amount advanced to the Merchant and the factoring fee, assuming the Merchant repaid the advance in full.

80. The net cash flow of the Merchant Advance activity is far less than the Factoring Fee Revenue because Par Funding utilized the cash repayments from the Merchants to make new Merchant Advances which resulted in additional Merchant Advance receivables and additional cash collections.

81. I analyzed the actual cash flow generated from the Merchant Advance activity to determine if it was sufficient to fund the payments made to the Investors.

82. I also segregated the activity for the periods 2011 to March 2020 and for April 2020 through July 2020 to provide totals for those periods. This is because after the COVID-19 Pandemic Par Funding primarily stopped receiving funds from Investors⁶¹ and the volume of Merchant Advance funding significantly decreased.⁶²

Pre-Pandemic Activity

83. During the period from 2011 to March 2020, my analysis reflects the following:

- a. The net amount of cash inflow from the Merchant Advances after accounting for the Merchant Fundings was \$5.4 million.
- b. Par Funding received \$547.2 million from Investors, made interest payments to the Investors of \$111.9 million and repaid principal of \$166.6 million for net cash inflow from Investors of \$268.7 million.
- c. Par Funding paid operating expenses and commissions totaling \$167 million.

⁶¹ I noted in the general ledger that Par Funding received a deposit from an Investor on July 28, 2021.

⁶² Joseph Barleta deposition testimony June 2, 2021 Pages 98-99.

d. Par Funding paid related parties and made equity distributions of \$74.2 million.

84. This data is summarized in **Table 4**.

Table 4

Summary of Cash Reconstruction for the Period 2011 to March 31, 2020

Summary of Cash Reconstruction For the Period 2011 to March 31, 2020	
Beginning Cash	\$ -
Cash flow from Merchant Advances	5,418,822
Business Expenses Total	(167,096,678)
Earnings before interest	(161,677,856)
Interest Paid to Investors	(111,873,772)
Operating deficit	(273,551,628)
Funds from investors	547,230,160
Principal payments to investors	(166,634,844)
Other disbursements (Note 1)	(74,221,036)
Ending cash	\$ 32,822,652
Note 1) Other disbursements include equity distributions, related party receivable/payable transactions, other related party payments and other note receivable/payable transactions.	

85. During this period, Par Funding did not generate sufficient cash flow from the Merchant Advances after accounting for the merchant fundings to make the payments to investors or to fund its operating expenses. The cumulative loss after payment of business expenses was \$162 million before consideration of interest paid to Investors of \$112 million. The business expenses and investor interest and principal payments could not have been made without the investor funds.

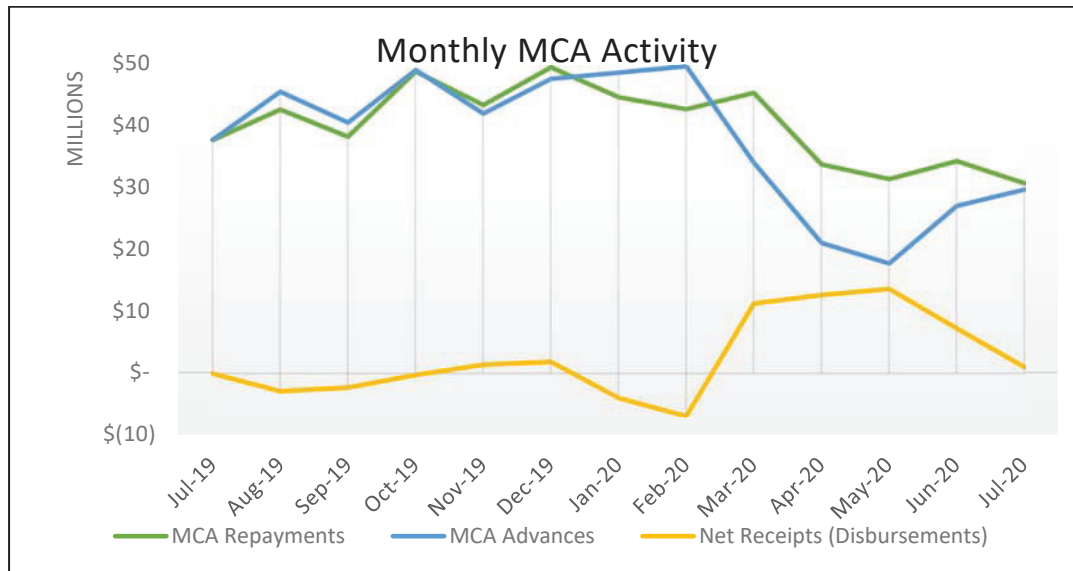
Pandemic Period Activity

86. During the period from April 1, 2020, to July 27, 2020, my analysis reflects the following:

a. The net amount of cash inflow from the Merchant Advances after accounting for the Merchant Fundings was \$34.5 million. During this period, the volume of Merchant Funding greatly declined due to a forced moratorium by the COVID-19 Pandemic, resulting in a temporary higher amount of net cash flow available. This resulted in a higher amount of cash flow during the April through July 2021. **Figure 4** illustrates the monthly trends for July 2019 through July 2020.

Figure 4

Monthly MCA Activity for the Period July 2019 through July 2020



b. Par Funding received \$0 from Investors, made interest payments to the Investors of \$6.5 million and repaid principal of \$12 million for net cash outflow from Investors of \$18.5 million.

- c. Par Funding paid operating expenses and commissions totaling \$20 million, which includes commissions of \$4,480,438 paid to related parties.
- d. Par Funding paid equity distributions of \$4.5 million to Eagle Six Consultants. This data is summarized in **Table 5**.

Table 5

Summary of Cash Reconstruction for the April 1, 2020 to July 27, 2020

Summary of Cash Reconstruction For the Period April 1, 2020 to July 27, 2020	
Beginning Cash	\$ 32,822,652
Cash flow from Merchant Advances	34,478,559
Business Expenses Total	(20,002,039)
Earnings before interest	14,476,520
Interest Paid to Investors	(6,456,576)
Operating surplus	8,019,944
Funds from investors	-
Principal payments to investors	(12,047,500)
Other disbursements (Note 1)	(5,742,128)
Ending cash	\$ 23,052,969
Note 1) Other disbursements include equity distributions, related party receivable/payable transactions, other related party payments and other note receivable/payable transactions.	

Summary of Cash Flow Findings

87. The cash flow generated from the Merchant Advance Receivables was not sufficient for Par Funding to make the interest payments to investors or to fund its operating expenses without utilizing the funds from investors. As demonstrated in

Table 6, Par Funding generated operating cash deficits totaling approximately \$265.5 million during the period 2011 through July 27, 2020.

Table 6

Summary of Cash Reconstruction for the Period 2011 through July 27, 2020

Summary of Cash Reconstruction For the Period 2011 to July 27, 2020	
Beginning Cash	\$ -
Cash flow from Merchant Advances	39,897,382
Business Expenses Total	(187,098,717)
Earnings before interest	(147,201,336)
Interest Paid to Investors	(118,330,348)
Operating deficit	(265,531,684)
Funds from investors	547,230,160
Principal payments to investors	(178,682,344)
Other disbursements (Note 1)	(79,963,164)
Ending cash	\$ 23,052,969
Note 1) Other disbursements include equity distributions, related party receivable/payable transactions, other related party payments and other note receivable/payable transactions.	

88. **Table 6** summarizes the data for the entire time period analyzed and **Exhibit I** presents the analysis by year. As demonstrated at **Exhibit I**, from 2011 through March 31, 2020, Par Funding didn't generate enough cash flow from Merchant Advances to pay business expenses and Investor interest expense. Par Funding only generated enough cash flow from MCA Advances after March 31, 2020, to pay business expenses and Investor interest expense due to the reduction in Merchant Advances. In total however, business expenses exceeded cash flow

from Merchant Advances by \$147 million as demonstrated in **Table 6**. Accordingly, the business expenses and Investor interest expense could not have been paid without Investor funds.

CASH PROFITABILITY OF MERCHANT ADVANCES

89. I analyzed the cash activity of the Merchant Advances on an individual basis to determine their profitability. In conducting this analysis, I found that the actual percentage of return that Par Funding was realizing on a cash basis was substantially less than the Factor Rates anticipated in the Factoring Agreements.

90. I analyzed the net cash inflow and outflow by Merchant Advance transaction, based on when each deal was funded, to determine the net cash profitability on an annual basis by the year in which the deal was funded. This analysis essentially marries the concepts of accrual based accounting and actual cashflow by quantifying the amount of cash flow for the Merchant Advances into the year in which the Factoring Agreement was effectuated and the accrual-based income was recognized.⁶³

91. I utilized the MCA Cash Database to prepare the analysis which is presented in **Exhibit J**.

92. The analysis presents the net cash flow for each Merchant Advance by year. For example, the Merchant Advances with Factoring Agreements dated in 2016 are listed in *Row 5* and the net cash activity for the 2016 Factoring Agreements for

⁶³ Accrual accounting would equate to cash accounting to the extent the collections are significantly complete as contemplated by the original repayment terms of each MCA agreement. One would expect a significant amount of collections would be complete 1-2 years after the Funding Date considering the average term to collect was 128 days as discussed below at ¶197.

years 2016 through 2020 appears in *Columns F through J*. The net cash flow generated by the 2016 Factoring Agreements is \$9.9 million. The MCA Funds disbursed for 2016 Factoring Agreements were \$62.3 million. This equates to a 15.8% return on the cash disbursed.⁶⁴ In 2016, Par Funding recognized Factoring Fee income net of Factoring Losses of \$12.9 million.⁶⁵ Par Funding considers \$2.7 million of the Merchant Receivables as active accounts receivable.

93. The Merchant Advances with Factoring agreements dated in 2017 are presented in *Row 6* and the net cash activity for the 2017 Factoring Agreements for years 2017 through 2020 appears in *Columns G through J*. The net cash flow generated by the 2017 Factoring Agreements is \$24.7 million. The MCA Funds disbursed for 2017 Factoring Agreements were \$153 million. This equates to a 16.1% return on the cash disbursed.⁶⁶ In 2017, Par Funding recognized Factoring Fee income net of Factoring Losses \$46 million.⁶⁷ Par Funding considers \$6.8 million of the Merchant Receivables as active accounts receivable.

94. To further analyze the cash profitability of the Merchant Advances, I considered key data sources for years 2013 through 2018 since the repayment cycle for Merchant Advances made during those years are more complete than the Merchant Advances made during the years 2019 through 2020.⁶⁸

⁶⁴ The CBSG Funding Analysis at **Exhibit E** states that the average factor rate for 2016 was 34%.

⁶⁵ Factoring fee income was \$21,598,989 and factoring losses were \$8,713,601 per 2016 Profit & Loss Statement.

⁶⁶ The CBSG Funding Analysis at **Exhibit E** states that the average factor rate for 2017 was 36%.

⁶⁷ Factoring fee income was \$66,609,332 and factoring losses were \$20,580,713 per 2017 Profit & Loss Statement.

⁶⁸ As discussed in **Table 7**, the weighted average term per KPI report through 2018 was 128 days. Analyzing collections which occurred 18 months after funding is more than three times greater than the average term per KPI of 128 days.

95. **Table 7** summarizes key data for the Merchant Advance activity for years 2013 through 2018:

Table 7

Weight Average Return and Factor Rate

Year Funded	Actual Net Cash Inflow from Merchant Advances Through July 27, 2020 Per MCA Cash Database	MCA Funds Disbursed Per MCA Cash Database	Actual Return	Average Factor Rate per KPI Report	Expected Return Based on MCA Funds Disbursed Per MCA Cash Database	Average Term Per KPI Report (In days)
2013	\$ 1,312,155	\$ 9,840,352	13.3%	35.0%	\$ 3,444,123	120
2014	5,554,652	12,213,076	45.5%	33.0%	4,030,315	94
2015	7,158,164	27,789,327	25.8%	35.0%	9,726,264	115
2016	9,863,962	62,257,246	15.8%	34.0%	21,167,464	132
2017	24,659,527	152,860,623	16.1%	36.0%	55,029,824	139
2018	22,444,342	280,679,381	8.0%	36.0%	101,044,577	124
2013 - 2018	70,992,802	545,640,005	13.0%	35.6%	194,442,568	128
2019	27,613,279	351,334,852	7.9%	32.0%	112,427,153	108
Jan - Jul 2020	(50,682,429)	183,937,573	-27.6%	32.0%	58,860,023	92
2019 - Jul 2020	(23,069,150)	535,272,425	-4.3%	21.0%	171,287,176	103
	\$ 47,923,652	\$ 1,080,912,430	4.4%	33.8%	\$ 365,729,744	115
			<i>Weighted Average</i>			

96. During the period from 2013 to 2018, Par Funding advanced \$545 million to Merchants. Par Funding’s KPI Report reflected an average Factor Rate of 35.6% which would result in an expected return of \$194 million based on the actual cash disbursed to Merchants of \$545 million. However, the actual return to date is only \$71 million, or 13% in total. Annualizing this return would result in an even lower rate of return when considering the time to collect the Merchant Advances.

97. Notably, the weighted average term of the MCA Advance was 128 days, or approximately 4.2 months. This means that the average MCA Advance should have been fully repaid within that period. But many Merchants did not pay the Merchant Advances during the repayment period and the unpaid balances could

go into default status or be rolled into new Factoring Agreements which extends the period of time the Merchant Advance has to be repaid.

98. The cost of rolling over the Factoring Agreement is the additional Factor on the amount rolled over. This is illustrated in **Table 8**. In this hypothetical example, the Merchant reloads \$90,000 and the corresponding factor amount onto two successive Merchant Advances at a factor rate of 30%. The first reload results in additional amount due of \$27,000. Multiple rollovers can exponentially increase the amounts due and the cost of the Advance to the Merchant. There was a large amount of reloads in the MCA Advance transactions.

Table 8

Hypothetical Reload Example

	A	B	C = A/B-1	D	E	F = B-D-E	G	H = A-G	I = H*30%
Funded Date	Advance Amount	Payback Amount	Factor Rate	Cash Repayment	Reload	A/R Balance	Net Advance Amount	Cash Not Received by Merchant	Factor on Cash Not Received
12/31/16	\$ 100,000	\$ 130,000	30.0%	\$ 40,000	\$ 90,000	\$ -	\$ 100,000	\$ -	\$ -
06/30/17	90,000	117,000	30.0%	-	117,000	-	-	90,000	27,000
12/31/17	117,000	152,100	30.0%	-		152,100	-	117,000	35,100
	\$ 307,000	\$ 399,100	30.0%	\$ 40,000	\$ 207,000	\$ 152,100	\$ 100,000	\$ 207,000	\$ 62,100
Initial amount reloaded			\$ 90,000						
Factor on Cash Not Received			62,100						
Total A/R Balance			\$ 152,100						

99. **Table 9** summarizes the status of the Merchant Advance receivables for the Merchant Advances Funded in years 2013 through July 2020.

Table 9

Active vs Default Merchant Advance Receivable Analysis

Funded Year	A MCA Funds Disbursed Per MCA Cash Database	B Active AR at 07/27/20 Per MCA Suites	C = B / A % of Funds Disbursed	D Default AR at 07/27/20 per MCA Suites	E = D / A % of Funds Disbursed	F = B + D Total AR at 07/27/20 Per MCA Suites
2013	\$ 9,840,352	282	0%	\$ 1,790,196	18%	\$ 1,790,478
2014	12,213,076	153,998	1%	2,082,364	17%	2,236,361
2015	27,789,327	594,761	2%	4,046,233	15%	4,640,993
2016	62,257,246	2,665,508	4%	8,072,589	13%	10,738,097
2017	152,860,623	6,779,671	4%	30,732,794	20%	37,512,465
2018	280,679,381	43,683,517	16%	52,230,552	19%	95,914,069
2013 - 2018	545,640,005	53,877,736		98,954,728		152,832,464
2019	351,334,852	180,300,390	51%	30,676,299	9%	210,976,689
Jan - Jul 2020	183,937,573	166,389,580	90%	5,279,117	3%	171,668,697
2019 - Jul 2020	535,272,425	346,689,970		35,955,416		382,645,386
Total	\$ 1,080,912,430	\$ 400,567,706	37%	\$ 134,910,144	12%	\$ 535,477,851

100. Based on my analysis of the performance of the Merchant Advances funded during years 2013 through 2018 per MCA Suites, the actual cash flow ultimately collected for those Factoring Agreements through July 27, 2020, is \$71 million. I compared this cash flow to the payments made to the Investors and Operating expenses paid during those years in **Table 10**. The cash flow generated by the Merchant Advances through 2020 for such Merchant Advances funded for years 2013 through 2018 was not sufficient to cover the interest payments to the Investors and the operating expenses in 2013 and during years 2016 through 2020.

Table 10

Cash Surplus (Shortfall) from Merchant Advances

Year Funded	Actual Net Cash Inflow from Merchant Advances per MCA Cash Database through 07/27/2020	Interest Paid to Investors During Year Per Cash Reconstruction	Business Expenses Paid During Year Per Cash Reconstruction	Cash Surplus (Shortfall)
2013	\$ 1,312,155	\$ 712,618	\$ 1,340,858	\$ (741,321)
2014	5,554,652	1,271,911	2,088,879	2,193,862
2015	7,158,164	1,369,729	2,782,202	3,006,233
2016	9,863,962	2,704,417	9,675,676	(2,516,131)
2017	24,659,527	9,845,738	34,059,430	(19,245,641)
2018	22,444,342	26,520,213	46,101,950	(50,177,821)
2013 - 2018	70,992,802	42,424,626	96,048,995	(67,480,819)
2019	27,613,279	51,693,404	49,848,096	(73,928,221)
Jan - Jul 2020	(50,682,429)	24,101,774	40,792,810	(115,577,013)
2019 - Jul 2020	(23,069,150)	75,795,178	90,640,906	(189,505,234)
	\$ 47,923,652	\$ 118,219,804	\$ 186,689,901	\$ (256,986,052)

Accounts Receivable Remaining

101. In connection with analyzing the profitability of the Merchant Advance Receivables, consideration must be given to the Merchant Advances yet to be collected. The Merchant Advance Receivables exist because Par Funding recognized the income in the period it was deemed to have been earned. However, the cash associated with the income has not yet been collected.

102. My analysis does not consider Par Funding’s ability or rights to collect from the Merchants based on any legal remedies which would require legal interpretations and are outside the scope of my Report.

103. I am also not rendering any opinions, nor have I conducted any analysis as it relates to Par Funding's underwriting process. My analysis is based only on the cash activity with the Merchants through July 27, 2020.

104. As of July 27, 2020, the Merchant Advance Receivable balance recorded on Par Funding's balance sheet was \$419 million. The active Merchant Advance receivables in the MCA Suites database was \$400 million and the default Merchant Advance receivables was \$135 million.⁶⁹ My analysis is focused on the entire portfolio totaling approximately \$535 million and is summarized in **Exhibit K**.

105. To present this analysis, I analyzed the cash receipts and disbursements for each Merchant Advance transaction. I segregated the transactions into three categories (MCA Category):

- a. Merchants that had only one Merchant Advance with Par Funding.
- b. Merchants that had multiple Merchant Advances with Par Funding but did not have any rollovers.
- c. Merchants that had multiple Merchant Advances with Par Funding and did have rollovers.

106. I further segregated the data into groups based on the following characteristics: ("MCA Group"):

⁶⁹ The MCA Suites AR includes Merchant Advances where Par Funding has only a joint participation interest and the QuickBooks Merchant Advance Receivables includes deals that Par Funding participates in which were not funded by Par Funding and are not included in MCA Suites. My analysis analyzes the profitability of the data in MCA Suites.

- a. Multiple transactions for the same merchant,⁷⁰
- b. Common ownership,⁷¹
- c. Rollover transactions between different merchants⁷²

107. The analysis in **Exhibit K** is summarized by MCA Category and presents the following information:

- a. The dates of the first and last funding within each group.
- b. The Advance Amount and Repayment Amounts (*Column A-B*).
- c. The actual cash advanced and repaid and cash surplus (deficit) (*Column C-E*).
- d. The total amount of the Merchant Advance that was rolled over or “reloaded” (*Column F and G*)
- e. The amount of fees charged⁷³ (these reduce the amount of funds advanced to the Merchants) (*Column H*).
- f. The collections that occurred during the eight-week period prior to the Receiver being appointed (*Column I*).
- g. The Merchant Receivable balance (*Column J-L*).

⁷⁰ For example, if company X received 10 separate funding’s, all 10 of the funding’s would be assigned a unique grouping to determine cash profitability and to eliminate the accrual profitability due to rollovers. See Notes to Exhibit K.

⁷¹ MCA Suites reflected the same owner owned two or more companies which received funds from Par Funding.

⁷² For example, if the amount advanced to company X was reduced to payoff the Merchant Advance Receivable e for a different merchant.

⁷³For example, the Factoring Agreements reflect Par Funding would assess Origination Fees to cover underwriting and related expenses.

Category A Merchants

108. Using the source data from **Exhibit L**, I analyzed the activity for Merchants with only one transaction with Par Funding (“Category A Merchants”). I analyzed the Merchant Advance Receivables considered “active” in MCA Suites which totals \$24.7 million of which \$18.4 million relates to Merchant Advances which were funded in 2020 and \$6.3 million relates to Merchant Advances which were funded prior to 2020. I sorted the active Merchant Advance Receivables balances in ascending order to identify the Merchants with the five highest active balances and summarized key data related to those Merchants in **Table 11**:

Table 11⁷⁴

MCA Category A - Highest A/R Balances

MCA Category	MCA Group	Min Funded Date	Max Funded Date	Last Repayment Month	Net Cash Surplus (Deficit)	Active A/R	Total Collections 06/2020-07/27/2020	Years to Repay Based on Current Collections
A	Platinum Radium	12/18/19	12/18/19	Jul-20	\$ (2,715,419)	\$ 3,315,419	\$ 62,000	8.9
A	Taj Wholesale	07/23/20	07/23/20		(336,000)	490,000		No Payments
A	Ygm Group	10/16/17	10/16/17	Jul-20	(209,978)	317,221	1,500	35
A	Neo Lights Holdings (Simkar)	01/25/19	01/25/19	Mar-19	(198,701)	312,026		No Payments
A	Castlerock Properties	07/02/20	07/02/20	Jul-20	(165,077)	260,077	33,923	1
Total					\$ (3,625,176)	\$ 4,694,744	\$ 97,423	

109. I determined among the Merchants that Par Funding includes as active is the Merchant YGM Group (“YGM”). Pursuant to the Factoring Agreement with YGM, the Advance Amount was \$250,000 and the repayment amount was \$355,000, equating to a factor rate of 1.42. On October 16, 2017, Par Funding

⁷⁴ I annualized the collections for the eight-week prior to the receivership. I divided the active accounts receivable by the annualized collections to determine the number of years it would take to repay the Merchant Advance Receivable remaining.

advanced \$247,832 to YGM after accounting for fees. YGM was supposed to make weekly installments of \$13,654 for 26 weeks with the balance fully paid off in April 2018. As of July 27, 2020, YGM had made payments totaling \$37,854. The total payments YGM made in the eight-week period prior to the Receivership is \$1,500. A copy of this factoring agreement is included as **Exhibit M**.

110. I also utilized the data in MCA Suites to determine the following:

- a. There are Merchant Advance Receivables which were funded prior to 2020 for which no payment was received during the eight-week period prior to the Receivership. I determined that there were 16 active Merchant Advance Receivables totaling \$976,000 in this category
- b. I also determined that there were 30 Merchant Advance Receivables totaling \$980,673 which were funded during January through March 2020 which have not made any repayments during the eight-week period prior to receivership.

Category B Merchants

111. I also analyzed the transactions for the Category B Merchants using the source data for **Exhibit N**. These are Merchants who had more than one transaction with Par Funding but MCA Suites did not reference any reload transactions.⁷⁵ I analyzed the Merchant Advance receivables considered “active” in MCA Suites which totals \$56.7 million of which \$25.5 million relates to Merchant

⁷⁵ Par Funding recorded some transactions that were categorized as “write-offs” in MCA Suites. In certain instances, I found these transactions were similar in nature to “reloads” in that the balance categorized as “write off” was rolled into a subsequent transaction.

Advances which were funded in 2020 and \$31.2 million relates to Merchant Advances which were funded prior to 2020. I sorted the active Merchant Advance Receivable balances in ascending order to identify the Merchants with the highest active Merchant Advance Receivables balances and summarized key data related to those Merchants in **Table 12:**

Table 12

MCA Category B - Highest A/R Balances

MCA Category	MCA Group	Min Funded Date	Max Funded Date	Last Repayment Month	Net Cash Surplus (Deficit)	Active A/R	Total Collections 06/2020-07/27/2020	Years to Repay Based on Current Collections
B	Dual Diagnosis Treatment Center	03/12/18	07/09/18	Jan-20	\$ (2,967,916)	\$ 8,893,247		No Payments
B	Gex Management	08/29/18	02/28/19	Jun-20	(2,933,433)	3,822,416	6,000	106
B	Millennium Holdings	06/05/20	06/10/20	Jul-20	(3,362,750)	3,790,550	202,250	3
B	ROC Funding	08/30/17	04/28/20	Jul-20	4,441,907	3,583,803	1,723,999	0
B	Live Aquaria Holdings Corp	07/17/20	07/23/20	Jul-20	(2,172,879)	3,189,715	72,785	7
Total					\$ (6,995,070)	\$ 23,279,730	\$ 2,005,034	

112. Within the Merchant Category B data, there are 32 Merchants funded prior to January 1, 2020, with active Merchant Advance receivable balances greater than \$50,000 as of January 27, 2020, that made little⁷⁶ or no payment during the eight weeks period prior to the Receivership. The total Merchant Advance Receivable balances for these 32 Merchants equates to \$21 million.

113. For example, Dual Diagnostics, a Merchant that was funded in 2018 has an active Merchant Advance Receivable balance of \$8.9 million. The Net Advance Amount is \$6.7 million and total payments received was \$3.7 million resulting in cash loss to Par Funding as of July 27, 2020, of \$3.0 million. The last payment

⁷⁶ Less than \$2,500 during the 8-week period from June 1, 2020, through July 27, 2020.

made as of July 27, 2020, was in January 2020 for \$1,500. Par Funding considers this Merchant Advance receivable as “active”. **See Table 13**

Table 13

Dual Diagnostics Merchant Summary

Dual Diagnostics Merchant Summary		
Date of First Funding		3/12/2018
Advance Amount	\$	12,033,998
Repayment Amount		17,950,714
Active AR balance		8,893,247
Net Cash Advanced		6,682,582
Net Cash Repaid		3,714,667
Net cash flow through 7/27/20		(2,967,916)
Total reloads/write-offs		5,347,426
Additional fees		4,625
Payments eight weeks prior to Receivership		-
Date of last payment per Deposit Log		1/22/2020
Amount of last payment per Deposit Log	\$	1,500

114. In another example, Gex Management, a Merchant that was funded in 2018 has an active Merchant Advance Receivable balance of \$3.8 million. The total Net Advance Amount is \$5.9 million and total payments received was \$2.9 million resulting in cash loss to Par Funding as of July 27, 2020, of \$3.0 million. The last

payment made as of July 27, 2020, was in June 2020 for \$3,000. Par Funding considers this Merchant Advance receivable as “active”. **See Table 14.**

Table 14

Gex Management Merchant Summary

Gex Management Merchant Summary		
Date of First Funding		8/29/2018
Advance Amount	\$	9,515,130
Repayment Amount		11,920,145
Active AR balance		3,822,416
Net Cash Advanced		5,862,044
Net Cash Repaid		2,928,610
Net cash flow through 7/27/20		(2,933,433)
Total reloads/write-offs		5,172,494
Additional fees		3,375
Payments eight weeks prior to Receivership		6,000
Date of last payment per Deposit Log		6/3/2020
Amount of last payment per Deposit Log	\$	3,000

Category C Merchants

115. I also analyzed the transactions for the Category C Merchants using the source data from **Exhibit O**. I analyzed the Merchant Advance Receivables considered “active” in MCA Suites which totals \$319 million of which \$122.5 million relates to Merchant Advances which were funded in 2020 and \$196.7 million relates to Merchant Advances which were funded prior to 2020. I sorted the active

Merchant Advance Receivable balances in ascending order to identify the Merchants with the highest active balances and summarized key data related to those Merchants in **Table 15**:

Table 15

MCA Category C - Highest Active A/R Balance

MCA Category	MCA Group	Min Funded Date	Max Funded Date	Last Repayment Month	Net Cash Surplus (Deficit)	Active A/R	Total Collections 06/2020-07/27/2020	Years to Repay Based on Current Collections
C	Tzvi	05/15/15	07/27/20	Jul-20	\$ (20,417,811)	\$ 91,494,728	\$ 11,279,482	1.4
C	National Brokers Of America	05/07/15	07/23/20	Jul-20	1,748,782	35,223,997	3,817,259	2
C	Colorado Homes	02/05/18	12/31/19	Jul-20	(5,769,983)	29,875,957	30,000	166
C	Kingdom Logistics	08/01/18	05/18/20	Jul-20	(3,889,129)	21,481,126	2,997,542	1
C	Big Red	03/24/14	08/21/19	Jul-20	(2,351,178)	18,952,252	2,500	1,263
Total					\$ (30,679,320)	\$ 197,028,060	\$ 18,126,783	

116. The Category C Merchant activity reflected Merchant Advance Receivables with rollover or reloads as classified in MCA Suites. This means that when a Merchant did not repay the Merchant Advance pursuant to the original Factoring Agreement terms, the unpaid balance was incorporated into a new Factoring Agreement transaction which resulted in extended payment terms. In theory, these types of Merchants would be profitable to Par Funding since the Merchant continuously pays high rates of return on the funds advanced.

117. There are several Merchants in Category C with large active Merchant Advance Receivable balances where on a historical basis, the net cash flow generated from the Merchant Advances as of July 27, 2020, was negative.

118. By way of example Merchant Grouping Tzvi represents transactions with five different Merchants associated with Tzvi: B&T Supply, Yanky Holding

Supplies, Naki Cleaning Services, YBT Industries and Lifeguard. The relationship with Tzvi began in 2015. Tzvi has reloaded and written off more than 60% of the Advanced Amount. This means that rather than repaying the Merchant Advances and finding sources of capital that are less expensive, Tzvi continuously rolled forward a significant amount of the advance spreading over a five-year period. The total amount of cash advanced to Tzvi is \$91.4 million and the total repaid is \$71 million, resulting in next cash loss of \$20.4 million. Tzvi owes Par Funding more than \$91 million as of July 27, 2020, which is approximately the same amount of cash it has received from Par Funding.

119. During 2020, Par Funding advanced \$35.9 million to Tzvi. Par Funding received \$31.1 million in payments from Tzvi during 2020 of which \$11.3 million was paid during the eight weeks prior to the Receivership. While this gives the appearance that the Merchant Advance is active and collectible, Par will need to recover more than \$20 million to simply “break even” with Tzvi, before consideration of operating expenses and the cost of capital (Investor funds).

Table 16

TZVI Merchant Summary

Tzvi Merchant Summary	
Date of First Funding	5/15/2015
Advance Amount	\$ 235,624,590
Repayment Amount	307,177,596
Active AR balance	91,494,728
Net Cash Advanced	91,367,745
Net Cash Repaid	70,949,933
Net cash flow through 7/27/20	(20,417,811)
Total reloads/write-offs	145,536,717
Additional Fees	803,783
% of Advance Amount reloaded	62%
Payments eight weeks prior to Receivership	11,279,482
Total amount funded in 2020	\$ 35,925,493

120. In another example, Merchant Grouping Colorado Homes represents transactions with five different merchants associated with Colorado Homes: CNP Operating, Colorado Sky, Dickinson Wright, United by ECH, and Colorado Homes. The relationship with Colorado Homes began in 2018. Colorado Homes has reloaded more than 40% of the advance amount. This also means that rather than repaying the Merchant Advances and finding sources of capital that are less expensive, Colorado Homes also continuously rolled forward a significant amount of the advance spreading over a three-year period. The total amount of cash

advanced to Colorado Homes is \$30.5 million and the total repaid is \$24.7 million, resulting in next cash loss of \$5.8 million. Colorado Homes owes Par Funding more than \$29.9 million as of July 27, 2020, which is approximately the same amount of cash it has received from Par Funding.

121. During 2020, Par Funding did not make any advances to Colorado Homes. Par Funding received \$300,000 from Colorado Homes in 2020 of which only \$30,000 was paid during the eight-week prior to the Receivership. While this gives the appearance that the Merchant Advance is active and collectible, Par will need to recover more than \$5.7 million to simply “break even” with Colorado Homes, before consideration of operating expenses and the cost of capital (Investor funds).

Table 17

Colorado Homes Merchant Summary

Colorado Homes Merchant Summary	
Date of First Funding	2/5/2018
Advance Amount	\$ 54,514,518
Repayment Amount	75,703,127
Active AR balance	29,875,957
Net Cash Advanced	30,466,226
Net Cash Repaid	24,696,243
Net cash flow through 7/27/20	(5,769,983)
Total reloads/write-offs	22,214,268
Additional Fees	1,083,341
% of Advance Amount reloaded	41%
Payments eight weeks prior to Receivership	30,000
Total amount funded in 2020	\$ -

Observations Regarding Merchant Advance Receivable remaining

122. In total, these examples of 15 MCA Groups have active Merchant Advance Receivable balances totaling \$225 million despite cash losses in excess of \$41 million as summarized in **Table 18**. These receivables represent more than 50% of the Merchant Advance Receivable balance of \$419 million as of July 27, 2020.

Table 18

MCA Category Summary

MCA Category	Report Table	Count of MCA Group	Net Cash Surplus (Deficit)	Active A/R as of 7/27/20
A	15	5	\$ (3,625,176)	\$ 4,694,744
B	16	5	(6,995,070)	23,279,730
C	17	5	(30,679,320)	197,028,060
Total		15	\$ (41,299,566)	\$ 225,002,534

123. Each of the MCA Categories include a significant number of Merchants Advance Receivables classified as “active” but have not made payments during the eight weeks prior to the Receivership and in some cases a longer period. Based on the analysis conducted for the Category B and C Merchant Advance Receivables, I determined they are largely comprised of Merchant Advances that generated cash losses on a historical basis, many of which do not appear to be currently performing. In Category C, there are Merchant Advance Receivables with large remaining balances include a significant number of reloads. Considering these factors in conjunction with Par Funding’s historical track record of profitability

on the Merchant Advance Receivables indicates that Par Funding will not yield the profits expected in the Factoring Agreements.

124. Assuming Par Funding's numerous remaining Merchant Advance Receivables other than the 15 MCA Groups in **Table 18** are collected in full (this would equate to approximately \$194 million) and no other business or interest expenses are incurred, an impairment of more than 14%⁷⁷ to only these 15 MCA Groups would result in less than full repayment to Investors and Joint Funders as the excess of Accounts Receivable (\$419 million)⁷⁸ over the amounts owed to Investors (\$366 million) and Joint Funders (\$22.6 million) is just \$30 million⁷⁹ as of July 27, 2020.

125. This analysis further demonstrates that the cash flow generated from the Par Funding Merchant Advances was not sufficient to pay the promised investor returns and operational expenses because the Merchant Advances did not yield sufficient profit to Par Funding.

Par Funding Payments Select Parties

126. I utilized the Cash Reconstruction to determine the amounts paid to certain parties as requested by the Commission. The following table summarizes the payments made to the selected parties and **Exhibit P** includes a detailed schedule of the transfers to each party.

⁷⁷ Calculated as \$30 million (as described in FN 79) divided by \$225 Million of Active A/R as of 7/27/2020 for the 15 MCA Groups.

⁷⁸ Per QuickBooks.

⁷⁹ Id. Total Accounts Receivable as of July 27, 2020, is \$419,028,881 less amounts owed to Joint Funders of \$22,571,676 less amounts owed to investors of \$366,101,849 equates to \$30,355,356.

Table 19
Transfers Summary

Payee	Disbursements	Exhibit
ABetterFinancialPlan.com	\$ 1,914,045	P.1
ABFP Income Fund	32,633,720	P.2
ABFP Income Fund 2	10,671,546	P.3
ABFP Income Fund 3	6,313,406	P.4
ABFP Income Fund 3 Parallel LLC	233,992	P.5
ABFP Income Fund 4	2,049,440	P.6
ABFP Income Fund 4 Parallel LLC	172,472	P.7
ABFP Income Fund 6	356,945	P.8
ABFP Income Fund 6 Parallel	143,338	P.9
ABFP Income Fund Parallel	153,206	P.10
Beta Abigail Inc	4,878,350	P.11
Dean Vagnozzi	743,137	P.12
Eagle Six Consultants	47,143,509	P.13
Fidelis Financial Planning	6,476,557	P.14
Full Spectrum Processing	10,689,472	P.15
Heritage Business Consulting	42,451,249	P.16
Joseph Cole Barletta	160,715	P.17
Joseph LaForte	-	N/A
Lisa McElhone	11,310,598	P.18
LME Family Trust 2017	14,300,000	P.19
Michael Furman	-	N/A
New Field Ventures, LLC	11,739,902	P.20
Recruiting & Marketing Resources, Inc.	7,933,228	P.21
United Fidelis	-	N/A
Total	\$ 212,468,829	

127. I utilized the Cash Reconstruction to determine that \$49,971,790 was paid out in equity distributions.⁸⁰ See **Exhibit Q** for a detailed schedule.

⁸⁰ These transactions were recorded to “retained earnings” in the QuickBooks general ledger.

128. I utilized the Cash Reconstruction to determine the amounts paid to related parties which were categorized in the general ledger as commission payments. The following table summarizes these payments.

Table 20

Commissions paid to Related Parties

Related Party	Commissions Paid
A Better Financial Plan	\$ 1,914,045
ALB Management	3,186,297
Beta Abigail Inc	4,877,007
Eagle Six Consultants	34,208,226
Heritage Business Consulting Inc	36,419,217
Joseph C Barleta	4,900
New Field Ventures,LLC	12,074,086
Perry Abbonizio	701,736
Total	\$ 93,385,514

Commingling

129. On August 26, 2020, I issued a Declaration regarding the commingling of Investor and MCA funds in Par Funding’s bank accounts. A copy of the Declaration is included in **Exhibit R**. I adopt the conclusions from that Declaration in this report.⁸¹ I found that there was commingling in Par Funding’s bank accounts and Investor Funds were commingled with funds from Merchant Advance transactions.

⁸¹ The Declaration was based on certain cash activity of Par Funding for a limited period of time whereas the information contained within this Report considers the cash activity of Par Funding for 2011 through July 27, 2020.

IX. BASIS OF OPINIONS

130. My opinions are based on the documents reviewed and enumerated at **Exhibit B**, and my extensive expertise and experience in forensic accounting.

131. I am a Certified Public Accountant (CPA), Certified Insolvency and Restructuring Advisor (CIRA), Certified Fraud Examiner (CFE), and practitioner addressing forensic accounting, fraud investigations, solvency/insolvency and restructuring issues for more than 15 years.

132. I reserve the opportunity to revise my opinions and Expert Report based on additional information that may become available. I also reserve the right to prepare charts and demonstratives for trial and rebut any opposing expert's analysis and report if asked.

133. Fees for professional services provided are based on hours actually, expended by each assigned staff member extended by the standard hourly billing rate for that individual. The standard hourly billing rates for professional staff working on this matter range from \$136 to \$450. Fees are not contingent on the outcome of this matter.

Dated: August 13, 2021

BY: Melissa Davis

Melissa Davis, CPA, CIRA, CFE
KapilaMukamal
1000 S. Federal Highway
Suite 200
Fort Lauderdale, FL 33316
(954) 761-1011
mdavis@kapilamukamal.com



Melissa Davis, CPA, CIRA, CFE

mdavis@kapilamukamal.com



Melissa Davis is a Partner at *KapilaMukamal, LLP*. She joined the firm in 1998. Her practice concentrates on insolvency and fiduciary matters. Ms. Davis has qualified as an expert in federal court, testified in trials, hearing and depositions. She has served as a court appointed Assignee for the Benefit of Creditors and as Plan Trustee in Chapter 11 bankruptcy matters. She has worked on numerous high profile cases.

Professional Experience

Ms. Davis concentrates on providing bankruptcy, litigation and forensic investigation services to debtors, creditors, receivers, assignees, bankruptcy trustees, examiners and liquidating trusts. Her practice also includes forensic accounting, fraud investigations and litigation support and family law matters.

Ms. Davis has served as a financial advisor to fiduciaries operating distressed companies in a variety of industries including mobile fueling, health insurance, real estate, retail, hospitality, assisted living facilities/nursing homes, metal extrusion, stevedoring, hedge funds and waste management. Her experience includes distressed business operations, management, preservation of collateral and asset divestiture services.

Ms. Davis has investigated fraudulent and preferential transfers, prepared defense, solvency and liquidation analyses. She has worked on asset tracing, tracing of commingled funds, provided litigation support and damage calculation services, including forensic and securities fraud investigations and corporate business conduct analysis. Ms. Davis has extensive experience in fraud and Ponzi-scheme investigations and commingled funds tracing analysis. Her forensic and fraud investigations have involved working in conjunction with the Securities and Exchange Commission (SEC.), the Federal Trade Commission (FTC), the Federal Bureau of Investigation (FBI) and various United States Attorneys Offices.

Ms. Davis has testified in court and depositions and served as Plan Trustee and court appointed Assignee for the Benefit of Creditors.

EDUCATION / QUALIFICATIONS

Certified Public Accountant (CPA) - Florida
 Certified Insolvency and Restructuring Advisor (CIRA)
 Certified Fraud Examiner (CFE)

Florida Atlantic University, Boca Raton, Florida —
 Bachelor of Business Administration,
 Major in Accounting,

PROFESSIONAL AFFILIATIONS

American Institute of Certified Public Accountants
 Florida Institute of Certified Public Accountants
 Association of Insolvency & Restructuring Advisors
 Association of Certified Fraud Examiners
 American Bankruptcy Institute
 International Women’s Insolvency & Restructuring
 Confederation
 Bankruptcy Bar Association, Southern District of Florida
 National Association of Federal Equity Receivers

AREAS OF EXPERTISE

Forensic Accounting
 Bankruptcy and Insolvency
 Creditors Rights
 Restructuring
 Financial Transactions Litigation
 Complex Commercial Litigation



Melissa Davis, CPA, CIRA, CFE

mdavis@kapilamukamal.com

SPEAKING ENGAGEMENTS

NAFER's Virtual Education Series—*The Receivers' Huddle — "Look Out for Number One, But Don't Step in Number Two"* - June 2021

FICPA 2021 Valuation, Forensic Accounting & Litigation Services Conference— Panel Member—*"Distressed Valuation and Solvency Analysis"*—January, 2021

American Bankruptcy Institute ("ABI") (abiLIVE) Webinar—*"COVID-19: Fraud Schemes, Relief Act Forgiveness Fraud and International Commercial Fraud Issues"* - August 2020

Florida Attorney General Consumer Protection Fall Conf.—*"Tracing Commingled Funds"* - 2018

ABI 2017 Annual Spring Meeting—*"Fraudulent Transfers—The Long Claw of The Law"* - April 2017

IWIRC 23rd Annual Fall Conference—*"The Dissection of a Ponzi Scheme"* - October 2016

FICPA – North Dade/South Broward Chapter – *"Tracing Commingled Funds"* - July 2016

Jacksonville Bankruptcy Bar Association 23rd Annual Bkcy. Seminar – *"E-Discovery in Bankruptcy: Why Should You Care?"* - August 2015

ABI 2015 Southeast Bankruptcy Workshop – *"Time for Trial: Evidentiary Issues in Bankruptcy Litigation"* - July 2015

Central Florida Bankruptcy Law Association – *"What Do Boy Bands and Healthcare Have in Common"*, -July 2014

Florida Bar Business Law Section – *"Professional Fiduciaries: Responsibilities and Duties"* - May 2014

Tampa Bay Bankruptcy Bar Association – *"What Do Boy Bands and Healthcare Have in Common"* - March 2014

Bankruptcy Bar Association of the Southern District of Florida – *"Valuation Issues in Bankruptcy"* - May 2013

ABI SE Regional Conference – *"Ponzi Schemes and Barring Claims Against the Guilty"* - July 2012

Turnaround Management Association – *"Current Issues in Real Estate"* - April 2012

PUBLICATIONS

"Disgorgement of Ill-Gotten Gains in Consumer Fraud Schemes" - Daily Business Review—July 2021

"Why South Florida Emerged As A Nationwide Leader For Covid-19 Relief Schemes" - South Florida Business Journal—May 2021

"Fraudulent Transfer Claims in Claw Back Litigation" - Law Journal Newsletters—The Bankruptcy Strategist—May 2021

"An Insolvency Primer" - American Bankruptcy Institute Commercial Fraud Committee—March 2021

"New Receivership Act Streamlines Receiver's Role for Lenders, Other Stakeholders" - Daily Business Review—September 2020

"Eye of the Evaluator—The Role of Contingent Liabilities in an Insolvency Analysis" - American Bankruptcy Institute Journal—April 2018

"Tracing Commingled Funds in Fraud Cases" - ABI, Commercial Fraud Committee On-Line Article -June 2017

"Fraud and Forensics: Piercing Through The Deception In A Commercial Fraud Case" – ABI Journal – 2015

"Ponzi Schemes: Fiduciaries May Be The Saving Grace", ABI Journal -2014

"A Health Care Fraud and Bankruptcy Primer" - Southern District of Florida Bankruptcy Bar Association Journal -2014

"Rising Tide in the Wake of Ponzi," ABI Journal—2013

ACCOMPLISHMENTS

Top CPAs and Litigation Support Professionals—South Florida Legal Guide, 2015—2021

CIVIC, VOLUNTEER AND PHILANTHROPIC

Past and Present

American Bankruptcy Institute—

- Financial Advisors and Investment Banking Committee (2021)
- 40 Under 40 Steering Committee (2021)
- Newsletter Editor FAIB Committee (2021)
- Co-chair Commercial Fraud Committee (2016-2019)
- Advisory Board—SE Regional Conference (2017-2021)
- Advisory Board—Caribbean Insolvency Symposium (2016-2021)

Nicholas Dworet Memorial Fund—Fundraising coordinator

Leukemia & Lymphoma Society—Team in Training Participant and Volunteer

KapilaMukamal, LLP
1000 S. Federal Highway, Suite 200
Fort Lauderdale, FL 33316
Main 954-761-1011
Direct 954-712-3205
www.kapilamukamal.com

Kapila Mukamal

CPAs, Forensic and Insolvency Advisors

Melissa Davis, CPA, CIRA, CFE
Case Experience

Trial and Hearing Testimony

Yuval Lugassy v. Shay Lugassy
Case No. CACE-19-007017
Client – Lagaci, Inc
Forensic Accounting Expert
Attorney Contact – Daniel Gielchinsky – Law Office of Daneil Y. Gielchinsky

Webster Business Credit Corporation v. Donald Woodrow Smith
Case No. 8:17-bk-04591-CPM
Client – Webster Business Credit
Forensic Accounting Expert
Attorney Contact – Scott Underwood – Buchanan Ingersoll & Rooney

Stemtech International, Inc.
Case No. 17-11380-RBR
Client – Official Committee of General Unsecured Creditors
Feasibility
Attorney Contact – Paul Singerman – Berger Singerman

SEC v. Robert H. Shapiro, Woodbridge Group of Companies, LLC et. al.
Case No.17-12560-KJC
Client – Securities and Exchange Commission
Forensic Accounting
Attorney Contact – Russell Koonin

FTC v. Hispanic Global Way, LLC
Case No. 1:14-cv-22018-CMA
Client – Jonathan Perlman, Receiver
Forensic Accounting
Attorney Contact – Jesus Suarez, Genovese Joblove & Battista, PA

United States of America v. Joseph Signore, et al
Case No. 14-80081-CR-Hurley
Client – James D. Sallah, Receiver for JCS Enterprises, et. al.
Expert Witness - Forensic Accounting, Ponzi Schemes
Attorney Contact – Ellen Cohen, Assistant U.S. Attorney

United States of America v. Craig Allen Hipp
Case No. 14-80081-CR-Hurley
Client – James D. Sallah, Receiver for JCS Enterprises, et. al.
Expert Witness - Forensic Accounting, Ponzi Schemes
Attorney Contact – Ellen Cohen, Assistant U.S. Attorney

Sherry Frederickson v. Ivan Frederickson a/k/a Tucker Frederickson et. al.
Case No. 2015CA00581XXXXMBAD
Client – Sherry Frederickson
Expert Witness - Forensic Accounting/asset tracing
Attorney Contact – Jack Scarola, Searcy Denney Scarola Barnhart & Shipley, PA

Melissa Davis, CPA, CIRA, CFE
Case Experience

Rothstein Rosenfeldt Adler, PA
Case No. 09-34791-RBR Chapter 11
Client – Robert Furr, Chapter 11 Trustee Banyon 1030-32
Forensic Accounting
Attorney Contact – Russell Blain, Stichter Riedel, Blain & Prosser, PA – Tampa, FL

FTC v. American Precious Metals, LLC
Case No. 11-61072-CIV-ZOLCH
Client – David Chase, Receiver for American Precious Metals, LLC
Forensic accounting/asset tracing
Attorney contact – Patrick Rengstl, Levine Kellogg Lehman, Schneider & Grossman - Miami

Ocean Bank v. Lexington Place Associates, LLC
Case No. 08-CA-2750
Client – Ocean Bank
Forensic accounting/asset tracing
Attorney Contact – James Robinson, White & Case - Miami

Atlantic Rolloff Services, Inc.
Case No. 06-11592-PGH
Client: Kenneth A. Welt, Chapter 11 Trustee of Atlantic Rolloff Services, Inc.
Asset sale/allocation accounting
Attorney contact – Daniel Gonzalez, Meland Russin & Budwick - Miami

Deposition Testimony

CFTC v. Jason B. Scharf (d/b/a Citrades.com) et. Al.
Case No. 17-cv-774-J-32MCR
Client: Kenneth Murena, Receiver
Forensic Accounting Expert
Attorney contact – Russel Landy, Damian & Valori - Miami

Securities and Exchange Commission v. JCS Enterprises, Inc. et. al.
Case No. 14-CV-80468
Client – James Sallah, Receiver for JCS Enterprises, Inc. et. al.
Forensic accounting
Attorney Contact – Patrick Rengstl, Sallah Astarita & Cox, LLC – Boca Raton

Amalie Oil Company v. TC Chemicals
Case No. 8:18-cv-1155-T-36AAS
Client – TC Chemicals
Damages
Attorney Contact – Eric Johanson – Jennis Law – Tampa, FL

Banyon 1030-32 v. Maple Leaf Drilling Partners, et. al.
Case No. 13-01297-RBR
Client – Robert Furr, Chapter 11 Trustee Banyon 1030-32
Forensic Accounting

Melissa Davis, CPA, CIRA, CFE
Case Experience

Attorney Contact – Scott Stichter, Stichter Riedel, Blain & Prosser, PA – Tampa, FL

Melanie Damien as Receiver for the Estate of Aubrey Lee Price v. KM Homes, LLC

Case No. 1:12-CV-03977-TCB

Client – Melanie Damian

Forensic Accounting

Attorney Contact- Guy Giberson, Damian & Valori – Miami, FL

Rothstein Rosenfeldt Adler, PA

Case No. 09-34791-RBR Chapter 11

Client – Robert Furr, Chapter 11 Trustee Banyon 1030-32

Forensic Accounting

Attorney Contact – Russell Blain, Stichter Riedel, Blain & Prosser, PA – Tampa, FL

PSN Liquidating Trust, Plaintiff v. Intelsat Corporation

Case No. 02-11913-BKC-AJC Chapter 11

Client – Soneet R. Kapila, Examiner for PSN Liquidating Trust

Expert Witness - Insolvency

Attorney Contact – Edward Griffith, Bolatti Griffith – New York

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Witness	Direct	Cross	Redirect	Recross
MELISSA DAVIS	3	38	73	

G O V E R N M E N T E X H I B I T S

Exhibit	Received	Admitted
1.30		73
220A		16
220A, 220B, 220C	15	
220B		26
220C		36

D E F E N S E E X H I B I T S

(NONE)

P R O C E E D I N G S

* * * * *

(Thereupon, proceedings were held but not transcribed.)

* * * * *

12:31

5 Thereupon,

MELISSA DAVIS,

7 having been duly sworn by the Court, testified as follows:

THE WITNESS: Yes, I do.

12:31

9 **THE COURT:** And now you may lower your hand, but
10 would you begin by introducing yourself to the members of our
11 jury? Would you tell the jurors your full name and would you
12 please spell your last name for the court reporter?

13 **THE WITNESS:** Yes. My name is Amanda Melissa
14 Davis, D-A-V-I-S.

12:32

15 **THE COURT:** Ms. Davis, you're soft-spoken. I'm
16 going to ask you to try to project a little bit more volume,
17 if you can, because I want to make sure the jurors right at
18 the end can hear you as well as everybody, okay?

THE WITNESS: Okay.

12:32

20 **THE COURT:** Sure. Let me turn now to Ms. Cohen and
21 allow her to proceed.

MS. COHEN: Thank you.

DIRECT EXAMINATION

12:32

25 **BY MS. COHEN:**

1 Q. Good afternoon.

2 A. **Good afternoon.**

3 Q. Ms. Davis, I wanted to ask you some questions about your
4 background before we go any further into your testimony.

12:32 5 Have you completed college?

6 A. **Yes, I have.**

7 Q. And what kind of a degree did you attain?

8 A. **A bachelor's of business administration and accounting.**

9 Q. From what university or college?

12:32 10 A. **Florida Atlantic University.**

11 Q. And in what year did you attain that degree?

12 A. **2001.**

13 Q. As part of that degree, were you studying for your
14 certified public accountant's license?

12:32 15 A. **Yes, I was.**

16 Q. And did you, in fact, attain a CPA license?

17 A. **Yes, I am a certified public accountant in the State of
18 Florida.**

19 Q. Now, how long have you been a CPA?

12:33 20 A. **Since 2002.**

21 Q. In addition to obtaining a CPA license, have you gotten
22 other certifications?

23 A. **Yes, I have. I am a certified fraud examiner, and I'm
24 also a certified insolvency and restructuring advisor.**

12:33 25 Q. And when did you become a certified fraud examiner?

1 A. I believe it was in 2005.

2 Q. And do you recall whether or not you take a test to
3 attain that?

4 A. Yes. There is some classes that you take and some
12:33 5 studying, and then there is an exam that you have to pass in
6 order to obtain the certification.

7 THE COURT: Ms. Davis, if you pull the chair up
8 just a little bit more, you won't have to lean down. That
9 ought to be able to pick up your voice, but I just want you
12:33 10 to be comfortable while you're testifying, okay?

11 THE WITNESS: Okay. Thank you.

12 THE COURT: Ms. Cohen, you may proceed.

13 MS. COHEN: Thank you, Your Honor.

14 BY MS. COHEN:

12:34 15 Q. Ms. Davis, you also said -- we talked a little bit about
16 your CPA license. Is that something you get upon graduation
17 or is there something more required?

18 A. No. There is additional education requirements. It's
19 been a long time, but I think it's 20 extra credit hours that
12:34 20 you have to be able to sit for the CPA exam in the State of
21 Florida.

22 Q. And once you have that CPA license, are there any
23 requirements to continue your education?

24 A. Yes, there are. I have to have 80 hours of continuing
12:34 25 professional education every two years.

1 Q. So that's two full weeks basically of education every two
2 years?

3 A. **That's correct.**

4 Q. Now, in terms of the certified fraud examiner, that
12:34 5 you've indicated you attained, is there also a continuing
6 education requirement for that?

7 A. **Yes, there is. The certified fraud examiner requires 20
8 hours of continuing education per year, of which 10 hours
9 have to relate to a fraud course.**

12:35 10 Q. Now, you also mentioned being a certified insolvency and
11 restructuring advisor. Did you have to take a test to become
12 one of those?

13 A. **Yes. That is a three-part course that consists of two
14 days of classes and then one day of a test for each of the
12:35 15 three parts.**

16 Q. And when did you attain that certification?

17 A. **I believe that was in 2004 or 2005.**

18 Q. And is there, likewise, a continuing education
19 requirement for that certification?

12:35 20 A. **Yes. For the CIRA, I have to have 60 hours of continuing
21 professional education in insolvency or restructuring,
22 receivership, bankruptcy type courses every three years.**

23 Q. And now, in addition to those particular certifications
24 and licenses, you are a member of any professional
12:36 25 associations?

1 A. Yes, I am. I'm a member of the Association of Certified
2 Fraud Examiners. I'm a member of the Association of
3 Insolvency and Restructuring Advisor. I'm a member of the
4 Bankruptcy Bar Association of the Southern District of
12:36 5 Florida. I'm a member of the International Women's
6 Insolvency and Restructuring Confederation.

7 MR. SALANTRIE: Judge, I hate to interrupt. We'll
8 stipulate to the qualifications of this witness.

9 THE COURT: All right. Well, let me just turn to
12:36 10 Ms. Cohen and allow her proceed with what she wants to
11 elicit.

12 BY MS. COHEN:

13 Q. Well, let me just ask you how long you've been working as
14 a CPA?

12:36 15 A. I have been working since 2002, since I became a
16 certified public accountant, as a CPA.

17 Q. For whom do you work now?

18 A. My employer is Kapila Mukamal.

19 Q. The court reporter might appreciate you spelling that.

12:36 20 A. It's spelled K-A-P-I-L-A, and then M-U-K-A-M-A-L.

21 Q. And how long have you worked for them?

22 A. I worked there only since April of 2014, but that was a
23 new firm that we formed. The name of my former firm was
24 Kapila & Company and I've been at Kapila & Company since
12:37 25 1998. We merged with another partner in 2014 and we have a

1 new name now, Kapila Mukama1.

2 Q. So basically you've worked at the same place all along?

3 A. Yes, that's correct.

4 MS. COHEN: I would offer Ms. Davis as an expert in
12:37 5 accounting and in fraud examination for the purposes of this
6 trial.

7 THE COURT: Mr. Salantrie, did you want to voir
8 dire or do you want to save that for your cross-examination?

9 MR. SALANTRIE: Judge, we have no objection.

10 THE COURT: All right. Ladies and gentlemen, let
11 me just explain where we are in this respect. One of the
12 things you've probably noticed is that most witnesses have
13 been limited to saying to you what they say they saw or what
14 they say they heard. We call somebody like that a fact
12:38 15 witness. Now, of course, you need to decide are they -- is
16 their testimony truthful and so on and you evaluate it.

17 When you have somebody who by virtue of either
18 their educational background or their work experience, that
19 they have special training in a field, for example, in
12:38 20 accounting or fraud examination, that person is allowed to be
21 qualified as an expert. And here is the difference. Unlike
22 the fact witnesses, an expert can come in and give you an
23 opinion. They can say, I've looked at this or that, here is
24 my opinion.

12:38 25 Now the jury instruction will tell you that just

1 like any other witness, though, it is up to the jury to
2 decide whether to accept and rely upon that testimony. But
3 you'll understand now that Ms. Davis has been certified as an
4 expert in these two fields.

12:39 5 Counsel, you may proceed.

6 MS. COHEN: Thank you.

7 BY MS. COHEN:

8 Q. Now Ms. Davis, were you retained to do an examination of
9 some of the books and records, or the books and records of
10 essentially two companies, JCS Enterprises, Incorporated, and
11 T.B.T.I., Incorporated?

12 A. Yes. That's correct. My firm was engaged by Mr. Sallah
13 to analyze the records of those companies.

14 Q. And Mr. Sallah is who?

12:39 15 A. He is the receiver of JCS and T.B.T.I.

16 Q. Now, Ms. Davis, in doing that, did -- what kind of
17 records were you looking at essentially?

18 A. We primarily focused on the bank records and the
19 investment account records for JCS, T.B.T.I., and the other
12:39 20 receivership entities. We also reviewed the merchant account
21 statements that were entered by the credit card companies
22 along with the related databases that were available to us.

23 We also reviewed the investor files and the related
24 databases containing investor information. And to some
12:40 25 extent, we also looked at the JCS and T.B.T.I. accounting

1 records and tax returns.

2 Q. All right. I'm going to ask you some specific questions
3 about some of those now. And, by the way, did you bring like
4 a compilation of some of the things that you had looked at
12:40 5 with you that's sitting up on the witness stand?

6 A. Yes. I prepared a report and I have a binder that
7 contains the supporting documents for the report that I
8 prepared.

9 Q. Now, you indicated that you looked at bank records. How
12:40 10 many, just generally, if you recall, how many different bank
11 accounts do you think you looked at in doing your work?

12 A. For preparing this report, there was probably 20
13 different bank accounts.

14 Q. And as you think about those bank accounts, did you look
12:41 15 at who the signatories on those accounts were?

16 A. Yes, I did.

17 Q. Were any of them Craig Hipp?

18 A. No.

19 Q. Now, in addition to looking at those bank accounts, did
12:41 20 you look at certain charge card accounts that were held by
21 either company?

22 A. Yes. We looked at a series of American Express accounts
23 that were held in the name of JCS and I believe Joseph
24 Signore.

12:41 25 Q. And in addition, did you look at what we call merchant

1 accounts?

2 A. Yes. We did. We looked at merchant account statements
3 from the credit card companies containing customer
4 information.

12:41 5 Q. Now, just to be clear, what is a merchant account?

6 A. A merchant account is an account that a credit card
7 company will deposit customer funds into, and then the
8 customer funds are transferred to the business that made the
9 credit card charge.

12:41 10 Q. So, for instance, in this case, did you look at accounts
11 from an organization known as First Data?

12 A. That's correct.

13 Q. Do you know what a gateway account is or a gateway is?

14 A. A gateway, from my understanding, is an online database
12:42 15 that allows businesses to access their merchant accounts to
16 obtain information about the credit card charges of their
17 customers.

18 Q. So did you look at a gateway in this case to see what was
19 going on?

12:42 20 A. Yes, we did.

21 Q. And from what company was that, if you recall?

22 A. It was called NMI Gateway.

23 Q. Did you look at -- you said you looked at investor files.
24 Where did you obtain these investor files?

12:42 25 A. We obtained them from the receiver.

1 Q. And were these from JCS and T.B.T.I.?

2 A. **That's correct. I believe the receiver had received them**
3 **from T.B.T.I. and JCS.**

4 Q. And did you review each and every investor -- excuse me,
12:42 5 let me try that again.

6 Did you review each and every investor file that
7 was presented to you?

8 A. **Yes.**

9 Q. And do you recall whether or not you created a database
12:43 10 from that?

11 A. **Yes. We have a database and I'll refer to that database**
12 **as a bank reconstruction.**

13 Q. That database from the investor account, just to take a
14 side trip for a second, what general kinds of information did
12:43 15 your co-workers and yourself include in that database?

16 A. **We included the name of the investor, the amount of the**
17 **investment, the number of machines that were purchased and**
18 **also whether or not they invested through a retirement**
19 **account.**

12:43 20 Q. Did you do that for each of the companies, that is for
21 JCS customers that purchased directly through JCS, and folks
22 that had contracts and purchased the machines through the
23 T.B.T.I. arm?

24 A. **Yes, that's correct.**

12:43 25 Q. Now, in addition, did you look at other files such as for

1 advertisers?

2 A. **Yes. We did. We found throughout the JCS records some**
3 **folders that contained various advertising contracts.**

4 Q. Did you receive anything that indicated where any of
12:44 5 these machines were placed, such as the location list?

6 A. **I did -- yes, I did see a list of -- a location list with**
7 **machines, a list of locations where machines were allegedly**
8 **placed. Yes.**

9 Q. And was that part of your activity of looking at that or
12:44 10 was that kind of a side note?

11 A. **It was just a side note.**

12 Q. Did either of these companies utilize QuickBooks?

13 A. **Yes, they both utilized QuickBooks.**

14 Q. And did you place any reliance on the QuickBooks that
12:44 15 you -- I mean, did you look at them and place any reliance on
16 those?

17 A. **For JCS I looked at them and did not place any reliance.**
18 **For T.B.T.I., I looked at them, and I did refer to some of**
19 **the categories that they used to classify their transactions**
12:45 20 **and their disbursements.**

21 Q. Did you receive any records from the accountant on behalf
22 of either of these companies?

23 A. **Yes, I received records from, I believe, three different**
24 **accountants, two for JCS and one for T.B.T.I.**

12:45 25 Q. And did you place any reliance on those records?

1 A. Not really. They were tax returns, and they weren't
2 relevant to what I was doing.

3 Q. Did you receive a check register for either of these
4 companies?

12:45 5 A. Yes. We received -- JCS did use a check, electronic
6 check register software, and we did receive a copy of the
7 check register.

8 Q. And did you rely on that at all?

9 A. No, we did look at it as a starting point to quickly
12:45 10 understand where some of the disbursements were, but we
11 ultimately relied on all the bank records for our bank
12 reconstruction.

13 Q. And are you familiar with what Sunbiz is?

14 A. Yes. Sunbiz is the Florida Division of Corporations. I
12:46 15 believe it's the name of the entity. It's a website that you
16 can access information about companies on it. It's available
17 to the public.

18 Q. Now, you said you were doing a bank reconstruction. Just
19 basically, what does that consist of?

12:46 20 A. Essentially, what we do when we prepare a bank
21 reconstruction is we look at all of the bank statements and
22 investment account statements for each of the bank accounts
23 for the entities involved, and we input all of the data into
24 a database so that we can then easily review it and prepare
12:46 25 summaries and things of that nature.

1 Q. And did you do that in this case?

2 A. Yes, we did.

3 Q. And as a result of that, were you able to come up with
4 some figures and numbers as to, for instance, where funds
12:46 5 were obtained from by the companies?

6 A. Yes.

7 Q. And were you able to come up with some figures and
8 numbers of where the funds went to after the companies got
9 them?

12:47 10 A. Yes, we were.

11 MS. COHEN: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. COHEN:

14 Q. (Complies.) Now I've placed in front of you three
12:47 15 different items that are marked 220 A, 220 B, and 220 C. Are
16 you familiar with those items?

17 (Thereupon, the aforementioned exhibit was introduced.)

18 A. Yes, I am.

19 BY MS. COHEN:

12:48 20 Q. Let's take 220 A first. Well, first of all, in your
21 familiarity with those items, do those -- does that
22 particular item, 220 A, render a portion of the opinion that
23 you developed in this case as a result of your bank
24 reconstruction activities?

12:48 25 A. Yes, it does.

1 Q. And did you prepare that item yourself?

2 A. Yes, I did.

3 MS. COHEN: Your Honor, at this time we would move
4 admission what has been marked as 220 A. It is a new
12:48 5 exhibit.

6 THE COURT: All right. Is there any objection to
7 the receipt of what is now marked Government's 220 A?

8 MR. SALANTRIE: No, Judge.

9 MS. COHEN: Your Honor, may that be distributed to
12:48 10 the jury?

11 THE COURT: Well, first let's make sure it's in
12 evidence. So 220 A is received into evidence without
13 objection and, yes, a copy may be distributed to the jury.

14 (Thereupon, the aforementioned exhibit was admitted.)

12:48 15 THE COURT: I'll ask the marshal to assist us on
16 that.

17 BY MS. COHEN:

18 Q. I've placed on the screen 220 A, a copy of that, and that
19 is now in front of you, Ms. Davis; is that correct?

12:50 20 A. That's correct.

21 Q. At the top of this chart, 220 A, it says, Sources and
22 Uses of Funds. Did you determine that label?

23 A. Yes, I did.

24 Q. And what did you mean by sources and uses of funds, so we
12:50 25 understand?

1 A. This is a summary of the bank reconstruction of the JCS
2 and T.B.T.I. and GeeBo entities. So these are the totals of
3 the sources and uses of funds available to those entities for
4 the time period of the bank reconstruction.

12:51 5 Q. Now, just looking at very top line after that, are you
6 designating categories? In other words, what the column
7 means?

8 A. That's correct.

9 Q. So when you say type, just generally what do you mean?

12:51 10 A. I mean, that's -- I've categorized each of the
11 transactions within the bank reconstruction into one of
12 several categories in order to be able to subtotal the
13 transactions to present it in summary form.

14 Q. And then the next item appears to say sources?

12:51 15 A. That would be -- that would equate to the amount of
16 deposits into the bank accounts.

17 Q. And you have percentage after that?

18 A. That's the percentage of the total.

19 Q. And then you say uses. What does that mean?

12:51 20 A. That means checks or wire transfers. That means money
21 outgoing from the bank accounts.

22 Q. And then you have percentage after that again?

23 A. That's correct.

24 Q. And then what is -- what do you mean by net?

12:51 25 A. The net is the difference between the sources and the

1 **uses.**

2 Q. On this first line after that, the first item you were
3 talking about is what?

4 A. **Money received from or paid to investors.**

12:52 5 Q. And how much money, as a result of your bank
6 reconstruction, did you determine was received from
7 investors?

8 A. **\$80,840,553.**

9 Q. And when you came up to that determination, whose bank
12:52 10 accounts were you looking at to find that?

11 A. **The investor money flowed into either JCS or to**
12 **T.B.T.I.'s bank accounts.**

13 Q. Now, was some of this money brought in through credit
14 card transactions from machines?

12:52 15 A. **Yes, it was.**

16 Q. And first of all, which company? Was it both companies
17 that had credit card accounts that could bring in money?

18 A. **No. Only JCS had merchant accounts.**

19 Q. Were you able to make a determination as to how much of
12:52 20 this \$80,840,000-plus came in through credit card accounts?

21 A. **I do have -- we were able to determine that.**

22 Q. And how much was that, if you can tell us?

23 A. **I don't think I can answer that question today. We do**
24 **have the ability to answer that question though.**

12:53 25 Q. Well, approximately, how much?

1 A. I would say it's probably at least 10 to 12 million
2 dollars.

3 Q. And your hesitation on saying how much comes from what?

4 A. Just because I haven't tabulated it, but I do know that
12:53 5 there is at least 10 to 12 million dollars.

6 Q. Were you able to determine whether or not some of the
7 customers utilizing the credit card accounts were -- the JCS
8 credit card merchant account -- were actually contracted
9 through T.B.T.I.?

12:53 10 A. Yes. We did note that there were certain T.B.T.I.
11 investors, investors who had T.B.T.I. contracts where the
12 money was deposited into the JCS bank account because only
13 JCS had a merchant account.

14 Q. Now you said that in looking at these records, you looked
12:54 15 at investor files that included counting the number of
16 machines. Were you able to come up with a number of machines
17 that had been purchased as a result of these investor
18 purchases?

19 A. Yes, according to our calculations, it was in excess of
12:54 20 22,000 machines.

21 Q. Do you know how much in excess of 22,000?

22 A. I do have the exact number. I believe it was 22,543. I
23 can look for it in my report.

24 It was 22,536 machines.

12:55 25 Q. I know you've said that you haven't completely tabulated

1 the credit card amounts, but have you made any kind of
2 determination how many of the machines were bought through
3 the usage of credit cards?

4 A. **No. That is something that we couldn't tabulate, but**
12:55 5 **it's not something that I've done.**

6 Q. Now, Ms. Davis, were you able to determine how much of
7 the credit card, what percentage of the credit card usage was
8 done by T.B.T.I. customers?

9 A. **No.**

12:55 10 Q. Now, going on, you indicate that there were \$49,752,796
11 utilized for investors. What was that for?

12 A. **That was payments that JCS and T.B.T.I. made to their**
13 **investors for their returns.**

14 Q. And how are you able to determine that figure?

12:56 15 A. **By looking at the bank reconstruction, we have a column**
16 **in our bank reconstruction that has a name. So every**
17 **transaction we looked at the supporting documentation and**
18 **completed the name and our bank reconstruction. And then we**
19 **reviewed all the investor files to determine all the names of**
12:56 20 **the investors.**

21 Q. Now, as you were looking at this, you said that
22 \$49,752,796 went out to investors. Did you see checks
23 actually written to each and every investor that there were
24 files for at both JCS and T.B.T.I.?

12:56 25 A. **We did see checks written to investors, but your question**

1 **is do I know that every investor received a payment?**

2 Q. No, it's a different question.

3 A. **Okay.**

4 Q. My next question is, when you look only at the JCS
12:57 5 checking accounts, were they writing checks from the JCS
6 checking account to the T.B.T.I. customers?

7 A. **No.**

8 Q. How did you -- so if I look at this 49 million, this is
9 all JCS customers?

10 A. **No. This is a combined bank reconstruction of both JCS
11 and T.B.T.I.**

12 Q. Could you determine -- did you determine where the money
13 for the T.B.T.I. investor checks originated from?

14 A. **Yes. It came from JCS.**

12:57 15 Q. And was there -- so are you indicating that
16 approximately -- well, how much of that came from JCS, if you
17 know?

18 A. **I do know. It was \$41,982,017.**

19 Q. Went from JCS to T.B.T.I.?

12:58 20 A. **That's correct.**

21 Q. Over what period of time?

22 A. **That would have been from January 2012 to approximately
23 January 2014.**

24 Q. And so does that leave about eight million dollars that
12:58 25 went from JCS directly to JCS customers?

1 A. I want to explain something about Exhibit 220 A. This is
2 a combined bank reconstruction of both JCS and T.B.T.I. So
3 the inner company transaction equals zero. They net to zero.
4 The \$49,752,796, that was the total amount of funds that were
12:58 5 paid to investors.

6 THE COURT: Ms. Davis, I'm sorry to interrupt you
7 but I'm going ask you to slow down on the numbers. The
8 numbers are especially difficult for the court reporter to
9 take. Okay. So when you're just giving numbers, really kind
12:59 10 of take that slow.

11 THE WITNESS: Thank you. I will.

12 A. Of the \$49,752,796 paid to investors, of that \$38,528,657
13 was paid from T.B.T.I. to its investors. The balance would
14 have been from JCS.

12:59 15 BY MS. COHEN:

16 Q. Now, you have an item here called ATM business. Whose
17 business was that?

18 A. That was T.B.T.I.'s business.

19 Q. And was that at all related to the virtual concierge
12:59 20 machine business?

21 A. No. That was a business that T.B.T.I. had before the
22 virtual concierge machine business.

23 Q. And was any of the monies from the virtual concierge
24 business put into the ATM business?

01:00 25 A. That is a somewhat difficult question to answer. They

1 did -- they had -- T.B.T.I. had, I can't remember, three or
2 four bank accounts. I can look at the list. One of their
3 accounts was primarily used for the ATM business, but
4 occasionally they did deposit investor funds into that
01:00 5 account.

6 Q. Now, was the ATM business utilized -- well, was the ATM
7 business monies generally utilized to pay the virtual
8 concierge business investors?

9 A. No, that wouldn't be possible because (inaud.) in order
01:00 10 to meet the investor obligations.

11 Q. I see at the end you have a net of \$171,000. When you
12 say that, is that all the earnings that that ATM business
13 made?

14 A. That's correct. That figure represents the difference
01:00 15 between the amount of money that came in from the ATM
16 business and the amount of money that went out related to the
17 ATM business.

18 Q. I want to skip down to commissions. You see that line?

19 A. Yes.

01:01 20 Q. And what do you mean by commissions?

21 A. Those were commissions paid to various parties for the
22 sale of VCM machines.

23 Q. And did that include payments from JCS to T.B.T.I.?

24 A. No.

01:01 25 Q. Who is this commissions to?

1 A. Would you like me to give you some names?

2 Q. Generally, are they T.B.T.I. people or JCS people?

3 A. They were some -- a lot of them were investors, and
4 investors were receiving some commissions, but there were
01:01 5 also some T.B.T.I. and JCS people as well.

6 Q. You have an item that's called credit cards. What is
7 that?

8 A. Those were payments made for credit cards, for example,
9 the American Express card.

01:01 10 Q. Then you have an item entitled Real Estate Rent Related?

11 A. Yes. Those were payments made either by T.B.T.I. or JCS
12 for what appeared to be business-related rental or real
13 estate type expenses.

14 Q. Let me just skip down to an item you call advertising.
01:02 15 You see that item?

16 A. Yes.

17 Q. Can you tell us -- excuse me -- where you derived your
18 \$21,143 entry for advertising from?

19 A. Yes, those were the deposits made into the JCS bank
01:03 20 accounts that were received from the various parties that
21 were paying JCS advertising revenue.

22 Q. And when you say they were paying advertising revenue,
23 did you have some sort -- in any of these instances, did you
24 have documentation to back up that these were advertisers?

01:03 25 A. Yes, we did have -- for some of them we had advertising

1 **contracts.**

2 Q. Did you scour all of the records to try and find all of
3 the advertisers?

4 A. **Yes. We did.**

01:03 5 Q. And you came up with a total of how much?

6 A. **\$21,143.**

7 Q. Let's put that aside for a moment now.

8 Now, as you were working on your report and your
9 opinion, did you look to see what organizations or
01:03 10 individuals received money that were not investors?

11 A. **Yes, we did.**

12 Q. And did you -- did you call them a certain kind of
13 category?

14 A. **We called it insiders.**

01:04 15 Q. And you called them insiders why?

16 A. **It's a very common term that we use in my line of work.**
17 **If someone is either running the business or related to that**
18 **person, we usually call them an insider.**

19 Q. And I've placed in front of you what has been marked for
01:04 20 identification as Government's Exhibit 220 B. Are you
21 familiar with that item?

22 A. **Yes, I am.**

23 Q. And how is it that you're familiar with that particular
24 item?

01:04 25 A. **I prepared this chart.**

1 Q. And you prepared this chart utilizing, generally, what
2 kinds of information?

3 A. I prepared the chart utilizing the bank reconstruction.

4 MS. COHEN: Your Honor, at this time the Government
01:04 5 moves admission of what's been marked 220 B.

6 THE COURT: Would there be any objection?

7 MR. SALANTRIE: No, Judge.

8 THE COURT: Government's Exhibit 220 B is received
9 into evidence without objection, and it may be distributed to
01:04 10 the jury as well.

11 (Thereupon, the aforementioned exhibit was admitted.)

12 MS. COHEN: And I prepared a copy for Your Honor
13 and the court reporter.

14 BY MS. COHEN:

01:05 15 Q. And, again, I've placed on our ELMO what has been marked
16 as 220 B, and I believe everybody has it in front of them.

17 Now, is this the table of what you've called
18 insiders that we were referring to?

19 A. Yes, that's correct.

01:06 20 Q. And the -- I see a column to the left that has a header.
21 That header is what?

22 A. That's either the name or the type of expense that it
23 was.

24 Q. The person who is getting the money?

01:06 25 A. Yes, that's the person who is receiving the money.

1 **That's correct.**

2 Q. And the column to the right indicates what?

3 A. **Those are the totals from the bank reconstruction for the**
4 **period that we reconstructed.**

01:06 5 Q. Now I see the first one says WCFS, Inc. What is that?

6 A. **That is an entity owned, I believe, by Chad Wright.**

7 Q. Do you know who Chad Wright is?

8 A. **Yes, I believe Chad Wright is the son of Paul and**
9 **Christine Schumack.**

01:06 10 Q. And then he received about how much?

11 A. **WCFS received \$2,761,100.**

12 Q. The next item you have indicated is?

13 A. **Paul and Christine Schumack.**

14 Q. And they received how much?

01:07 15 A. **1.5 million dollars.**

16 Q. And as you were going through these bank reconstructions
17 and looking at how much companies or people were being paid,
18 were you able to determine whether any of these payments
19 we're now looking at were commissions?

01:07 20 A. **We have not made that determination. I do believe that**
21 **some of the memos and the checks would reference things that**
22 **would indicate it was a commission payment, but I haven't**
23 **itemized them here.**

24 Q. The next item is JOLA Enterprises.

01:07 25 A. **Yes.**

1 Q. And do you know what JOLA Enterprises is?

2 A. **That is a company owned by Joseph Signore and Laura**
3 **Signore.**

4 Q. Did you see any income -- well, let me ask you this: Did
01:07 5 you do reconstruction as to what was going on with JOLA?

6 A. **We did reconstruct the JOLA bank records, yes.**

7 Q. And did you see any income coming into JOLA?

8 A. **No.**

9 Q. Where did the money come from from JOLA?

01:08 10 A. **It came from JCS.**

11 Q. The next item I see is Laura Signore. How much did she
12 get?

13 A. **She got \$811,754.**

14 Q. And then Joseph Signore got how much?

01:08 15 A. **Joseph Signore would be \$220,162.**

16 Q. And the next item is for whom?

17 A. **Craig Hipp.**

18 Q. And how much was that?

19 A. **\$153,660.**

01:08 20 Q. Now as you're doing this reconstruction, did you see
21 payments to a payroll company for weekly payroll for
22 employees?

23 A. **Yes. There were payments to ADP.**

24 Q. And is that a payroll company?

01:08 25 A. **Yes, it is.**

1 Q. When you did this particular chart, and added up
2 Mr. Hipp's payments, the \$153,660, did that include the
3 amounts that he was paid through ADP?

4 A. **No, it did not.**

01:09 5 Q. Do you know what his salary was as you sit here today?

6 A. **No, I do not.**

7 Q. And what period of time does this \$153,660 cover?

8 A. **I believe his payments began in 2012, and were ongoing
9 until 2014.**

01:09 10 Q. Now, in addition to this, did you see certain other
11 payments going to Mr. Hipp?

12 A. **I notated in my report that Mr. Hipp has a doing business
13 as name. It's called A&K Electronic Solutions, and A&K
14 Electronic Solutions received payments from the American
01:09 15 Express card of approximately one million, I believe it was,
16 \$1,157,000.**

17 Q. Other than seeing money go into that, did you net it out
18 to see if any purchases had been made through that?

19 A. **No, I have not.**

01:10 20 Q. And so is that a reason you did not include that in this
21 chart?

22 A. **Actually, I believe in the report I think I had a
23 footnote that might not be here that just footnoted the fact
24 that those payments were made to the -- with the American
01:10 25 Express card.**

1 Q. And do you know what the net out is?

2 A. No, I do not.

3 Q. And when we talk net, what are we talking about?

4 A. I believe what you're referring to is the fact that I
01:10 5 believe JCS made the payments to A&K for purchase of
6 equipment, and then Mr. Hipp was purchasing equipment for the
7 company, and I think when you mean net, you mean what was
8 left after he made the purchases.

9 I have not performed that analysis.

01:10 10 Q. And do you have any opinion as to how much he got?

11 A. No. I don't know.

12 Q. And then we go further down in the list, for various
13 other items. I see here an item that indicates gold
14 bouillon?

01:11 15 A. Yes.

16 Q. What was that item?

17 A. Mr. Signore wrote a check for \$25,000 to -- I don't
18 recall the specific payee, but it was something gold
19 bouillon, and he referenced in the memo, "Gold."

01:11 20 Q. So what were your total insider payments that you came up
21 with?

22 A. \$11,715,895.

23 Q. Now, as you were looking at these various monies coming
24 in, and the various monies going out, including how much was
01:11 25 paid out to investors, did you look at where the source of

1 the money for investor payouts came from?

2 A. **Yes, I did.**

3 Q. What source did the investor money payouts come from?

4 A. **The only source available to pay the investor returns was**
01:12 5 **new investor money.**

6 Q. Now, you've been an accountant and a certified fraud
7 examiner for a period of time. Are you familiar with these
8 kinds of events where money comes in and the only source is
9 other investor money?

01:12 10 A. **Yes, I am.**

11 Q. And is that called a particular kind of a scheme?

12 A. **Yes. It's an investment fraud scheme known as a Ponzi**
13 **scheme.**

14 Q. And as you think about it, as you were looking at this
01:12 15 bank reconstruction, and working on these records, did you
16 form an opinion as to whether or not this was an investment
17 fraud or a Ponzi scheme?

18 A. **Yes, I did form the opinion that for the period from**
19 **approximately December 2011 through about April 2014, JCS and**
01:13 20 **T.B.T.I. conducted a Ponzi scheme.**

21 Q. And again, your definition of a Ponzi scheme is what?

22 A. **It's an investment fraud scheme where money received from**
23 **new investors is not used for its intended purpose. Instead**
24 **it's used to pay the returns that were promised to earlier**
01:13 25 **investors.**

1 Q. Now, as you were looking at the payments and doing your
2 bank reconstruction, did you find monies being spent to build
3 virtual concierge machines?

4 A. Yes, we did.

01:13 5 Q. Was there -- were you able to determine, based on your
6 reconstruction, an approximate number of machines that money
7 was spent on or utilized for?

8 A. No. I did not -- I was not able to determine, based on
9 my bank reconstruction, how many machines were built.

01:14 10 Q. Was there some other thing that you relied upon to
11 determine that?

12 A. Yes. Well, in my report I addressed the amount of
13 machines that I understand were placed out into, I'll call it
14 the market, and that number was approximately 100. And I
01:14 15 obtained that information from a report filed by Mr. Sallah,
16 and also one of the declarations filed in this case by --

17 Q. By another person?

18 A. -- by another person, yes.

19 Q. And were you also -- did you also look at some invoices,
01:14 20 for instance, from a company known as Spacios Design?

21 A. We did see invoices from Spacios Design, yes.

22 Q. Other than Spacios Design and what they were offering,
23 did you see any other companies that were making shells for
24 these machines?

01:14 25 A. I think Spacios and A&K were the main vendor, I believe,

1 that were providing materials for the machines.

2 Q. Now, I just want to go over just a couple of things and
3 we'll be done.

4 As you were looking at these items that were --
01:15 5 such as the investor files and the monies going out, were you
6 able to determine what kind of a return on investment the
7 investors thought -- were supposed to be getting?

8 A. Yes. I did look at that. Yes.

9 Q. And what did you determine was the return on investment,
01:15 10 generally, that investors were to be getting?

11 A. There was a range. Investors were offered the
12 opportunity to purchase the virtual concierge machines at
13 different price ranges, and speaking from memory I think the
14 lowest price that we saw for the cost of a machine was about
01:16 15 \$2,600, and the highest price, I believe, was \$4,500 or
16 \$4,800.

17 And then the investors were promised \$300 a month
18 for a period of 36 to 48 months.

19 Q. And so once you made that determination, did you take an
01:16 20 average and work on that?

21 A. I did. Essentially, the percentages that I calculated
22 based on the various scenarios, assuming the lowest cost
23 per -- the lowest cost of the machine and the highest cost of
24 the machine, and either a 36 or 48 month payment stream, the
01:16 25 returns that I calculated were ranged between 140 percent and

1 450 percent.

2 Q. And did you also determine how much money the companies
3 had to get in income to be able to pay out these investors?

4 A. Yes. I did. Based on the number of machines that we
01:17 5 calculated were sold to investors, which was the 22,543
6 machines, I calculated that JCS and T.B.T.I. would have
7 needed to generate \$243,464,400 in order to meet investor
8 obligations, assuming the most conservative payment stream of
9 \$300 for 36 months.

01:17 10 Q. So more than 243 million dollars?

11 A. That's correct.

12 Q. And how much did you find was coming in from advertisers?

13 A. I found \$21,143.

14 Q. Do you recall whether or not you saw any monies coming in
01:17 15 from transaction fees, for instance, utilization of credit
16 cards or convenience fees or things like that?

17 A. There were -- T.B.T.I. had an ATM business and that is
18 how T.B.T.I. would have generated revenue, I believe. They
19 received their percentage of ATM fees in that regard. There
01:18 20 were some other, I'll call them pockets or buckets of income
21 to JCS and T.B.T.I. I addressed them in my report.

22 One of the buckets, I believe, was some gambling, a
23 gambling website, I believe that they were involved with, and
24 I saw some money coming in from the merchant companies
01:18 25 related to that. That total is \$13,588.

1 Q. And how much did they net out from that 13-thousand plus
2 dollars?

3 A. Well, that was just money coming in. So that must have
4 -- I'm not exactly sure what it related to, but these were
01:18 5 **deposits coming into the JCS bank account.**

6 Q. Did you see money going out to those same companies from
7 JCS?

8 A. **No.**

9 Q. Now, in addition to that, did you also calculate -- well,
01:19 10 let me ask you this: Taking all of the potential areas that
11 were income coming in from sources other than investors, how
12 much, approximately, how much did you see if you added the 13
13 thousand and other items?

14 A. **Probably less than a hundred thousand dollars.**

01:19 15 Q. And was that -- that was over the course of how long?

16 A. **From December 2011 until April of 2014.**

17 Q. Now, in addition to that activity, did you also look at
18 the bank records to determine how much JCS gave to T.B.T.I.
19 for monthly payments to T.B.T.I. investors?

01:20 20 A. **Yes, we did.**

21 Q. And I put in front of you what has been marked as 220 C.
22 Do you see that?

23 A. **Yes.**

24 Q. And are you familiar with that particular document?

01:20 25 A. **Yes, I am.**

1 Q. And how is it that you are familiar with 220 C?

2 A. I prepared this chart.

3 MS. COHEN: Your Honor, I move admission for what
4 has been marked as 220 C.

01:20 5 THE COURT: Would there be any objection to the
6 receipt of 220 C?

7 MR. SALANTRIE: No, Judge.

8 THE COURT: Government's Exhibit 220 C is received
9 into evidence without objection.

01:20 10 (Thereupon, the aforementioned exhibit was admitted.)

11 THE COURT: And that may be distributed to the jury
12 as well.

13 BY MS. COHEN:

14 Q. I've placed on the ELMO again 220 C and distributed that
01:21 15 to the jury. This particular document indicates what,
16 Ms. Davis?

17 A. This document indicates -- there are two columns with
18 numbers in them. The first column is the amount of money
19 that was transferred from JCS to T.B.T.I. for the month
01:22 20 indicated. And the second column is the amount of money that
21 T.B.T.I. paid to its investors in the month indicated.

22 Q. And is that the \$41,982,017 you indicated JCS gave to
23 T.B.T.I. for these distributions?

24 A. That's correct.

01:22 25 Q. And the net amount that they actually distributed was

1 what?

2 A. **\$38,528,657.**

01:22

3 Q. Now, during this time period, did JCS or T.B.T.I. take in
4 income, other than investor money that would have covered the
5 amount that JCS transferred to T.B.T.I.?

6 A. **No.**

01:23

7 Q. Now thinking about the opinions that you came to -- we
8 have already talked about the Ponzi and investment fraud
9 opinion. Did you come to a determination as to how much
10 money the investors lost as a result of this activity?

11 A. **Yes. Based on the records reviewed to date, the**
12 **investors have lost on a cumulative basis, approximately 31.1**
13 **million dollars.**

01:23

14 Q. Was that 31.1 million dollars available in any bank
15 accounts that you reviewed when you came into the picture?

16 A. **No.**

01:24

17 Q. Were you able to form an opinion as to whether or not
18 there was sufficient revenue to pay all of the JCS and
19 T.B.T.I. investors their monthly payments?

20 A. **No. There was not sufficient revenue from any source.**

21 **MS. COHEN:** Your Honor, the Government tenders the
22 witness.

23 **THE COURT:** Cross-examination, Mr. Salantrie.

01:25

24 Do we need to take a break? Let's do that. Let's
25 take the midafternoon break, one of our jurors needs to step

1 out, but I think this is a good time and that way we won't
2 interrupt the cross-examination.

3 So let's take that 15 minute break.

4 (Thereupon, the jury was escorted out of the
01:25 5 courtroom.)

6 **THE COURT:** Court will be in recess for 15 minutes.
7 Ms. Davis, if you'd like to step down, please feel free to do
8 that.

9 **THE WITNESS:** Thank you.

10 (Thereupon, a brief recess was taken from 2:25 p.m.
11 to 2:43.)

12 **THE COURT:** Mr. Marshal, will you bring in the
13 jury, please?

14 (Thereupon, the jury was brought into the
01:44 15 courtroom.)

16 **THE COURT:** Ladies and gentlemen, please be seated.
17 We're just about to start cross-examination so let me turn
18 back to Mr. Salantrie and allow him to proceed.

19 Counsel?

01:45 20 **MR. SALANTRIE:** Thank you, sir.

21

22 **CROSS EXAMINATION**

23 **BY MR. SALANTRIE:**

24 Q. Good afternoon, ma'am.

01:45 25 A. Good afternoon.

1 Q. Prior to today, have we had any opportunity to speak?

2 Have we spoken?

3 A. **No, we have not.**

4 Q. Have we met?

01:45 5 A. **No.**

6 Q. You're being compensated for your work in this case,
7 correct?

8 A. **Yes.**

9 Q. And you work for the firm Kapila Mukamal?

01:45 10 A. **That's correct.**

11 Q. And are you a partner in that firm?

12 A. **Yes.**

13 Q. And besides yourself, what other accountants have worked
14 on this case?

01:45 15 A. **There's a number of different people in the firm that
16 have worked on the case.**

17 Q. Name the accountants.

18 A. **David Greenblatt, Andrea Feldman, Soneet Kapila, and
19 those would be the primary people working on the case.**

01:46 20 Q. And your hourly billing rate is what?

21 A. **\$396.**

22 Q. Currently?

23 A. **That's correct.**

24 Q. You received a raise since last year, correct?

01:46 25 A. **No. I had an increase in my billing rate.**

1 Q. Oh, okay. So you were billing 380, now you're billing
2 396 an hour?

3 A. **My firm is billing 396 per hour now, yes.**

4 Q. For your work and your efforts?

01:46 5 A. **For my work, that's correct.**

6 Q. And you actually are not the highest paid member of your
7 firm that has worked on this case, correct?

8 A. **That's correct.**

9 Q. And the highest rate is \$530 an hour?

01:46 10 A. **That's Mr. Kapila's hourly rate, that's correct.**

11 Q. And that's his current hourly rate?

12 A. **I believe so, yes.**

13 Q. The rate he billed for work performed in this case,
14 correct?

01:46 15 A. **That's correct.**

16 Q. And your firm has submitted a bill or bills in this case,
17 correct?

18 A. **We have submitted -- I believe we have only submitted one
19 bill, and it covered a two-month period and that would have
01:47 20 been the months of April and May, I believe, of 2014.**

21 Q. And what was that bill for?

22 A. **That was for approximately \$140,000.**

23 Q. And that was paid?

24 A. **That's correct.**

01:47 25 Q. And what is the current outstanding balance for work

1 performed up until and including -- how about before today?

2 A. **Approximately, \$380,000.**

3 **THE COURT:** The only thing we may need to
4 differentiate, I don't know if this is appropriate, is work
01:47 5 that was done for the United States Attorney as opposed to
6 work that may have been done for other entities.

7 And I'll --

8 **MR. SALANTRIE:** I follow what you're saying there.

9 **BY MR. SALANTRIE:**

01:48 10 Q. And have -- were you employed by the receiver in this
11 case?

12 A. **Yes.**

13 Q. And have you submitted those bills to the receiver?

14 A. **The only bill that we have submitted, the one for**
01:48 15 **\$140,000 was submitted to the receiver.**

16 Q. And there's an outstanding balance of \$380,000?

17 A. **That's the amount that we have in work in progress. We**
18 **have not issued a bill for that amount.**

19 Q. And there will be more billed hereafter?

01:48 20 A. **Eventually, we will issue a bill. That's correct.**

21 Q. And the receiver is paid by the U.S. Government, correct?

22 A. **No. That's not correct.**

23 Q. Who pays that bill?

24 A. **The receiver is paid from the assets and the receivership**
01:49 25 **estate.**

1 Q. Have you submitted a bill or an invoice to the U.S.
2 Attorney's Office?

3 A. **No.**

4 Q. Do you plan on doing that?

01:49 5 A. **No.**

6 Q. Have you performed work on this case in preparation for
7 your testimony here today?

8 A. **Yes.**

9 Q. And you're not billing for that?

01:49 10 A. **I'm billing the receiver.**

11 Q. And how much -- how many hours have you put in -- I'll
12 take that back.

13 You prepared a report in this case, correct?

14 A. **I prepared a report for Mr. Sallah.**

01:49 15 Q. That's dated January 21st?

16 A. **That's correct.**

17 Q. Let's go back. And you, in part, relied on the
18 receiver's report, correct?

19 A. **Yes.**

01:50 20 Q. In forming your opinions?

21 A. **No, not necessarily in forming my opinions. That was one
22 of the documents that I relied on to ascertain the number of
23 machines that had been placed.**

24 Q. And you determined that there were 22-odd -- 22,000-plus
01:50 25 machines that were sold, correct?

1 A. **That's correct.**

2 Q. And you determined that 1,839 investors?

3 A. **That's correct.**

4 Q. Is that right?

5 A. **That's correct.**

6 Q. And you also learned that of those 1,839, only 272
7 invested directly through JCS, correct?

8 A. **I don't know if I have that number in my report. I would
9 need to go back and refresh myself.**

01:51 10 Q. Do you have the report with you?

11 A. **Yes.**

12 Q. Can you check page 13?

13 A. **Yes, (complies.)**

14 Q. It's either 13 or 11. Page 11 of your report.

01:51 15 A. **Okay. (Complies.) Okay.**

16 **Will you please repeat the question?**

17 Q. Did you determine that there were 1,800 investors?

18 A. **Yes.**

19 Q. Did you further determine from reviewing the receiver's
01:52 20 report, page 13, that of those, 272 invested directly through
21 JCS?

22 A. **That's something that's in the receiver's report. Is
23 that what you're asking me about?**

24 Q. Yes.

01:52 25 A. **Oh, no. I haven't confirmed that number.**

1 Q. Did you view that in the receiver's report?

2 A. Yes, that number is in the receiver's report, that's
3 correct.

4 Q. So the balance would be through T.B.T.I., correct?

01:52 5 MS. COHEN: Objection, Your Honor.

6 THE COURT: If you know. If you're able to answer
7 that.

8 A. The number -- I can only answer a question about the
9 number of investors based on our bank reconstruction. And
01:52 10 the bank reconstruction that we prepared, I testified about
11 that number before, it was a total of 22,000, approximately
12 22,500 investors. I haven't prepared --

13 BY MR. SALANTRIE:

14 Q. Ma'am, I'm not asking you the amount of investors. I am
01:53 15 asking you the amount -- I am asking you the amount of the
16 investors, not the amount of machines that were sold.
17 There's a distinction, correct?

18 A. Yes.

19 Q. You are aware that some investors bought multiple
01:53 20 machines, correct?

21 A. Yes.

22 Q. So if there was 22,500 VCs sold, that would not translate
23 into 22,500 investors, correct?

24 A. Oh, no. That's correct.

01:53 25 Q. In fact, there were 1,800 investors, correct?

1 A. That's correct.

2 Q. And of those 1,800 investors, 272 bought directly from
3 JCS?

4 A. That's not something that I'm saying. That's something
01:53 5 that you're saying.

6 Q. I'm saying it's in the receiver's report.

7 A. But that's something that the receiver said that.

8 THE COURT: Wait a minute. Hold on now just so you
9 understand this.

01:53 10 Mr. Salantrie is asking you questions, and I know
11 sometimes it's hard to -- in cross-examination a lawyer is
12 allowed to ask what is called a leading question. But you
13 need to understand, he's -- in every one of the questions
14 he's asking you do you agree with that, is that correct?

01:54 15 So if you're not prepared to answer that, you need
16 to tell that to Mr. Salantrie, because he's not testifying in
17 the case, okay?

18 THE WITNESS: Yes.

19 THE COURT: Just so you understand that.

01:54 20 A. Okay. That is not a calculation or a tabulation that I
21 have prepared.

22 BY MR. SALANTRIE:

23 Q. I understand that. But you, in fact, based your analysis
24 and opinions in part on the receiver's report, correct?

01:54 25 A. The only thing that I relied on in the receiver's report

1 was the number of machines that were placed.

2 Q. You testified on direct -- that was it, only that?

3 A. Yes.

01:55

4 Q. You testified on direct examination that you reviewed the
5 investor contracts?

6 A. That's correct.

7 Q. So you have 22 -- you have investor contracts of 1,800
8 individuals, correct?

9 A. That's correct.

01:55

10 Q. And in the investor contracts, would be the name of the
11 seller?

12 A. That's correct.

13 Q. And it would be one of two companies, correct?

14 A. That's correct.

01:55

15 Q. One would be JCS, correct?

16 A. Correct.

17 Q. And one would be T.B.T.I.?

18 A. Correct.

01:55

19 Q. So you, in fact, had the information to determine the
20 amount of investors that purchased through JCS, correct?

21 A. Correct.

22 Q. And would you agree with me that that number was 272?

23 A. No.

24 Q. How many was it?

01:55

25 A. I don't know.

1 Q. Do you have any evidence to establish it is anything
2 other than 272?

3 A. I don't know.

4 Q. You don't know if you have any information?

01:56 5 A. I have the database that I prepared that contains the
6 number of units sold to each investor, and I could tabulate
7 that, yes.

8 Q. Well, would you please do that?

9 A. I can't do that sitting here today.

01:56 10 Q. Well, if you had an opportunity to review all the
11 contracts in this case, would you be able to determine how
12 many investors invested directly through JCS?

13 A. Yes.

14 Q. Have you reviewed -- well, let me ask you this: How many
01:57 15 contracts were there?

16 A. I don't know exactly how many contracts were in those
17 files.

18 Q. You would agree that the vast majority of the contracts
19 were between individuals and T.B.T.I., correct?

01:57 20 A. Yes.

21 Q. All right. Would your view of all the contracts be
22 consistent with there being approximately 272 JCS investors
23 and about 1,500 T.B.T.I. investors?

24 MS. COHEN: Your Honor, I will object to that as
01:58 25 asked and answered.

1 THE COURT: Right. I'll sustain the objection.

2 BY MR. SALANTRIE:

3 Q. In fact, your opinions are based on an analysis of all
4 documents enumerated in Exhibit A of your report, correct?

01:58 5 A. That's correct.

6 Q. And Exhibit A, number 22 states, first report of
7 receiver, James Sallah?

8 A. Yes.

9 Q. And you read that entire report, correct?

01:58 10 A. Yes.

11 Q. And you read in that report that there were two --

12 MS. COHEN: Objection. Calls for hearsay.

13 MR. SALANTRIE: Just asking what she read, Judge.

14 THE COURT: I don't think you can do this. No.

01:59 15 I'll sustain that objection. The rules of evidence have been
16 changed on this one point.

17 MR. SALANTRIE: I'm not offering it for the truth
18 of the matter asserted.

19 THE COURT: I'm not sure about that.

01:59 20 BY MR. SALANTRIE:

21 Q. You did make a determination of how many VCs, virtual
22 concierge machines, were sold by JCS, correct?

23 A. I made a determination of how many VCs were sold in
24 total.

02:00 25 Q. And did you bother to determine how many were sold by JCS

1 and how many were sold by T.B.T.I.?

2 MS. COHEN: Your Honor, I'll object to the form of
3 the question.

4 THE COURT: Well, "did you bother" I think probably
02:00 5 gets into argumentative. But are you able to tell us with
6 any definition, any specificity between those two today?

7 THE WITNESS: No, Your Honor.

8 THE COURT: Okay. Let's go ahead.

9 BY MR. SALANTRIE:

02:00 10 Q. You would agree that you read that amount in the
11 receiver's report, correct?

12 MS. COHEN: Objection.

13 THE COURT: Wait. I'm going to sustain the
14 objection.

02:01 15 BY MR. SALANTRIE:

16 Q. You would agree that the vast majority of VCs were sold
17 by T.B.T.I. and not JCS, correct?

18 A. Yes.

19 Q. Can you approximate the percentage of VCs sold by JCS
02:01 20 versus T.B.T.I.? In other words, five to one, six to one,
21 whatever it may be?

22 A. No, I cannot today. That information is in the database,
23 but I don't know the answer today.

24 Q. So you just basically piled it into one answer regarding
02:02 25 the amount of investors overall, correct?

1 A. I calculated -- for the purpose of this report, for the
2 purpose of issuing this report, I did not segregate things
3 between T.B.T.I. and JCS in terms of investors, that's
4 correct.

02:02 5 Q. I understand, for purposes of that report. But I'm
6 asking you now for purposes of your testimony, can you
7 segregate between the two of them?

8 A. Can I segregate what?

9 Q. The amount of investors and the amount of VCs sold
02:02 10 between T.B.T.I. on one side and JCS in a separate column?

11 A. No.

12 Q. Were you instructed not to make that calculation?

13 A. No.

14 Q. You have the information in your database, you just
02:03 15 didn't calculate it; is that correct?

16 A. That's correct.

17 Q. I believe you testified on direct examination regarding
18 credit card statements that you reviewed.

19 A. Yes. Merchant account statements.

02:04 20 Q. Merchant accounts?

21 A. I believe that that's what you're referring to, yes.

22 Q. There were six of them, correct?

23 A. I believe that's correct.

24 Q. And they were all American Express?

02:04 25 A. No. There were six American Express credit card

1 **accounts. That's different from a merchant account.**

2 Q. Fair enough. How many merchant accounts did you --

3 A. **I don't recall exactly. It was about six or seven,**
4 **though.**

02:04 5 Q. Were they all in the name of JCS?

6 A. **Or GeeBo.**

7 Q. Or GeeBo?

8 A. **Yes.**

9 Q. And the owner of those merchant accounts were whom?

02:04 10 A. **JCS or GeeBo.**

11 Q. JCS or GeeBo. Okay.

12 Now, what about the American Express cards, did you
13 have an opportunity to review the statements of six credit
14 card accounts?

02:05 15 A. **That's correct.**

16 Q. You're looking at your report to refresh your memory?

17 A. **Yes, I was just going to confirm that they were there.**
18 **Yes, there are six.**

19 Q. And those credit card accounts were all Amex, correct?

02:05 20 A. **Yes.**

21 Q. And they were all in the name of Joe Signore or JCS,
22 correct?

23 A. **It looks -- I'm looking at my report, and five of them**
24 **were in the name of JCS/Joseph Signore, and one was in the**
02:05 25 **name of JCS/Malcolm Swasey.**

1 Q. That's right. None of them had my client's name on them,
2 correct?

3 A. **That's correct.**

4 Q. I believe you testified that there were about 20 bank
02:06 5 accounts that you reviewed, correct?

6 A. **Yes.**

7 Q. And those were in the name of JCS or GeeBo or T.B.T.I.,
8 correct?

9 A. **Yes.**

02:06 10 Q. And you did a bank reconstruction of those accounts,
11 correct?

12 A. **Yes.**

13 Q. You tried to determine essentially the total amount of
14 money that came in, the total amount of money that went out?

02:06 15 A. **That's correct.**

16 Q. Sources and uses as you testified to, correct?

17 A. **Yes.**

18 Q. Did you -- you did make an effort to distinguish between
19 the T.B.T.I. accounts on one side and the JCS/GeeBo accounts
02:06 20 on the other, correct?

21 A. **The information is within the database as a combined**
22 **database, as I stated before. So actually, some of the**
23 **charts that appear in the report, the transactions are a**
24 **total for both, for all three companies, JCS, T.B.T.I., and**
02:07 25 **GeeBo.**

1 Q. So once again, you combined the uses and sources of all
2 three companies to get a total use and total source account?

3 A. Yes, for purposes of preparing this report, that's
4 correct.

02:07 5 Q. I believe that you mentioned that there were about 10 to
6 12,000 dollars -- at least 10 to 12, excuse me, million
7 dollars of credit card transactions that were used for the
8 purchase of the VCs correct?

9 A. Yes, that's correct. I'm not exactly sure about the
02:08 10 number. Again, it's within the database, but it's not
11 something I tabulated. That would represent the number of
12 investors who paid for the VCM using a credit card.

13 Q. You didn't tabulate that, right?

14 A. That's correct.

02:08 15 Q. And it's not in your report, correct?

16 A. That's correct.

17 Q. Yet you remembered that?

18 A. Yes.

19 Q. But you can't remember what investors?

02:08 20 MS. COHEN: Objection, Your Honor. Argumentative.

21 THE COURT: Right. I'll sustain the objection.

22 BY MR. SALANTRIE:

23 Q. And you didn't see a T.B.T.I. merchant account, correct?

24 A. That's correct.

02:08 25 Q. So you were able to determine -- correct me if I'm wrong

1 -- that purchase -- T.B.T.I. customers would on occasion buy
2 the VCs using a JCS merchant account. Is that what your
3 testimony was?

4 A. **That's correct.**

02:09 5 Q. And how much of that 10 to 12 million dollars reflects
6 that?

7 A. **I don't know.**

8 Q. And how are you able to link the T.B.T.I. purchase with
9 the JCS merchant account?

02:09 10 A. **In some instances, we had the name of a purchaser that
11 was provided on the merchant account statement or in the
12 merchant account database, and we would take the name of the
13 purchaser and match it to an investor file, and the investor
14 files were either T.B.T.I. investor files or JCS investor
02:09 15 files.**

16 Q. And other than those transactions, were you able to
17 determine whether or not there was any other money flowing
18 from T.B.T.I. to JCS based on the bank account records?

19 A. **Yes. There was money flowing from T.B.T.I. to JCS. I
02:10 20 don't recall how much it was, though.**

21 Q. More or less than a million?

22 A. **I don't remember.**

23 Q. You don't remember?

24 A. **No.**

02:10 25 Q. And I believe you testified on direct examination that

1 there was money flowing from JCS to T.B.T.I.?

2 A. **Yes.**

3 Q. I think it was 39 million or whatever it was. 41
4 million? Forty-one nine?

02:10 5 A. **That's correct.**

6 Q. And were those checks, wire transfers?

7 A. **They were a combination of checks and TransFirst.**

8 Q. And you were able to determine on one of these charts
9 that \$49,752,796 was paid from JCS or T.B.T.I. to the
02:11 10 investors on their investment, correct?

11 A. **That's correct.**

12 Q. That's just about 50 million, using an easy number. We
13 know the exact number, right?

14 A. **Yes.**

02:11 15 Q. And you also testified that you were able to determine
16 that of that \$49,752,796 number, \$38,528,657 was paid to the
17 investors by T.B.T.I., correct, Exhibit C?

18 A. **That's correct.**

19 Q. So there's a difference of is \$11,224,139 if I calculated
02:12 20 correctly, which I probably didn't?

21 A. **If your math is correct, that's correct.**

22 Q. So we'll call it 11.2.

23 A. **Okay.**

24 Q. So the \$11,224,139 was paid to the investors, paid back
02:12 25 to the investors by JCS?

1 A. **That's correct.**

2 Q. And I believe that was all your analyses -- let me
3 withdraw that.

4 Your forensic analysis of the finances was for a
02:13 5 29-month period, I believe.

6 A. **December 2011 through April 2014.**

7 Q. Is that about right?

8 A. **That sounds about right.**

9 Q. Check my math again, please. So that's over a 29-month
02:13 10 period?

11 A. **Correct.**

12 Q. All right. Likewise, on Exhibit B where you indicate
13 that Mr. Hipp was paid \$153,660, that was over a 29-month
14 period, correct?

02:14 15 A. **Correct.**

16 Q. Directing your attention to 220 B, Government Exhibit 220
17 B, which I believe that the jury has a copy of it, let's go
18 down to some more of these columns here.

19 Were you able to determine who Matthew Brand was?

02:15 20 A. **I believe he's related to Laura Signore.**

21 Q. Loris Fiallo (ph.)?

22 A. **That is a relative of Chad Wright.**

23 Q. Chad Wright is the son of Paul and Christine Schumack?

24 A. **That's correct.**

02:15 25 Q. PSCS Holdings?

1 A. That is Paul and Christine Schumack's entity.

2 Q. Of course, Christine Schumack is Christine Schumack. And
3 Crystal Wright, 16,400?

4 A. Yes, I think she's related to Chad Wright.

02:15 5 Q. Real estate purchases. Who made the real estate
6 purchases of \$1,205,440 from the accounts?

7 A. The lion's share of the real estate purchases were made
8 by T.B.T.I., and a small amount, about \$314,000, was made by
9 JCS.

02:16 10 Q. Small amount?

11 A. A smaller amount.

12 Q. Everything is relative. And T.B.T.I. being Paul
13 Schumack's company, correct?

14 A. That's correct.

02:16 15 Q. Were you able to determine what Paul Schumack was buying?

16 A. For the real estate?

17 Q. Yes.

18 A. This was -- these were actually monthly payments for a
19 rental home located at 2445 South Ocean Boulevard.

02:16 20 Q. In what city?

21 A. Highland Beach. The rent was about \$60,000 a month.

22 Q. Really? And the -- and that would go out of the -- that
23 amount of money for the -- I'm sorry, the real estate
24 purchases, the 900-something thousand dollars -- I'm sorry.

02:17 25 We have to go back.

1 The real estate purchases, there's about
2 300-something thousand for Joe Signore?

3 A. **That's correct.**

4 Q. And then another eight hundred or nine hundred and some
02:17 5 thousand dollars by T.B.T.I.?

6 A. **That's correct.**

7 Q. And I'm approximating it.

8 A. **Yes.**

9 Q. And the T.B.T.I. money was withdrawn or otherwise paid
02:17 10 from T.B.T.I. accounts, correct?

11 A. **That's correct.**

12 Q. And the 300-some-odd thousand dollars, that was paid or
13 used by Joe Signore, came out of a JCS account, correct?

14 A. **Yes.**

02:18 15 Q. Is that for rent, mortgage?

16 A. **No, that was for the purchase of two different pieces of
17 property.**

18 Q. And there's a column there beneath real estate purchases
19 for \$1,110,218 for personal expenses?

02:18 20 A. **Yes.**

21 Q. Did you break that down?

22 A. **Yes. I have two subtotals that I can share with you.**

23 Q. Okay. Thank you.

24 A. **The first one is for meals and entertainment of \$123,579.
02:19 25 And the second one is personal check card expenses,**

1 miscellaneous on check card type transactions, and those
2 totalled \$986,639. But I do not have a total between JCS and
3 T.B.T.I. here.

4 Q. But it would be one of the two entities --

02:19 5 A. Yes.

6 Q. -- that spent \$1,110,218 on the items you just mentioned,
7 correct?

8 A. Yes.

9 Q. And I'm sorry, 986 was for what again?

02:19 10 A. \$986,639 was for personal check card expenses.

11 Q. You don't know who was expending that money?

12 A. I have the information, just not -- I'm not prepared to
13 answer it today.

14 Q. Generally, was it Paul Signore or, excuse me, Joseph
02:20 15 Signore or Paul Schumack?

16 A. They would be included in the people, yes.

17 Q. And the other number, I'm sorry, beyond the 986, was
18 what?

19 A. \$123,579. That would be classified as meals and
02:20 20 entertainment.

21 Q. Fuel and Foods, is that for a jet or something?

22 A. No. Fuel Foods is --

23 Q. 539 thousand?

24 A. \$779,216.

02:21 25 Q. Thank you. What's that for?

1 A. Fuel Foods is a business where, I believe it was Paul
2 Schumack, was purchasing shares of the business.

3 Q. 533 thousand and some-odd dollars for cash expenditures?

4 A. That's correct.

02:21 5 Q. Can you further break that down?

6 A. I want to just check to see.

7 I do not have the subtotal between the two
8 entities. It's just a very long list of a lot of
9 transactions.

02:22 10 These consist of checks payable to cash, cash
11 withdrawals, and ATM withdrawals.

12 Q. But do you have any large numbers, and by large I'll say,
13 I don't know, 25 thousand or more in a cash, check? Can't
14 take much out of an ATM machine, right?

02:22 15 A. No. Nothing of that nature.

16 Q. And that would be either Paul Schumack or Joe Signore?

17 A. I think I would have to answer whoever was the signing
18 authority in the bank account, so it could also include Laura
19 Signore or Christine Schumack. Who had signatory authority
02:23 20 on the bank account. I don't know who withdrew the money,
21 for example, from the ATM machines.

22 Q. Fair enough. And certainly not Craig Hipp?

23 A. No.

24 Q. Am I correct.

02:23 25 A. I would assume so, unless he had the ATM card.

1 Q. He's not a signatory on any of the 20 accounts that you
2 analyzed, correct?

3 A. That's correct.

4 Q. 426,197, what was that? It says automobile, boat-related
02:23 5 expenses. What was that specifically for and by whom?

6 A. That was by both entities -- let me just see.

7 That actually appears to be primarily -- there's a
8 few for JCS. It looks like it's for both. It looks
9 primarily to be T.B.T.I., but it does include a few JCS
02:24 10 transactions.

11 Q. Did someone buy a boat?

12 A. There were payments in here to a marina. There was a lot
13 of payments for fuel. I recall that there was a purchase of
14 a motor home by T.B.T.I. for \$86,900. It's a very long list.

02:25 15 Would you like me to give you some other examples?

16 Q. Just a couple large ones, if you could.

17 A. There was a wire here for a truck purchase for \$16,000 by
18 JCS.

19 Q. To whom?

02:25 20 A. It was Richard Cattafi, or maybe I'm not reading that
21 right. Give me just a second.

22 Yes, Richard Cattafi, C-A-T-T-A-F-I.

23 Q. Box truck?

24 A. I don't know what kind of truck it was. I believe there
02:25 25 was a purchase of a box truck. It could have been that one.

1 There was the purchase of a Rolls Royce by JCS for
2 \$26,000. The payment was made to an entity called, Excel,
3 E-X-C-E-L, Corporation.

4 Q. And these are --

02:26 5 A. There's a lot of fuel purchases. That's what all this
6 is.

7 Q. And just give us an example of a large fuel bill over
8 \$100, if there was is one?

9 A. Florida Petroleum Market, \$1,300.

02:26 10 Q. Did you determine what Florida Petroleum Market is?

11 A. No. No, I think we just assumed it was for fuel because
12 of the word petroleum.

13 Q. Fuel for what?

14 A. I don't know.

02:27 15 Q. Big boat?

16 A. It's possible. There was a purchase for some car tires,
17 a series of purchases for car tires. \$692.49, \$1,604.71.
18 These were made by T.B.T.I.

19 Q. Okay. Thank you on that category. Personal home.

02:27 20 There's a personal home, \$316,665. Are these checks?

21 A. They are checks and debits from the T.B.T.I. bank
22 account, one of the T.B.T.I. bank accounts. It looks like
23 all of those are T.B.T.I. related.

24 Q. Are they made payable to a mortgage company?

02:28 25 A. Well, there's some City Furniture disbursements, Extended

1 **Audio and Video, JPS Pyramid Landscaping, Grand Masters**
2 **Piano, Gray Taxidermy, Northern Mills Hardwood Flooring.**

3 Q. All T.B.T.I. and all personal expenses it seems?

4 A. **That's correct.**

02:28 5 Q. Do you have copies of the checks, any of the checks you
6 just mentioned?

7 A. **Not with me today.**

8 Q. Do you know who the signer was?

9 A. **No.**

02:28 10 Q. There was a deposit that you observed for one million
11 eighty-four dollars [sic], correct?

12 A. **Perhaps I don't recall that amount. Was it in the report**
13 **or --**

14 Q. For the purchase of a GeeBo territory purchase, territory
02:30 15 license?

16 A. **Oh. Let me just check the total, please.**

17 Q. I think it's in Exhibit B, perhaps. Exhibit B under
18 funds received?

19 A. **Yes.**

02:31 20 Q. And that amount was deposited into JCS's account,
21 correct?

22 A. **I believe --**

23 Q. Or GeeBo?

24 A. **-- some of it was deposited to GeeBo and some was**
02:31 25 **deposited to JCS.**

1 Q. And do you have the documentation regarding the purchaser
2 of that territorial license?

3 A. Let me see if I have it. Yes.

4 Q. Who was that?

02:32 5 A. There was a number of different parties.

6 Q. Okay.

7 A. It's a total. The 1,084,000 is a total of several
8 transactions.

9 Q. And do you have the name of the -- let me ask you this:

02:32 10 Were they checks or wires?

11 A. They were -- they appear to be checks. Checks deposited
12 into either JCS or My GeeBo accounts. I have check numbers
13 for each of the transactions.

14 Q. Who is the signer of the checks?

02:32 15 A. I don't have copies of the checks. I have a list of the
16 parties who the funds were received from. So --

17 Q. That will be fine.

18 A. Would you like me to read them?

19 Q. Sure. Please.

02:32 20 A. The first one is dated October 29th, 2013. Check number
21 1443 from John Shipley for \$195,000. That's S-H-I-P-L-E-Y.

22 Q. Is there any other note regarding what territory?

23 A. No. We could have, if there was a memo on the check it's
24 likely in our database, but that's not here.

02:33 25 The next one is dated October 30th, 2013. Check

1 number 376 from Thomas Episcopo, E-P-I-S-C-O-P-O, for
2 \$209,000.

3 Next one is November 8th, 2013. Check number 132
4 from Chad Masten for \$500,000, M-A-S-T-E-N.

02:34 5 THE COURT: Mr. Salantrie, what does this have to
6 do with anything in this case?

7 MR. SALANTRIE: It's revenue by Joe Signore.

8 THE COURT: So what? Can't we move on to something
9 that has to do with the issues in this case? This is just
02:34 10 not relevant to anything.

11 MR. SALANTRIE: Judge, it's the heart of my
12 defense.

13 THE COURT: It's not just relevant to anything in
14 the lawsuit.

02:34 15 MR. SALANTRIE: Respectfully, it is to my defense,
16 Judge.

17 THE COURT: Well, please move on to something that
18 is relevant. We're not going to sit and read through 5,000
19 checks. I mean, this is foolish.

02:34 20 MR. SALANTRIE: I believe there was six checks.

21 THE COURT: Well, it's just not relevant
22 to anything in the lawsuit.

23 MR. SALANTRIE: I request to make a motion.

24 THE COURT: No. Let's go ahead, please.
02:34 25 Ask something that deals with the case, if you

1 would. We're getting lost in the minutiae of a huge
2 enterprise that's not relevant to anything.

3 **MR. SALANTRIE:** It is possible to come side-bar?

4 **THE COURT:** No. Please deal with something that's
02:35 5 relevant to this lawsuit.

6 **BY MR. SALANTRIE:**

7 Q. You testified on direct examination regarding a company
8 called A&K Electronics?

9 A. **Yes.**

02:36 10 Q. Correct?

11 A. **That's correct.**

12 Q. Did you have an opportunity to view the Sunbiz records?

13 A. **Yes. I did.**

14 Q. And that was Craig Hipp's company?

02:36 15 A. **I believe it's a -- my understanding it's a doing
16 business as.**

17 Q. A d/b/a?

18 A. **Yes.**

19 Q. Also called a fictitious name?

02:36 20 A. **Yes, I believe so.**

21 Q. That's a legal document filed with the State of Florida,
22 correct?

23 A. **Yes.**

24 Q. And you made a determination that about 1.1 million
02:36 25 dollars flowed from JCS into A&K Electronics, correct?

1 A. **A&K received payments from the American -- one of JCS's**
2 **American Express credit card accounts, yes.**

3 Q. And during that 29-month period, it was approximately 1.1
4 million dollars, correct?

02:37 5 A. **It was \$1,157,761.**

6 Q. And did you analyze those accounts?

7 A. **Which accounts?**

8 Q. The A&K.

9 A. **I don't have any account, any bank records for A&K.**

02:37 10 Q. You did testify on direct examination that the money for
11 A&K was used to purchase computer equipment?

12 A. **Yes. Well, I don't know how A&K used the money because I**
13 **haven't reviewed A&K's bank records, but it is my**
14 **understanding that JCS was paying A&K to purchase equipment**

02:37 15 **because I saw invoices that were issued from A&K to JCS with**
16 **equipment on them.**

17 Q. Computer equipment?

18 A. **Yeah.**

19 Q. Monitors?

02:37 20 A. **Yes. That's right. Electronic, let's call it**
21 **electronic.**

22 Q. Electronic equipment, okay. And that totalled about
23 1.157 thousand dollars?

24 A. **No. The invoices that I saw, I didn't -- I didn't**
02:38 25 **reconcile them to the amount that was paid from JCS to A&K.**

1 Q. And you determined that amount from analyzing the JCS
2 records, correct?

3 A. The 1,157,000?

4 Q. Yes.

02:38 5 A. I determined that amount by looking at the American
6 Express credit card statements of JCS.

7 Q. And you also learned that \$175,000 was returned by A&K to
8 the receiver, correct?

9 A. Yes, I am aware of that.

02:38 10 Q. And that amount was provided by A&K to the receiver,
11 correct?

12 A. I believe so. I know it had something to do with
13 Mr. Wright or A&K, yes.

14 Q. And at the time it was returned, you were unaware that it
02:39 15 even existed, correct?

16 A. I don't know that I had any knowledge about it. I
17 think --

18 THE COURT: Well, let me stop. The "it" that
19 existed is what, the company or what?

02:39 20 MR. SALANTRIE: The money in A&K's account.

21 THE COURT: I see.

22 A. That's correct. I don't have any A&K bank records.
23 That's correct.

24 BY MR. SALANTRIE:

02:39 25 Q. And the receiver had no information that that money

1 existed?

2 MS. COHEN: Objection. Calls for an assumption.

3 THE COURT: Sustained.

4 BY MR. SALANTRIE:

02:39 5 Q. Going back, you mentioned on direct examination regarding
6 money spent by JCS for the building of VCs. You observed
7 invoices from Spacios Design, correct?

8 A. Yes, I do recall seeing those.

9 Q. For the building -- purchase of the VC boxes, correct?

02:40 10 A. I know that they had something to do with the VC machine
11 materials.

12 Q. And the amount invoiced, that JCS was invoiced was
13 \$805,000, correct?

14 A. I don't know.

02:40 15 Q. Did you observe a QuickBooks analysis of the invoices for
16 the VC boxes?

17 A. I'm not sure what you're referring to.

18 Q. Did you analyze invoices from Spacios Design to JCS for
19 the building of the VC boxes?

02:41 20 A. I'm aware that there were invoices within the files, but
21 I have not analyzed them or tabulated them in any manner.

22 Q. If I were to show you those invoices, would you be happy
23 to review them?

24 A. I'd be happy to review them.

02:41 25 THE COURT: Mr. Salantrie, tell me what you're

1 doing, if you would, please.

2 MR. SALANTRIE: I'm going to show the witness the
3 invoices from Spacios.

4 THE COURT: Right. And then what?

02:41 5 MR. SALANTRIE: Ask her to calculate the amount.

6 THE COURT: To perform a calculation here in the
7 courtroom?

8 MR. SALANTRIE: I can also show her a --

9 THE COURT: Are these in evidence already?

02:41 10 MR. SALANTRIE: Yes, Judge.

11 THE COURT: Why don't you just put the hypothetical
12 to her if they're already in evidence?

13 MR. SALANTRIE: I have to show her the exhibit.

14 THE COURT: Why don't you just put the
02:42 15 hypothetical?

16 BY MR. SALANTRIE:

17 Q. If you saw a summary of the invoices, would that assist
18 in determining the total amount?

19 THE COURT: With a hypothetical, are the invoices
02:42 20 already in evidence?

21 MR. SALANTRIE: Yes.

22 THE COURT: Why don't you just put the hypothetical
23 to the witness? The jury knows what's in evidence. So go
24 ahead and say to her, if such-and-such is the case, and go to
02:42 25 your question, just so we can understand your question.

1 **BY MR. SALANTRIE:**

2 Q. Let me show you what's been marked Government Exhibit
3 1.29 A. 1.29 A, do you see that?

4 A. **Okay.**

02:42 5 Q. This is a Spacios Design QuickBooks report.

6 **THE COURT:** What is the question that you're
7 putting to the witness, if you would? What are you asking?

8 **MR. SALANTRIE:** Do those invoices add up to
9 \$805,000?

02:43 10 **THE COURT:** Okay. So if that is the case, what is
11 the question you're putting to the witness?

12 He's asking you to assume that we now have invoices
13 in evidence that Spacios invoiced 800,000, whatever the
14 figure is.

02:43 15 So what is the question you're asking the witness?

16 **BY MR. SALANTRIE:**

17 Q. If that's in evidence and a fact, then you would agree
18 that \$805,000 was spent by JCS to build the virtual concierge
19 machines?

02:43 20 A. **Well, that's only assuming that JCS paid the invoices**
21 **that Spacios submitted to them.**

22 Q. You don't know if they were paid or not?

23 A. **I don't.**

24 Q. You do have -- you do have information from the records
02:43 25 you have reviewed that JCS paid \$1.157 million for electronic

1 equipment, electronics equipment, correct?

2 A. That they paid 1.1 million -- the \$1.1 million to A&K for
3 purchase of equipment, that's correct.

4 Q. And that adds up to approximately 2 million dollars,
5 correct?

6 A. Oh, do you mean to Spacios?

7 Q. Spacios and electronics.

8 A. Assuming it was all for electronic equipment, the math is
9 close, yes.

02:44 10 MR. SALANTRIE: Thank you. No further questions.

11 THE COURT: Thank you, Mr. Salantrie.

12 Let's go back to the Government for redirect.

13 MR. SALANTRIE: Reserve my motion.

14 THE COURT: Yes, indeed.

02:44 15 MR. SALANTRIE: Thank you.

16 MS. COHEN: Your Honor, could I have one second
17 with Mr. Salantrie?

18 THE COURT: Yes, of course.

19 MS. COHEN: Thank you, Your Honor. I appreciate
02:45 20 that.

21 The first thing I'd like to do is move into
22 evidence what has been marked for identification as
23 Government's Exhibit 1.30 pursuant to the stipulation
24 previously entered.

02:45 25 THE COURT: Would there be any objection to the

1 receipt of Government's Exhibit marked 1.30? Well, no, wait
2 a minute. My notes indicate that Government's 1.30 -- excuse
3 me, that's 130. This is 1.30?

4 MS. COHEN: Yes, Your Honor.

02:45 5 THE COURT: Hold on just a second, if you would.

6 MS. COHEN: It's page 3, row 59.

7 THE COURT: Thank you. Right. Is there any
8 objection to the receipt of Government's Exhibit 1.30.

9 MR. SALANTRIE: No, Judge. We all signed a
02:46 10 stipulation.

11 THE COURT: Received in evidence without objection
12 and that may be shown to the jury.

13 (Thereupon, the aforementioned exhibit was admitted.)

14

15 **REDIRECT EXAMINATION**

16 BY MS. COHEN:

17 Q. This indicates an application for a fictitious -- for
18 registration of a fictitious name, and it gives a
19 registration number relating to the fictitious name A&K
02:46 20 Electronic Solutions located at 3001 Southwest Longleaf
21 Court, Port St. Lucie, Florida 34953, indicating the owner of
22 the fictitious name is Hipp, Craig, A, at that same address.

23 Now is that the fictitious, the Sunbiz type record
24 you were looking at when you determined that Mr. Hipp was the
02:47 25 owner of A&K Electronic Solutions, Ms. Davis?

1 A. Yes, it was.

2 Q. Ms. Davis, did you determine that investor money
3 presented to T.B.T.I., for purchase of these machines was
4 sent to JCS?

02:47 5 A. Yes, it was.

6 MS. COHEN: That's all I have, Your Honor.

7 THE COURT: May the witness be excused?

8 MS. COHEN: She may from the Government. Thank
9 you.

02:47 10 THE COURT: All right. Ms. Davis, you may step
11 down and be excused. Thank you for coming.

12 Let's turn back to the Government and allow you to
13 call your next witness.

14
15 * * * * *

16 *(Thereupon, proceedings were held but not transcribed.)*

17 * * * * *

18
19

20 *(Thereupon, the above portion of the trial was concluded.)*

21
22

* * *

23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

3-16-2015



DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 14-CR-80081

UNITED STATES OF AMERICA,
Plaintiff

vs.

November 12, 2015

JOSEPH SIGNORE; PAUL LEWIS
SCHUMACK, II; LAURA
GRANDE-SIGNORE,
Defendants.

EXCERPT OF TRIAL TESTIMONY OF MELISSA DAVIS

BEFORE THE HONORABLE **DANIEL T.K. HURLEY,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:
UNITED STATES OF
AMERICA

STEPHEN CARLTON, AUSA
ELLEN COHEN, AUSA
United States Attorney's Office
500 South Australian Avenue Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Stephen.carlton@usdoj.gov
Ellen.cohen@usdoj.gov

FOR THE DEFENDANT:
JOSEPH SIGNORE

MICHAEL SALNICK, ESQ
JACK FUCHS, ESQ
Salnick Fuchs Bertisch PA
1645 Palm Beach Lakes Blvd Suite 1000
West Palm Beach, FL 33401
(561) 471-1000
Msalnick@sfblaw.net
Jfuchs@sfblaw.net.

FOR THE DEFENDANT:
PAUL LEWIS SCHUMACK,
II

ANTHONY J. NATALE, AFPD
KRISTY R. MILITELLO, AFPD
Federal Public Defender's Office
150 W Flagler Street, Suite 1500
Miami, FL 33131
(305) 533-4246
Anthony_natale@fd.org



1 FOR THE DEFENDANT: IAN J. GOLDSTEIN, ESQ.
LAURA GRANDE-SIGNORE Goldstein and Jette PA
2 500 South Australian Avenue Suite 720
3 West Palm Beach, FL 33401
4 (561) 659-0202
Ijj@goldsteinjette.com

5 REPORTED BY: GIZELLA BAAN-PROULX, RPR, FCRR
6 United States Court Reporter
400 North Miami Avenue, Suite 8S32
7 Miami FL 33128
(305) 523-5294
8 gizella_baan-proulx@flsd.uscourts.gov

9
10 I N D E X

11	Witness	Direct	Cross	Redirect	Recross
12	MELISSA DAVIS	3			

13
14
15 G O V E R N M E N T E X H I B I T S

16	Exhibit	Received	Admitted
17	230A	19	20
18	230B	19	20
19	230C	19	20
20	230D	19	20
21	230E	19	20

22
23
24 D E F E N S E E X H I B I T S

25 (None)

1 P R O C E E D I N G S

2 *(The following proceedings were held in open court.)*

3 * * * * *

4 *(Thereupon, proceedings were held but not transcribed.)*

5 * * * * *

6 Thereupon,

7 **MELISSA DAVIS,**

8 having been duly sworn by the Court, testified as follows:.

9 **THE WITNESS:** Yes, I do.

10 **THE COURT:** And you may lower your hand. By the way,
11 don't hesitate to adjust that chair if you need to. I know
12 you're trying to get space and everything, but we'll work that
13 out.

14 I want to make sure, though, that the jurors can hear
15 you. Would you please begin by introducing yourself to the
16 members of our jury? Would you tell the jurors your full name
17 and would you please spell your last name for our court
18 reporter?

19 **THE WITNESS:** Yes. My name is Amanda Melissa Davis,
20 D-A-V-I-S.

21 **THE COURT:** Thank you, ma'am. You may proceed.

22

23 **DIRECT EXAMINATION**

24 **BY MS. COHEN:**

25 Q. Good afternoon.

1 A. **Good afternoon.**

2 Q. How are you employed generally?

3 A. **I'm a certified public accountant and I'm a partner in the**
4 **firm Kapila Mukamal.**

5 Q. I'm going to talk about your background a little bit, if we
6 could. When did you -- did you go to university?

7 A. **Yes. I went to Florida Atlantic University.**

8 Q. And did you graduate from Florida Atlantic University?

9 A. **Yes.**

10 Q. And what year were you graduated?

11 A. **I believe it was 2001.**

12 Q. Did you have a particular degree you were graduated with?

13 A. **Yes, I obtained a bachelor's of business administration and**
14 **accounting.**

15 Q. Did your education stop at that time or did it continue on?

16 A. **No. It continued. I took some additional courses so that**
17 **I could sit for the certified public accounting exam in the**
18 **State of Florida.**

19 Q. What is a certified public accountant? What does that
20 consist of to get that certified public exam?

21 A. **I believe it was 20 extra credit hours of graduate level**
22 **courses in accounting-related material.**

23 Q. Thereafter, to become a certified public accountant in
24 addition to those additional courses, are there other
25 requirements?

- 1 A. **I had to take a test.**
- 2 Q. This test was a one day test, a two day test?
- 3 A. **I believe it was two days.**
- 4 Q. And did you successfully pass that?
- 5 A. **Yes.**
- 6 Q. As a result of that, you attained what license?
- 7 A. **I'm a certified public accountant.**
- 8 Q. Is that licensed only in Florida or are you licensed
- 9 elsewhere?
- 10 A. **Just in Florida.**
- 11 Q. How long have you had that certification?
- 12 A. **Since 2002.**
- 13 Q. In addition to your being a certified public accountant,
- 14 have you been certified in any other areas?
- 15 A. **Yes. I'm a certified fraud examiner and a certified**
- 16 **insolvency restructuring advisor.**
- 17 Q. What is a certified fraud examiner?
- 18 A. **It's a qualification for financial and other professionals**
- 19 **in the fraud industry. I have -- I take continuing**
- 20 **professional education classes each year in the area of fraud.**
- 21 Q. So did you have to take courses before you could take this
- 22 examination?
- 23 A. **Yes. There were several courses that I had to take before**
- 24 **in order to prepare for the certified fraud examination.**
- 25 Q. And did you successfully pass that particular exam?

1 A. Yes, I did.

2 Q. What year did you become a certified fraud examiner?

3 A. I believe that it was in 2005.

4 Q. Now, in addition to that you said you were a certified
5 insolvency and restructuring advisor?

6 A. That's correct.

7 Q. Were there additional courses that you had to take to be a
8 certified insolvency and restructuring advisor?

9 A. Yes. There is a three part exam where I had to attend
10 classes for two days and then take an exam three different
11 times.

12 Q. What year did you attain that certification?

13 A. I believe it was in 2004.

14 Q. Now, as a result of these various tests, have you been
15 concentrating your practice in a particular type of work?

16 A. Yes. I concentrate my practice in forensic accounting,
17 fraud investigations, and bankruptcy and insolvency projects.

18 Q. In that regard, have you previously testified before courts
19 in this country as part of your work?

20 A. Yes, I have.

21 Q. And just generally, how many different courts have you
22 testified before?

23 A. I've testified in federal court in a trial and several
24 different types of hearings. I have testified in state court
25 and hearings related to forensic accounting issues, and I've

1 testified by deposition numerous times.

2 Q. And just so we're clear, when we talk about forensic
3 accounting, what are you generally talking about?

4 A. It's -- forensic accounting is a type of investigative,
5 financial investigative skills and we generally use our skills
6 to trace money and assets and reconstruct complex financial
7 transactions.

8 Q. You have been doing that kind of work for how long?

9 A. I've been doing that kind of work since I became a CPA in
10 2002.

11 Q. How long have you been working for Kapila -- and I always
12 say it wrong -- Mukamal?

13 A. Mukamal. Kapila Mukamal was just formed in 2014. Prior to
14 that our firm was called Kapila & Company, and I was there
15 since 1998.

16 Q. And what position do you hold with that firm?

17 A. I'm a partner.

18 Q. How long have you been a partner --

19 A. Since --

20 Q. -- approximately?

21 A. I would say probably eight years.

22 MS. COHEN: Your Honor, at this time the Government
23 offers Ms. Davis as an expert in forensic accounting.

24 THE COURT: Would counsel like to cross-examine?

25 MR. NATALE: No objection.

1 **MR. FUCHS:** No objection.

2 **MR. GOLDSTEIN:** No objection.

3 **THE COURT:** Ladies and gentlemen, I want you to know,
4 and you've probably noticed this, most of the witnesses who
5 have come and testified, they have been limited to tell us what
6 they say they saw or what they say they heard. And we call a
7 witness like that a fact witness. Fact witness.

8 There is another category of witnesses and that is
9 somebody who has had some special training and experience, for
10 instance, in the field of certified public accounting. That
11 person can come to court if they're qualified and they're
12 allowed to give you their opinion.

13 So the difference between an opinion as opposed to
14 someone saying, this is what I saw, this is what I heard. And
15 the difference, of course, is just like a fact witness, it's up
16 to you to decide whether to accept and rely upon the expert's
17 opinion.

18 So with that, Ms. Davis is able to testify as an
19 expert in the field of forensic accounting.

20 Ms. Cohen, you may proceed.

21 **MS. COHEN:** Thank you, Your Honor.

22 **BY MS. COHEN:**

23 Q. Now, are you familiar with companies known as JCS
24 Enterprises and JCS Enterprises Services, Incorporated?

25 A. Yes.

1 Q. Are you familiar with company called TBTI, Incorporated?

2 A. Yes.

3 Q. Are you familiar with a company called My Gee Bo,

4 Incorporated?

5 A. Yes.

6 Q. Are you familiar with a company called JOLA, Incorporated?

7 A. Yes.

8 Q. How about a company called PSCS, Incorporated?

9 A. Yes.

10 Q. And I'm sure I'll think of some words as we go along, but

11 how is it you generally became familiar with these companies?

12 A. My firm was retained by the receiver, Mr. Sallah, in, I

13 believe it was, April of 2014 when he was appointed as the

14 receiver for JCS and TBTI.

15 Q. Now, in that regard as part of your engagement did you

16 receive certain kinds of records to review as part of an

17 engagement to conduct forensic accounting?

18 A. Yes. We did. Mr. Sallah specifically engaged my firm to

19 prepare an accounting and a reconstruction of the bank records

20 and the bank activity of JCS and TBTI and other related

21 entities.

22 Q. Did it have a beginning date and ending date generally for

23 you to do this reconstruction? In other words, the time period

24 you were to look at for these companies?

25 A. Well, not initially but we determined at some point in time

1 that the beginning date of when this financial activity began
2 to occur was in approximately December 2011.

3 Q. And your end date for your reconstructive purposes was
4 what?

5 A. Was the date of the receivership appointment, which I
6 believe it was in April of 2014.

7 Q. And so once he took over, you weren't looking at anything
8 beyond that?

9 A. That's correct.

10 Q. Now, in that regard, what kinds of items did you utilize --
11 well, first let me take a step back.

12 You've used the term bank reconstruction, I believe.

13 Can you explain to us what that means?

14 A. Yes. A bank reconstruction is a type of work product that
15 my firm prepares and it's essentially a database that contains
16 all of the transactions that occurred in an entity's bank
17 accounts.

18 We put them into a database so that we can manipulate
19 the data, sort the data, subtotal the data and make summary
20 charts so that we can share information with the receiver and
21 other parties who are interested in understanding what
22 happened.

23 Q. Now when you say manipulate, you're not talking about
24 changing the data, are you?

25 A. No, just moving it around and subtotalling it.

1 Q. Now, in addition to bank records, did you have other kinds
2 of records that were provided to you for your review in this
3 bank reconstruction?

4 A. Well, the bank records consist of bank statements,
5 cancelled checks and other supporting documentation such as
6 copies of deposit slips and things of that nature.

7 We also reviewed statements from the credit card
8 merchant account companies. JCS had some merchant accounts
9 where investors were using credit cards to make investments
10 with JCS, so we had data from the merchant companies that we
11 reviewed.

12 We had access to the accounting records of JCS and
13 TBTI. We also reviewed the investor files. And I believe that
14 I have a complete list that I can walk through. But that's
15 generally what we looked at, are the financial records.

16 Q. Now I assume you did not do this for free.

17 A. No.

18 Q. Has your firm been paid for this activity of doing the
19 accounting?

20 A. Yes.

21 Q. And in addition to the receiver, were you retained by
22 another organization to also provide expert testimony?

23 A. Yes. I was retained by the United States Department of
24 Justice. We have a separate engagement for this particular
25 matter.

1 Q. And are you using the same information for both the
2 receiver's engagement as well as the United States Attorney's
3 engagement?

4 A. Yes. We're using our database, our bank reconstruction for
5 this engagement as well.

6 Q. And generally, because it's always of interest, can you
7 give us an idea of how much you've been paid so far for the
8 work that you've done for the receiver and for the United
9 States?

10 A. For the receiver, our -- the fees that we have been paid
11 for is approximately \$390,000, and for the Government's case
12 for this engagement, I'm not exactly sure about the amount we
13 have been paid for, but I know we have incurred approximately
14 \$20,000 in fees and we have been paid a portion of that. I
15 think it's about \$15,000.

16 Q. Have you -- by the way, this work that you did, do you do
17 it all yourself or do you have others that assist you?

18 A. There are others that assist me.

19 Q. And so when you talk about how much has been paid, is that
20 for everybody's work on this case?

21 A. Yes, that's for everyone in my firm, all of the -- not just
22 the bank reconstruction that we prepared, but there's a lot of
23 other tasks that the receiver turned to our firm to help him
24 with, including just taking over the business when he was
25 initially appointed, packing up the records, helping him

1 marshal assets and learn about what assets were available. We
2 helped him with tax filing requirements, and we're continuing
3 to help with other litigation support matters.

4 **THE COURT:** Ms. Cohen, if I might, I know the jury --
5 and because we have talked about this before and other
6 witnesses have referred to this -- I know the jury understands
7 that a receiver was, in fact, appointed. But I want to make
8 sure the jury understands that you must not -- that fact by
9 itself, you must not consider that fact in any way in deciding
10 whether the Government did or did not prove the charges in this
11 case.

12 The existence of the receiver may be relevant to other
13 things, to a defense or something else, but the mere fact that
14 a receiver was appointed, and we'll hear more of it because,
15 obviously, Ms. Davis, in talking about who she was retained by,
16 at least initially, we know it was the receiver. But the jury
17 must not in any way infer anything from the appointment of the
18 receiver in terms of proof in this case. It's not entitled to
19 any evidentiary weight at all. Okay?

20 So with that, let's go ahead.

21 **MS. COHEN:** Thank you, Your Honor.

22 **BY MS. COHEN:**

23 Q. At this point, let me ask you about a couple of specific
24 types of things and whether or not you examined them in
25 addition to what you've listed.

1 You've talked about bank accounts. When you were
2 talking about the bank accounts, did you also look at who the
3 signatories were on those bank accounts?

4 A. **Yes. We do keep track of that information, yes.**

5 Q. You indicated charge accounts. Were you looking at not
6 only the total bill but who was utilizing the charge accounts?

7 A. **For the credit card statements, I believe that they do
8 contain information regarding who was making the charges, yes.**

9 Q. Now, in addition to that, are you familiar with the term
10 merchant account?

11 A. **Yes.**

12 Q. What do you understand merchant account is?

13 A. **A merchant account is an account that processes credit card
14 transactions on behalf of an entity.**

15 Q. And in this case, was there a merchant account that you
16 looked at in regards to what was going on financially in this
17 case?

18 A. **Yes. There were several merchant accounts.**

19 Q. And do you recall the names of those?

20 A. **One of them was with First Data. I believe there were more
21 than one account with First Data, maybe two or three. And then
22 there was also one with SignaPay, and we recently just learned
23 very recently that there was another merchant account but I
24 don't know the name of the merchant. But there were several
25 merchant accounts, yes.**

1 Q. Are you familiar with the term gateway account?

2 A. Yes. Gateway was a database that was available to JCS, an
3 online database that they could use to go online and look at
4 the various credit card transactions that their merchants were
5 processing.

6 Q. Is there a specific company that they utilize for that?

7 A. I think it was called NMI Gateway.

8 Q. Now, you indicated that there were investor files that you
9 utilized?

10 A. Yes.

11 Q. These investor files that you utilized, were they from one
12 company or more than one company?

13 A. They were investor files turned over to the receiver by
14 both JCS and TBTI.

15 Q. And with those investor files that were turned over, what
16 did you do with those?

17 A. We reviewed the information contained in the investor files
18 and we incorporated certain information into our bank
19 reconstruction database so that we could keep track of
20 transactions by investor.

21 Q. Just generally, what kind of information were you gleaning
22 from these investor files?

23 A. We were looking to see which entity the investor contracted
24 with, either TBTI or JCS. We also looked to see a number of
25 machines that the investor purchased and we were initially

1 starting to compare what was in the investor contracts with
2 what was in the bank records.

3 Q. And were you looking at how much they actually paid in per
4 the investor files?

5 A. Well, we obtained that information from the bank records.

6 Q. Now, while you were reviewing these records, did you look
7 for advertising records?

8 A. Yes.

9 Q. And what kind of things were you looking through to find
10 records of advertising?

11 A. Well, we have always looked for the advertising revenue
12 within the bank records and then as part of that, a part of
13 that exercise, while reviewing all of the records of JCS and
14 TBTI, we came across files that contained advertising contracts
15 within the file.

16 Q. While you were doing this work, did you look for locations,
17 that is, where the VCMs, the machines were actually placed?

18 A. I've seen information about lists of machines that were
19 placed, but we did not focus on trying to determine where all
20 the machines were placed.

21 Q. Did you receive -- are you familiar with QuickBooks?

22 A. Yes.

23 Q. What is QuickBooks?

24 A. QuickBooks is a general ledger accounting software.

25 Q. Did you receive any QuickBook materials from either TBTI or

1 JCS?

2 A. Yes, there was a file for each entity.

3 Q. And what kind of -- generally, what kind of information is
4 included in that?

5 A. TBTI's QuickBooks contained its general ledger and I think
6 they regularly utilized QuickBooks to prepare all of their
7 accounting and write all of their checks, that kind of thing.

8 JCS's QuickBooks file did not appear to have been
9 complete. I'm not sure that they ever used QuickBooks on a
10 regular basis for any reason.

11 Q. So for either company, did you rely on what was in the
12 QuickBooks?

13 A. We definitely used TBTI's QuickBooks as a starting point
14 because there was a lot of transactions, thousands and
15 thousands of transactions within the TBTI bank record. So we
16 used the QuickBooks as a starting point but we then
17 substantiated everything with the bank records.

18 Q. How about JCS, did you use their QuickBooks?

19 A. No.

20 Q. Now, were there check registers provided to you from any of
21 these companies that we have talked about?

22 A. JCS used a software, I believe it was called Checksoft to
23 write checks, to prepare checks and we did obtain an electronic
24 check register from JCS.

25 Q. Did you utilize that and rely upon it in any way?

1 A. As we did with the TBTI QuickBooks in the very early stages
2 of the case, that's what we started with in order to get a
3 quick idea of what money was coming in and out of JCS. But
4 what we learned was, and that particular software didn't keep
5 track of money coming in or deposits, it only kept track of
6 checks that were being written and it didn't contain any
7 information about wire transfers.

8 So we ended up on relying on all of the bank records
9 for that, for JCS as well.

10 Q. In regards to the checks that were written out that were in
11 that particular check register for JCS that we just talked
12 about, was there a memo area that would have descriptions of
13 what checks were for?

14 A. Yes, there was.

15 Q. And did you include that information in your
16 reconstruction?

17 A. Yes, we did.

18 Q. Something that you relied upon in terms of that, just
19 putting that in for whatever it was worth?

20 A. That's correct.

21 Q. Did you also look at the Florida Secretary of State,
22 Department of Corporations' website, otherwise known as Sunbiz?

23 A. Yes, we did.

24 Q. Was that part of what you were looking at to help you do
25 this work?

1 A. Yes, to determine who the people involved with the entities
2 were, yes.

3 Q. We have been talking about bank reconstruction. And once
4 you got all of this information, what do you do with it all?

5 A. Well, it depends on, you know, what party, what kind of
6 information parties are seeking, and in this particular
7 instance the purpose of my firm preparing the bank
8 reconstruction and conducting the forensic accounting analysis
9 that we did, was because the receiver requested us to determine
10 whether or not JCS and TBTI had operated a Ponzi scheme.

11 Q. And in that regard, did you eventually write a report?

12 A. Yes, I did.

13 Q. In relationship to that report, and we're going to get into
14 some of that information -- did you create some tables that
15 would help us understand the work that you did?

16 A. Yes.

17 Q. I'm going to show you several items now, and I'm just going
18 to ask you if you recognize these and if you either
19 participated in or actually created these documents yourself or
20 they were created under your direction.

21 I've placed in front of what you has been marked for
22 identification as Exhibit 230 A through E.

23 (Thereupon, the exhibit was marked for identification.)

24 BY MS. COHEN:

25 Q. And the essence of my question, once you -- well, I told

1 you what I want to ask you.

2 A. **Yes, I did prepare these charts.**

3 Q. And are these charts related to the work that you have done
4 in forensic accounting, meaning the bank reconstruction and the
5 various items that you looked at in regards to this case?

6 A. **Yes. These charts summarize certain information from the
7 bank reconstruction.**

8 Q. And did you create these charts as part of your opinion of
9 what had happened as you completed your bank reconstruction
10 efforts?

11 A. **Yes.**

12 **MS. COHEN:** Your Honor, at this time the Government
13 would move admission what has been marked as Exhibit 230 A
14 through E, inclusive.

15 **THE COURT:** Would there be any objection?

16 **MR. NATALE:** No objection.

17 **THE COURT:** Government's Exhibit 230 A through E.
18 Each is received into evidence without objection.

19 (Thereupon, the exhibit was admitted into evidence.)

20 **MS. COHEN:** Your Honor, if I could press the courtroom
21 marshal into service, I have a copy of the chart for each -- of
22 these charts for each of the jurors.

23 **THE COURT:** Uh-huh. (Nodding).

24 **THE COURT SECURITY OFFICER:** Yes, sir. (Complies).

25 **THE COURT:** Thank you, Mr. Marshal. So each juror

1 should have five copies?

2 MS. COHEN: Yes. Five different documents.

3 THE COURT: Hold on a minute. Make sure everybody
4 gets what they need. A through E.

5 MS. COHEN: I believe there should be more than enough
6 there.

7 THE COURT: Is everybody all set now? When you're
8 ready, you may proceed.

9 BY MS. COHEN:

10 Q. All right. Ms. Davis, we're going to put on our electronic
11 presentation system what has now been admitted as Government's
12 Exhibit 230 A.

13 And in essence, just if you could just give us a
14 general overview of what it is you're talking about and then
15 we'll get to the specifics.

16 A. Okay. This table is a summary of the bank reconstruction
17 for JCS, TBTI, and Gee Bo, the bank reconstruction that I've
18 been talking about today, and it summarizes into different
19 categories the sources and uses of cash to each of those
20 entities on a combined basis.

21 Q. And when we look at this, in each of the columns were you
22 indicating something different?

23 A. Yes.

24 Q. So the first column was to indicate what?

25 A. The category of the transactions.

- 1 Q. The second column was to indicate what?
- 2 A. **Sources of funds or deposits into the bank accounts.**
- 3 Q. So these numerical figures indicate dollars?
- 4 A. **That's correct.**
- 5 Q. The third column is for what purpose?
- 6 A. **It's a percentage of the total.**
- 7 Q. And then the fourth column is what?
- 8 A. **Uses of cash or checks or wire transfers out of the bank**
- 9 **accounts.**
- 10 Q. And the fifth column?
- 11 A. **A percentage of total of uses.**
- 12 Q. And the final column?
- 13 A. **The final column is the difference between the sources and**
- 14 **the uses.**
- 15 Q. So starting on the first row, you are indicating what kind
- 16 of information?
- 17 A. **That on a combined basis JCS and TBTI received 80.7 million**
- 18 **dollars from investors.**
- 19 Q. And that is based upon what kind of information that you
- 20 were looking at?
- 21 A. **That's based upon our bank reconstruction which was derived**
- 22 **using the bank records and other documents that we have spoken**
- 23 **about today.**
- 24 Q. Now, that indicates how much of their income, if you will?
- 25 A. **81.42 percent.**

1 Q. And then the next column, what were you indicating?

2 A. That investors were paid 49.7 million dollars.

3 Q. Almost 50 million dollars?

4 A. Yes.

5 Q. And that indicates what percentage of the monies that were
6 taken in going out to investors?

7 A. Correct.

8 Q. And then you have a net figure here that's how much?

9 A. 30.9 million dollars.

10 Q. And what do you mean by net when you say that figure of
11 30.9 million dollars?

12 A. That's the difference on a global basis, the difference
13 between how much money JCS and TBTI received from investors
14 versus how much they paid out to investors.

15 Q. Now, the next row says ATM business. What were you
16 referring to when you said ATM business?

17 A. TBTI had a separate ATM business that it had been involved
18 in prior to the virtual concierge machine project. And that
19 line item represents the cash that came in and went out of
20 TBTI's bank accounts during this period related to the ATM
21 business.

22 Q. So were you accounting for all of the cash that had come
23 into TBTI regardless of whether it was from the virtual
24 concierge machines as opposed to the ATM business?

25 A. We accounted for all of the transactions, all of the cash

1 that came into TBTI, and we assigned each deposit, if you will,
2 into a category. So if it was investor funds for purchase of a
3 VCM machine, we would categorize that particular deposit into
4 the investor category, and if it was money related to the ATM
5 business, we categorized it in the ATM category.

6 Q. Just so that we're clear, when you talked about the 80.7
7 million dollars in the row above for investors, were you able
8 to tabulate that back to contracts so that that was a -- in
9 other words, you checked it in two ways, not only what the
10 deposit said but the fact that a contract existed?

11 A. We have -- yes, we verified a large majority of the
12 transactions to investor contracts, that's correct.

13 Q. And in terms of this 15.7 million that is cash involved in
14 the ATM business, how did you track that to the ATM business
15 itself?

16 A. We tracked it based on the payor. TBTI regularly received
17 deposits from a company, I believe it was the name eGlobal, and
18 another company called ATM Investors. And based on how those
19 transactions were recorded in the TBTI QuickBooks files we
20 notated that they were related to the ATM business. So that's
21 how we identified those.

22 Q. And this ended up being how much of the total that you were
23 looking at percentage-wise?

24 A. 15.9 percent.

25 Q. And then you have -- in the next column on this ATM

1 business you have a dollar figure. What is that?

2 A. TBTI was in the business of servicing ATMs and for some of
3 the ATM machines they actually replenished the cash inside the
4 machine and that's why there's such a large amount of cash
5 flowing in and out of that during this time period, because
6 when TBTI received the money from eGlobal or ATM investors,
7 there were large deposits from eGlobal and ATM investors and
8 then, subsequently, to receiving that money, TBTI would go to
9 the bank and withdraw large amounts of cash.

10 For example, the transactions were sometimes 80
11 thousand, 50 thousand, 40 thousand. They would actually go
12 into the bank and withdraw \$40,000 in cash and they would take
13 that cash and drive to the different ATM machines that they
14 were servicing and put the cash into the ATM machines.

15 Q. And as a result, you were able to track how much of the
16 money was going to the replenishment of those ATM machines?

17 A. Based on the reconstruction, it's 15.6 million dollars of
18 cash withdrawals that we have assumed and allocated to be ATM
19 business related.

20 Q. And as a result, you netted how much as actually being
21 left?

22 A. \$172,048.

23 Q. Now, would that be considered profit on the ATM business?

24 A. I wouldn't necessarily label it as profit, but it's the
25 difference between what we saw coming in and going out.

1 Q. Now, the next item, the next row is what?

2 A. **The next row represents payments received from or paid to**
3 **what we call insiders and related parties.**

4 Q. And did you have a list of those that we'll go over later?

5 A. **Yes, we do.**

6 Q. And in this particular column, how much do you indicate
7 that being a source for?

8 A. **It's about 1.1 million dollars.**

9 Q. And how much was spent for that line item?

10 A. **11.8 million dollars.**

11 Q. So when you netted it out in terms of the insider and
12 related parties, what was the net?

13 A. **10.7 million dollars out.**

14 Q. Negative?

15 A. **Yes.**

16 Q. The next row is related to what?

17 A. **What we consider to be operation and facilities type**
18 **expenses.**

19 Q. Those would be what kind of things, generally?

20 A. **Advertising, rent, you know, office supplies, telephone,**
21 **utilities, that kind of thing.**

22 Q. Is this incoming monies for advertisers paying to be on
23 VCMs or something else?

24 A. **No, these are other things. The primary amount that's**
25 **included within this operating facilities number, if I recall**

1 correctly, is there was a refund received. JCS tried to hire a
2 celebrity to do some marketing for them and they ended up, I
3 guess, cancelling the contract or whatever happened, and that
4 celebrity ended up refunding that money and I think that might
5 have 100,000 or \$200,000. That's primarily what that in-flow
6 was.

7 Q. But how much was actually used on this line item?

8 A. **8.5 million dollars.**

9 Q. So the net result was what?

10 A. **8.1 million dollars used.**

11 Q. You have an item that's called commissions. What were you
12 considering commissions for this line item?

13 A. **TBTI and JCS paid various parties commissions for selling
14 the VCM machines and those transactions are commissions.**

15 Q. Was there any in-flow of money from commissions?

16 A. **No.**

17 Q. Was there an outflow of money from commissions?

18 A. **Yes.**

19 Q. How much?

20 A. **6.4 million.**

21 Q. The next item appears to be credit cards. What are you
22 referring to here?

23 A. **JCS and TBTI somewhat, but primarily JCS, used credit cards
24 to charge -- use credit cards and then paid those credit cards
25 from the business bank accounts.**

1 Q. And is there any in-flow of money on this particular
2 account as to credit cards?

3 A. **No.**

4 Q. And the outflow was how much?

5 A. **2.1 million dollars.**

6 Q. You have an item here that says, "Further investigation
7 required." What are you relating here?

8 A. **Those are transactions where either we're missing the
9 supporting documentation from the bank or we have the
10 supporting documentation but we just don't know what the
11 transaction relates to so we haven't been able to put it in a
12 specific category.**

13 Q. And that's how much money?

14 A. **\$90,000 going out.**

15 Q. And just so we're clear on this, that represents what
16 percentage of the total used funds?

17 A. **.09 percent.**

18 Q. Your next item says, "Real estate and rent related." What
19 are you relating here?

20 A. **Those are transactions that were exactly what they say,
21 real estate related or rent related. JCS, for example, paid
22 rent for their office and that's where we categorized these
23 transactions.**

24 Q. And you have an in-flow of money here. Do you recall what
25 that came from?

1 A. I don't recall, but it's likely a refund of some sort.

2 Q. And then you have an outflow. How much is that?

3 A. \$461,000.

4 Q. You also indicate professional fees on the next line. Was
5 there any in-flow for the professional fees?

6 A. No.

7 Q. And generally, when you talk about professional fees,
8 you're talking about what kinds of things?

9 A. Legal fees and accounting fees, things of that nature.

10 Q. And how much was the outflow for that?

11 A. \$435,657.

12 Q. Just so we're clear, is this both for JCS, and TBTI, as
13 well as Gee Bo?

14 A. That's correct.

15 Q. Now the next item is, "Gee Bo territory purchases." What
16 is that?

17 A. As a result, JCS had formed an entity known as My Gee Bo
18 and they were selling -- it was supposed to be some sort of app
19 that you would use on a phone, and they were selling what they
20 were labeling as territories, for example, geographic
21 territories to people so that they could get in on this app
22 early and they would, I guess, have some sort of ownership
23 interest in the app or the territory or whatever it was.

24 So it was just money coming in from essentially
25 investors who were investing in these Gee Bo territories.

1 Q. Well, how much do you show here as an in-flow?

2 A. One million, 84 thousand.

3 Q. And of that one million, 84 thousand, was any of that --
4 did you account for any of that from the actual usage of the
5 app?

6 A. No. I don't think the app was ever used or finalized or
7 operational.

8 Q. And then we see an outflow of 260 thousand. What was that?

9 A. That was money that went back to the parties that had
10 purchased the territories. I believe some of them had
11 requested refunds and those people were given their money back.

12 Q. And so you ended up with a net effect of how much?

13 A. \$824,000.

14 Q. Last item on this grouping of type is what?

15 A. Advertising revenue.

16 Q. When you say revenue, be very specific as to what you mean,
17 please.

18 A. JCS -- the VCM business model was premised on the fact that
19 the VCM machines would be placed in various places, such as
20 hospitals or sporting facilities, that kind of thing, and the
21 machines would generate revenue based on advertisements that
22 were placed on the machines.

23 So I think the theory was that the user of the machine
24 would walk up to use the machine and they would see the
25 business's ad on the screen of the machine, and those ads are

1 supposed to be what generated the profits in this scheme, the
2 profits which were to be paid back to the investors.

3 And we noted within, as I mentioned before, the JCS
4 files that were turned over to the receiver, we found service
5 contracts with advertisers. And these in-flows of money
6 represent the sources of advertising revenue that we found
7 within the bank record of JCS and TBTI.

8 Q. So the total paid advertisements that you found amounted to
9 how much money?

10 A. \$21,233.

11 Q. And was that over the entire life of this program?

12 A. Yes.

13 Q. So from all the sources you had, you've got -- how much did
14 you find came in?

15 A. 99 million dollars.

16 Q. And how much went out?

17 A. 95 million dollars.

18 Q. And the net was what?

19 A. 3.5 million dollars.

20 Q. Below that you have beginning balance. What did that
21 relate to?

22 A. That would be -- we started our analysis as of December
23 2011 which is when we saw the first VCM machine being sold. So
24 any money that was in any of the JCS or TBTI bank accounts
25 prior to that date, that represents the total amount of money

1 in the bank accounts prior to December of 2011.

2 Q. Which was how much?

3 A. \$41,166.

4 Q. So the total amount that was left after all of that was how
5 much?

6 A. 3.6 million dollars.

7 Q. Now, I just want to ask you a few more questions about that
8 advertising area. Did you look for revenues from the sale of
9 coupons or banner ads?

10 A. I think that would be incorporated within the advertising
11 revenue.

12 Q. How about wrappings on the machines, like outside
13 advertising on the machines?

14 A. I didn't see anything of that nature.

15 Q. Did you look to see if there was any money coming in from
16 video ads and promotions that way?

17 A. We did notice -- first of all, we looked at every
18 transaction, you know. So we looked, we examined every single
19 deposit that came into these bank accounts, and we did notate
20 or notice, I believe it was gambling, it looked to us like
21 gambling revenue that maybe was generated on some sort of
22 gambling website or something, I'm not sure.

23 It was money coming in and it was referenced as
24 gambling money and I think it came into either Gee Bo or JCS.
25 I think it was like about 15 thousand dollars. I have the

1 exact figure, but it was --

2 Q. Relatively small?

3 A. Yes, it was de minimus.

4 Q. How about, did you find anything in terms of any
5 significant monies that were derived from a national ad or
6 local ad being placed on these VCMs?

7 A. No. The largest advertising revenue that I found was from
8 BB&T Bank for \$3,500. That's within the \$21,000 of advertising
9 revenue.

10 Q. Did you note any transaction fees being brought into the
11 company from the use of their gateway or their credit card
12 accounts?

13 A. No. I mean, there were some very small, de minimis, small
14 deposits, I believe it was into the JOLA bank account for
15 something from a merchant company. I'm not even sure what it
16 was, but nothing that was of any substance in any of the bank
17 accounts.

18 Q. Let me turn to Government's Exhibit 230 B, and is this
19 another table that you provided to us to explain what you were
20 looking at?

21 A. Yes.

22 Q. And this particular table indicates what kind of
23 information, generally?

24 A. This is a summary of the investor related transactions in
25 JCS and TBTI. And the purpose of this summary was to segregate

1 the information between the two different entities, TBTI and
2 JCS.

3 So we summarized the data by in-flows and outflows
4 from the investors and to the investors, and then also by
5 method of payment.

6 Q. So in this first in-flow column, you were indicating what
7 kind of in-flow, where the in-flows were coming from?

8 A. That's correct. So these are all investor-related
9 transactions. And the first line item indicates that the total
10 amount of credit card -- funds received from investors who paid
11 by a credit card was \$17,580,585. And the columns before that
12 provide the information on a company basis.

13 Q. And the specifics as to these columns, did you derive them
14 from some specific source that you were able to say, okay, this
15 charge is TBTI, that charge is JCS?

16 A. By information in the investor files, yes.

17 Q. And so did you do that kind of detail work where you
18 determined that TBTI's investors had charged 13.6 million
19 dollars on their credit cards to invest in this program?

20 A. Correct.

21 Q. And the JCS investors used how much on the credit cards?

22 A. \$1,692,000.

23 Q. And then you have another column here, it looks like JCS/
24 TBTI. What is that indicating?

25 A. Based on our review of the investor files, some investors

1 appeared to have invested with both JCS and TBTI.

2 Q. And so you had those combined investors using how much on
3 their credit cards?

4 A. \$630,105.

5 Q. And then you have another column that says, "Other." What
6 does that mean?

7 A. These transactions are in-flows into the JCS, I believe
8 it's just JCS bank account for credit card transactions for
9 which we have not been able to link them to a specific investor
10 yet. It is an ongoing process.

11 We're continuing to work with merchant companies for
12 JCS to provide us with the information that we need in order to
13 link these specific transactions to an investor name.

14 Q. Can you say whether or not this money, this 1.6 million, is
15 any of this money the kind of money that would have come from
16 transaction fees?

17 A. No. I don't believe it is. And the reason for me saying
18 that is that we have found, based on our detailed review of the
19 investor files, credit card receipts for parties that we know
20 invested with JCS or TBTI that we have not been able to tie
21 back to our bank reconstruction and those credit card receipts
22 total 1.7 million dollars.

23 Q. And then how much was actually paid into this program by
24 way of check?

25 A. Check or perhaps wire transfer, that kind of thing,

1 **\$63,163,676.**

2 Q. And of that, approximately how much came through TBTI?

3 A. **50.4 million.**

4 Q. And through JCS?

5 A. **11.3 million.**

6 Q. And if we go to the end here, does that 80.7 million

7 balance out with what we saw in the first table?

8 A. **Yes, it does.**

9 Q. The investor income?

10 A. **That's correct.**

11 Q. Just so we're clear, the total amount that you were able to

12 track back to TBTI investors was how much?

13 A. **64 million dollars.**

14 Q. And the total amount that went from investors directly to

15 JCS was how much?

16 A. **\$13,000,000.**

17 Q. And those combined investors?

18 A. **1.6 million.**

19 Q. And so you've not been able to track how much?

20 A. **1.9 million.**

21 Q. This next area of this table involves what?

22 A. **This provides data on the number of investors for each**

23 **broken down between TBTI and JCS, and also the number of**

24 **machines that the investors purchased.**

25 Q. So when you looked at TBTI, how many investors did you come

1 up with?

2 A. **1,534.**

3 Q. And how many of those -- how many VCMs did those 1,534

4 investors purchase?

5 A. **18,570.**

6 Q. And did you do the same thing for JCS?

7 A. **Yes.**

8 Q. And how many direct investors did you find for JCS?

9 A. **280.**

10 Q. And of those -- for those 280 investors directly through

11 JCS, how many VCMs, how many virtual concierge machines, did

12 they invest in?

13 A. **3,537.**

14 Q. Have you ever heard of the Log Me In database?

15 A. **It sounds familiar.**

16 Q. A database that indicates where the machines were located?

17 A. **Yes, I have. I have heard of that.**

18 **MR. FUCHS:** Objection.

19 **THE COURT:** Wait a minute.

20 **MR. FUCHS:** Objection. Leading.

21 **THE COURT:** Sustained.

22 **BY MS. COHEN:**

23 Q. Let me go to the next area. You have an outflows area

24 here. Do you see that?

25 A. **Yes.**

1 Q. In that outflows area, what were you indicating?

2 A. **These were monies that were paid to the investors.**

3 Q. Paid in what way?

4 A. **Some investors received money back on their credit card and**
5 **other investors received a check or a wire transfer from JCS or**
6 **TBTI.**

7 Q. So when you look at this first column, how much was
8 returned by credit card to TBTI investors?

9 A. **\$114,424.**

10 Q. And how much was returned by check or some other
11 methodology?

12 A. **37.3 million dollars.**

13 Q. Were you able to determine what that money represented in
14 terms of the contracts and what this case was about?

15 A. **That money was payments to investors for their monthly**
16 **royalties, I believe is what TBTI called it.**

17 Q. And the next column is for what company?

18 A. **JCS.**

19 Q. How much went back by -- returned by credit card?

20 A. **15 thousand.**

21 Q. And how much to the investors by way of check or other?

22 A. **9.9 million dollars.**

23 Q. So they received a total of what?

24 A. **\$9,939,250.**

25 Q. And then you have the combined. Did they get any credit

1 card returns?

2 A. **No.**

3 Q. And check or wire or other returns?

4 A. **2.1 million.**

5 Q. And so when we add all this up, you also had another column
6 where you were trying to determine things?

7 A. **Yes. These are credit card or other transactions going
8 out, money that we believe went back to investors, but we
9 haven't been able to link it to a specific investor.**

10 Q. We see a total at the end here, again, of \$49,794,596.
11 Does that tie back to that first table we were looking at?

12 A. **Yes.**

13 Q. And then you have a net down here again tying back --

14 A. **Correct.**

15 Q. -- to that first table?

16 A. **Yes.**

17 Q. Now, after you've looked at these rather broad areas that
18 we have just talked about, based on your experience and your
19 expertise, did you form an opinion about what was going on with
20 these companies?

21 A. **Yes.**

22 **MR. FUCHS:** Objection. Ultimate issue if that's where
23 it's going.

24 **THE COURT:** Well, I want to be very clear about this.
25 Our witness -- let me back up for a minute. When you look at

1 the charges in this case, each of the charges alleges that a
2 particular defendant had an intent to deceive somebody.

3 In other words, if you charge fraud, one of the
4 elements of fraud is that a material misrepresentation was
5 made. In other words, a misrepresentation about something that
6 was important, and that it was made with the intent to deceive,
7 with the intent to cheat somebody out of money.

8 An expert witness is not allowed to come into court
9 and give an opinion about the mindset of a particular
10 defendant. That's for the jury to decide based on all of the
11 evidence that is presented.

12 But the expert witness is allowed to speak about
13 looking at the financial transactions, what opinion she has as
14 to what was taking place. That's different from saying what
15 was the mindset of the person who might have been involved in
16 those transactions.

17 Does everybody understand that? So I'm going to
18 overrule the objection. I'll allow the witness to testify and
19 give her opinion about what she views or what her opinion is as
20 to the movement of money but not as to the mental intent of the
21 person who might or people who might have been involved in
22 causing the movement of the money.

23 So with that, you may proceed.

24 **MS. COHEN:** Thank you.

25 **BY MS. COHEN:**

1 Q. So did you form an opinion, after looking at all this
2 information, about what appeared to you to be going on?

3 A. Yes, I did. I formed an opinion that JCS and TBTI operated
4 a Ponzi scheme.

5 MR. FUCHS: Objection.

6 THE COURT: What is the legal objection?

7 MR. FUCHS: The ultimate issue. If she wants -- can
8 we approach sidebar?

9 THE COURT: No, I don't think that's necessary. I'm
10 looking at Rule 704, subsection B, and the witness is able to
11 express an opinion about whether this constitutes a Ponzi
12 scheme. That's something the jury is going to have to decide.
13 And I think the jury understands the essence of a Ponzi scheme
14 is that money is being taken from later investors to pay
15 earlier investors. That's not talking about what is the mental
16 intent of the people responsible for moving the money.

17 So with that, I'll overrule the objection and allow
18 the witness to go forward.

19 BY MS. COHEN:

20 Q. Ms. Davis, I'd asked you to give your definition of what
21 you understand a Ponzi scheme to be.

22 A. Okay. A Ponzi scheme is a type of investment fraud. When
23 a Ponzi scheme occurs, new investor money that flows into the
24 Ponzi scheme is not used for its intended purpose. Instead,
25 it's used to pay the returns that were promised to earlier

1 investors, and that usually happens --

2 THE COURT: Excuse me. Go ahead and finish your
3 answer, I'm sorry.

4 A. That usually happens because the underlying business that's
5 supposed to generate the returns for the investors is
6 insufficient or does not exist. And so this scheme itself is
7 dependent upon new investor money to stay alive.

8 THE COURT: I want to come back one more time. Our
9 witness, the witness today, Ms. Davis, she's not able to talk
10 about what is the mental intent behind the people, whoever is
11 in charge of moving money and making financial decisions. But
12 she is able to testify as to whether this kind of a movement of
13 money constitutes, in her opinion, a Ponzi scheme.

14 But I want to be very clear because she kind of linked
15 two things together. She cannot testify whether this
16 constituted a fraud because, remember, a fraud is something
17 that has the mental intent to deceive. That's something the
18 jury is going to have to decide whether this activity
19 constitutes fraudulent activity. Was this the mental intent to
20 deceive people? Okay.

21 All she can talk about is her opinion regarding what
22 was happening with the money, was later money being used to pay
23 off earlier investors, and is that, in the language of this
24 field, referred to as a Ponzi scheme. But that does not
25 establish whether there was fraudulent intent. Okay? And

1 that's critical to all the charges.

2 Let's go ahead.

3 **MS. COHEN:** Did you want to take the afternoon break
4 at this time or go forward?

5 **THE COURT:** No, I think we probably should. We have
6 been going for a while and we probably need to take that 15-
7 minute break. So let's do that.

8 I was going to ask Mr. Foster if you would stay with
9 us for a minute because I wanted to ask you to help us make
10 sure we understood the note you sent out, okay?

11 Let me allow the remainder of the jury to step out
12 and, Ms. Davis, if you would like to step down, please feel
13 free to do that.

14 (Thereupon, the jury was escorted out of the courtroom.)

15 **THE COURT:** Ladies and gentlemen, please be seated.

16 Mr. Foster, I wanted just to ask you to take a second
17 because I haven't had a chance to talk to the lawyers about
18 your note, but they have a copy of your note. Tell me exactly
19 what the problem is and what remedy do you think that is
20 available.

21 **JUROR:** The issue is I work for a hospital and we are
22 upgrading the system as relates with radiology, the reading of
23 images. It affects patient care in a certain way.

24 **THE COURT:** Sure.

25 **JUROR:** We have a contractor on premises right now.

1 He's not familiar with the system as I am. So I've been
2 working on the days that we don't go to court here on Fridays
3 and also after hours to assist in getting this particular
4 upgrade done. That's going to require me, or the upgrade to
5 start on the 17th or the 18th morning at midnight.

6 **THE COURT:** So starting on midnight the 17th and going
7 into the morning?

8 **JUROR:** No, no. Starting on the 18th at midnight.

9 **THE COURT:** At midnight on the 18th and going into the
10 morning hours of the 19th?

11 **JUROR:** Yeah. Into the morning hours. I was going to
12 take the first couple hours, you know, going in about 11:00 and
13 work until about 2 o'clock, 3 o'clock in the morning. My
14 concern is that if I do, that we've already had some issues
15 with people --

16 **THE COURT:** No, I understand. So tell me what you
17 think is a -- what kind of an accommodation could be made that
18 would help you?

19 **JUROR:** Either I could just stay up and try to get
20 through the day and leave around noon-ish and then relax, or
21 come in later in the afternoon or whatever time you guys, after
22 lunch or whatever, and work the afternoon for the rest of the
23 day. That's the accommodations.

24 **THE COURT:** Well, thank you for that.

25 **JUROR:** Also, this is only a request. If you tell me

1 I can't, I'll go back to my bosses and say, listen, they need
2 me to stay.

3 **THE COURT:** Tell us then again, are you the one person
4 in the hospital who can do this?

5 **JUROR:** At the present time.

6 **THE COURT:** What is it, Bethesda?

7 **JUROR:** No, Boca Raton Regional.

8 **THE COURT:** Okay.

9 **JUROR:** The person that we have there is experienced
10 but not experienced with our system and that's what the concern
11 is. And the only thing that I don't want to do is leave him in
12 a situation where he can't fix what's out there.

13 **THE COURT:** No, no, no. I understand that.

14 Thank you. I appreciate that. I hear also what
15 you've said, but I'd like to be able to talk to the lawyers
16 about it and your additional words have really helped us
17 understand that.

18 Let me let you take that break.

19 **JUROR:** Don't go and yell at me now.

20 **THE COURT:** No, no.

21 (Thereupon, the juror was escorted out of the courtroom.)

22 **THE COURT:** Now does anyone want to be heard further
23 on that last objection?

24 Mr. Fuchs?

25 **MR. FUCHS:** I think the more appropriate question,

1 and, obviously, the Government can ask it any way the Court
2 will allow, is does it appear money, new money was used to pay
3 old investors as compared to her making the definition, because
4 I believe once the word Ponzi comes out of their mouth it is
5 tied directly into the intent and that's what I'm afraid that
6 the jury, when an expert says the word Ponzi, it's already
7 inferring the fraudulent intent.

8 **THE COURT:** My concern is, is that -- and she kind of
9 said it in a sentence, a Ponzi is a fraud. She kind of said
10 that, maybe not quite in those words. She cannot opine on
11 fraud. We all agree to that. But I think she can say that to
12 take money from new investors to pay old investors is what in
13 the trade is known as a Ponzi scheme.

14 Now if my instruction to the jury has separated those
15 two adequately enough, okay. If you think I need to do
16 something else, but I think she can, as you said, certainly say
17 this is what I -- is clearly happening from my analysis of the
18 numbers.

19 Whether she can go that next step to use the word
20 Ponzi, I think she can, if that's something that's in her
21 field. But I want to be careful that she doesn't called it a
22 Ponzi fraud scheme and, Ms. Davis, I think understands that.

23 **MR. FUCHS:** Judge, I believe, maybe we can get a
24 read-back, I believe she used in the same definition this is a
25 Ponzi and any fraud and she used it. Based on that, we would

1 ask for a mistrial.

2 **THE COURT:** Okay. Let me come over and hear from
3 Mr. Carlton for just a moment.

4 **MR. CARLTON:** There is a case on all fours in the 11th
5 Circuit which indicates that -- and it's United States versus
6 Long, L-O-N-G. It's found at 300 Fed. Appx. 804. And the
7 pinpoint cite is on pages 814 and 815.

8 And in that case, the Government called -- it was a
9 fraud trial involving mail and wire fraud violations of 18 --
10 alleged violations of 18 USC 371, 1341, and 1343.

11 The Government called a forensic accountant. And in
12 that case, the forensic accountant testified that the entity at
13 issue bore the hallmarks of, quote, a Ponzi scheme, end quote.
14 And described the business's financial practices, but offered
15 no conclusion as to whether or not the defendant participated
16 in these practices with the intent to defraud investors.
17 Because the statement was factual with regard to the Ponzi, and
18 not a legal conclusion, it was admissible under 704.

19 So clearly, exactly as the Court has ruled, that 11th
20 Circuit has indicated that a forensic accountant can properly
21 render an opinion under Federal Rule of Evidence 704 that the
22 way that the business was operated and an analysis of it
23 indicates it was a Ponzi scheme. And what she cannot do is
24 exactly what the Court instructed.

25 And to the extent that there -- I didn't hear anything

1 impermissible, but to the extent that there was even a word
2 that was beyond that, the Court can instruct the jury that --
3 that whether or not what was in the defendant's minds is not
4 something within her purview and she can't attest to that, but
5 what she has stated has been reviewed by the 11th Circuit in a
6 case on all fours and it is perfectly permissible under 704.

7 **THE COURT:** Anything else, Mr. Fuchs?

8 **MR. FUCHS:** Again, as the Court said and then allowed
9 her, her answer would have been that this is characteristic of
10 what's called a Ponzi, not identifying it as any fraud which I
11 believe she said.

12 **THE COURT:** I'll tell you what, I'll come back to that
13 again, because we want to separate those concepts and I think
14 we're okay and I think everybody understands that.

15 All right. Thank you. Let's take that break now.
16 Let's take a 15 minute break. So the record is clear, I'm
17 denying the motion for mistrial.

18 Let's take that 15 minute break. Court is in recess.

19 (Thereupon, a brief recess was taken.)

20 (Thereupon, the venire panel entered the courtroom.)

21 **THE COURT:** Please be seated. Ladies and gentlemen,
22 just before we broke for the midafternoon recess, we were
23 talking about this concept of a Ponzi scheme. And you remember
24 I said that there's a very significant difference between the
25 concept of fraud and simply using the term a Ponzi to describe

1 the movement of money from a later investor to pay off an
2 earlier investor.

3 I want to make sure the jury understands that the
4 issue that the jury is going to have to look at in deciding the
5 various charges or many of the charges is, first, did a
6 particular defendant participate in a fraud? Did that person
7 act with the mental intent to deceive somebody? Was a
8 statement made that was untrue and was it made with the
9 intentional purpose of deceiving somebody so they would turn
10 money over, so that's very different than simply saying, well,
11 stepping back and looking at a chart, being able to graph out
12 where the money came from and what happened to it. That's the
13 testimony that Ms. Davis is offering.

14 Now, of course it's up to you to decide whether that
15 testimony from Ms. Davis is credible and worthy of belief. But
16 as I'm saying to you, Ms. Davis cannot and is not attempting to
17 speak to what was in anybody's mind. That's what the jury's
18 going to have to decide from all of the evidence that is
19 presented. That's not something that is subject to someone's
20 opinion, an expert's opinion, okay?

21 So with that now, let's come on back and I'll turn to
22 Ms. Cohen.

23 **BY MS. COHEN:**

24 Q. Now, Ms. Davis, during the course of your doing your
25 investigation that is coming up with, for instance, the numbers

1 involved in Table 2, that's Exhibit 230 B, you indicated, I
2 believe, that the number of VCMs for TBTI was 18 --

3 A. **18,570.**

4 Q. And for JCS?

5 A. **3,537.**

6 Q. And the combined?

7 A. **440.**

8 Q. And then so you came up with a total of how many machines
9 being invested in?

10 A. **22,547.**

11 Q. And, Ms. Davis, did you look at the terms of those
12 contracts that you're discussing here in terms of these VCMs
13 and what the investors were purportedly supposed to be getting
14 back?

15 A. **Yes.**

16 Q. They were supposed to get back what per machine?

17 A. **The contracts varied, but generally they received \$300 per
18 month for a period of 36 months.**

19 Q. And so did you calculate out, based upon 22,547 machines
20 what the gross amount would be that would be required to pay
21 these investors \$300 per month per machine for 36 months?

22 A. **Yes, I did.**

23 Q. And did you come up with that figure?

24 A. **Yes, I did. I'm speaking from memory, but I believe the
25 figure was 243 million dollars.**

1 Q. Did you see 243 million dollars of revenue come in?

2 A. No.

3 Q. How much revenue from advertising did you see come into
4 this business?

5 MR. FUCHS: Objection. Asked and answered.

6 THE COURT: I'll permit it. Let's go ahead.

7 A. Approximately \$21,000.

8 BY MS. COHEN:

9 Q. Was that part of what you were looking at when you came to
10 the conclusion this was a Ponzi?

11 A. That's correct.

12 Q. Now, did you look into -- you indicated on Table 1, which
13 is Exhibit 230 A, that there was a net left of \$30,949,666 from
14 what the investors had paid in. Do you recall that?

15 A. Yes.

16 Q. Did you look into what became of that money? In other
17 words, did you look and see, okay, they had 30 million dollars
18 left, how did they use it?

19 A. Yes.

20 Q. And when you did that, what kind of things were you looking
21 at?

22 A. Well, we were -- that information is in the bank
23 reconstruction. And essentially you can see within this table
24 how the money was used.

25 If you look at the net column, you'll see that 30

1 million dollars was essentially generated from the investors
2 and was primarily used to repay insiders and related parties
3 10.7 million dollars; operations and facilities' expenses of
4 8.1 million dollars; commissions of 6.4 million dollars; and
5 credit cards of 2.1 million dollars.

6 Q. Let me ask you about this. You indicate that more than 10
7 and a half million went to insiders.

8 A. Yes.

9 Q. Did you look at how that was -- how that 10 and a half
10 million dollars was utilized by the insiders?

11 A. Yes, we did.

12 Q. And I'm putting on the ELMO, our presentation system,
13 Exhibit 230 C. Is this a table that you created to help figure
14 that out, what became of that money?

15 A. Yes. This is one of the bank reconstructions that we have
16 prepared of the PSCS bank accounts.

17 Q. And we talked earlier about you're looking at the corporate
18 records for various of these companies. Did you determine who
19 PSCS was?

20 A. Yes. This was an entity related to Paul Schumack and
21 Christine Schumack.

22 Q. And in looking at that, what are you relating in this
23 particular table?

24 A. We looked at this entity and this entity's bank's records
25 to determine how much money came from TBTI and other related

1 entities and what happened to the money.

2 Q. So your first line item here is transfer to/from TBTI.

3 What are you indicating?

4 A. That TBTI transferred 1.6 million dollars to PSCS.

5 Q. And what is this next item?

6 A. This is a transfer from an entity called WCFS to PSCS for
7 \$825,000.

8 Q. And did you determine what WCFS, Inc. was?

9 A. That is an entity that's affiliated with an individual by
10 the name of Chad Wright, who I believe is the son of Paul and
11 Christine Schumack.

12 Q. And as we go down, what is Global ATM Network, Inc.?

13 A. I believe that is a company that's related to TBTI's ATM
14 business.

15 Q. I want to skip down here to something you call purchase of
16 residence, 7725 Northwest 39th Avenue, Coconut Creek, Florida.
17 Can you tell us what it is you're reflecting there?

18 A. The \$1,495,000 was a transaction for that particular piece
19 of real estate.

20 Q. So in looking at this chart, were you looking for -- what
21 were you looking to try and describe?

22 A. The reason that I prepared this chart is because we notated
23 a transfer, I believe it was in the amount of 1.5 million
24 dollars, that initially went out of TBTI that was first
25 deposited into Paul Schumack's personal bank account and then

1 subsequently the money was transferred into PSCS, I believe it
2 was this transaction.

3 We were essentially trying to follow the money to see
4 what happened to it. And essentially what they used the 1.5
5 million dollars for was to purchase this piece of real estate
6 in Coconut Creek.

7 Q. So we're looking at this chart in general. The source of
8 the money originally is from where?

9 A. TBTI.

10 Q. And is it related to the investors we have been talking
11 about and the amounts of money that, for instance, you show on
12 Table 2 coming into TBTI?

13 A. Yes.

14 Q. And is this PSCS one of the places where the Schumacks'
15 money was sent to?

16 A. That's correct.

17 Q. And were there other places that the Schumacks' money got
18 sent to?

19 A. I don't think -- yeah, some of the money went into WCFS
20 from TBTI.

21 Q. And you indicated this purchase of the house was one of the
22 items that utilized money from that source?

23 A. That's correct.

24 Q. Fuel Food investment. What is that?

25 A. Fuel Foods is an entity and it is an entity that Paul

1 Schumack and TBTI were -- Paul Schumack was essentially
2 investing in this entity. I believe he was buying shares of
3 some sort in this particular entity called Fuel Foods.

4 Q. And did you find documents and records that supported that
5 investment?

6 A. Yes, I did.

7 Q. Was that separate or part of the TBTI/JCS activities?

8 A. The money that was invested into the Fuel Foods entity came
9 from the JCS/TBTI investment activities.

10 Q. And so in the end result, how much went into this PSCS
11 entity from the monies from these investors?

12 A. Approximately, 2.4 million dollars.

13 Q. And did they use it all?

14 A. Yes.

15 Q. Now, in addition to that, did you find other monies going
16 to things that were related to Mr. Schumack or were those all
17 contained upon this chart 230 C?

18 A. I believe there were additional transactions that I
19 identified.

20 Q. What types of transactions?

21 A. I'm just going to open my report here --

22 Q. Sure.

23 A. -- so I don't have to speak from memory.

24 MR. NATALE: Can we have a reference as to what page
25 of the report, which report?

1 A. Yes, I'm looking at the report that's dated September 3rd,
2 2015.

3 BY MS. COHEN:

4 Q. And just for clarity, had you written a report previously
5 to September 3, 2015?

6 A. Yes.

7 Q. Are there any significant changes between the two reports?

8 A. Nothing significant, no.

9 Q. The previous report was dated approximately what?

10 A. January 21st, 2015.

11 Q. Now, the changes, were those as a result of your -- what
12 were those the result of?

13 A. We continued to receive additional bank records and also
14 information from the credit card companies, so we updated our
15 bank reconstruction as we go and continued to do that regularly
16 as we received additional information.

17 Q. Before we took this side trip, I was asking you about
18 Schumack transfers. You were going to look at something in
19 your report.

20 A. I identified several different examples of transfers.

21 Q. First, can you tell us what page you are looking at?

22 A. Those are identified on page 13 of the report.

23 Q. And what did you identify, ma'am?

24 A. The first transaction we discussed, it was a 1.6 million
25 transfer for the Coconut Creek residence. I identified

1 transfers totaling approximately \$720,000 for rental -- for the
2 rental expense of an oceanfront home.

3 Q. Do you recall what town that was in?

4 A. No, I believe it's in Palm Beach County on the ocean.

5 Q. Did you figure out about how much that would have been each
6 month for rent?

7 A. That's approximately 60 thousand dollars a month for rent.

8 Q. What else did you identify?

9 A. There was an investment, \$400,000 investment in a pension
10 plan.

11 Q. Who was that pension plan for?

12 A. That was for the benefit of Paul Schumack and I believe
13 Christine Schumack.

14 Q. What else?

15 A. There was a disbursement for \$500,000 to the United States
16 Treasury to pay for the Schumacks' personal income taxes. Then
17 there was in total, approximately 1.2 million dollars was
18 transferred for the Fuel Foods investments, some of which
19 flowed through the PSCS account, some of which was paid
20 directly by TBTI or another related entity.

21 Q. And how much of this -- well, how much all together did you
22 figure out had been transferred to the benefit of the
23 Schumacks?

24 A. Just for these particular transactions, these totalled
25 approximately 4.4 million dollars.

1 Q. And of this amount of money, the approximately 4.4 million
2 that you've just discussed, how much of that came from investor
3 money in these VCMs for this passive program?

4 A. It's my opinion that primarily all of it would have come
5 from investor funds because there were no other sources of
6 revenue available to TBTI during this time period to fund 4.4
7 million dollars in disbursements.

8 Q. Now, did you, likewise, look for that kind of information
9 as relates to Joseph Signore and Laura Grande-Signore?

10 A. Yes, I did.

11 Q. And let me place on the ELM0 230 D. Do you recognize that
12 particular item?

13 A. Yes.

14 Q. And is that related to -- what is that related to?

15 A. This is, again, a summary of the bank reconstruction but
16 this bank reconstruction is for the entity JOLA, which is an
17 entity that is related to Laura Signore and Joseph Signore.

18 Q. And you found that from what kind of records was related to
19 them?

20 A. Public records from Sunbiz.

21 Q. Now, in addition to looking at what went from -- well, let
22 me step back from that.

23 The monies were going from where to where? In other
24 words, the original monies.

25 A. The monies flowed into JOLA from JCS and, in some

1 instances, TBTI as well.

2 Q. Let's talk about this particular table for a moment. The
3 original money that comes into JOLA comes from JCS. Does it
4 come from investor monies again?

5 A. Yes.

6 Q. And you indicate in your first line here for JOLA a
7 transfer to/from JCS. What are you indicating here?

8 A. That JCS transferred \$717,400 to JOLA.

9 Q. And then you have the next line, you have another
10 indication here. This reads what?

11 A. That TBTI transferred \$239,575 to JOLA.

12 Q. And did you figure out where the money came from that TBTI
13 transferred into JOLA?

14 A. That would have been derived from investor funds.

15 Q. Now, in addition to that, did you also look at where the
16 money went to?

17 A. Yes.

18 Q. We see a line here that says, "Towards purchase of personal
19 residence, 14161 64th Drive, North Palm Beach Gardens,
20 Florida." Do you see that one?

21 A. Yes, I do.

22 Q. And that was how much?

23 A. \$112,119.

24 Q. Did that come from investor funds?

25 A. Yes. That was money that came to JOLA from JCS or TBTI

1 that was derived from investor funds.

2 Q. And did you trace this through to the purchase of this
3 particular residence?

4 A. I did.

5 Q. And how did you go about doing that?

6 A. I went to the public records to the -- it's the Palm Beach
7 County Property Tax Appraisers' Office and found the
8 documentation and traced the amounts, I believe also to some
9 closing statements or wire transfer support that indicated that
10 these transactions were related to this real estate purchase.

11 Q. And did you see a deed at some point that indicated the
12 purchase of this home?

13 A. I don't think I looked at a deed, but I did notate it in
14 the Palm Beach County property tax records.

15 Q. The names of the owners?

16 A. Yes, that's correct. The names.

17 Q. And what were the names of the owners?

18 A. I believe it's Joseph and Laura Signore, but I would need
19 to look in the support to confirm.

20 Q. Well, let me just ask you while I'm thinking about it.

21 When you talked about the house in Coconut Creek in
22 relationship to the Schumacks, did you likewise look to see who
23 the house was listed in the name of?

24 A. Yes, I did.

25 Q. And that was listed in the name of who?

1 A. That was listed in the name of Paul and Christine Schumack.

2 Q. All right. And so did you -- are you able to determine
3 that this one is listed in the name of Joseph Signore and Laura
4 Grande-Signore?

5 A. Yes. Let me just double-check.

6 Q. Sure.

7 A. Yes. This says the owners are Joseph Signore and Laura
8 Signore.

9 Q. The next item that we have on the screen is, it says,
10 "Rolls Royce upgrades." Let's talk about that a little bit.

11 A. We found evidence that Joseph Signore through JCS had
12 purchased a Rolls Royce and was making payments from JOLA to
13 upgrade the Rolls Royce.

14 Q. Now, the Rolls Royce itself, did it have a cost or was it
15 free?

16 A. No. It was \$26,000.

17 Q. You say that there were upgrades to this Rolls Royce.

18 First of all, do you have a description of this Rolls Royce?

19 A. I just have the year, 1986 Rolls Royce.

20 Q. And you said there were upgrades to this Rolls Royce. How
21 much in upgrades were spent on this Rolls Royce?

22 A. \$60,500.

23 Q. Was that money from investors?

24 A. Yes, it was.

25 Q. We talked a little bit about \$112,000 plus going into a

1 personal residence. Did you find any other money going from
2 the investors that invested in JCS to that personal residence?

3 A. Yes, I did. And I'll identify those transactions. They're
4 on page 11 of the report. There was two real estate purchases
5 by the Signore, the first one totalled \$535,000 for a
6 residence, 4,400 square foot residence located in Palm Beach
7 Gardens, and there was also a purchase of a vacant parcel of
8 land in Palm Beach County for \$115,000. Both parcels were
9 titled in the name of Joseph and Laura Signore.

10 Q. Did you find those monies coming from JCS originally, and
11 thereby the investors?

12 A. Yes.

13 Q. During the course of your work on this case, did you look
14 to see how much Joseph Signore and Laura Grande-Signore
15 personally received?

16 A. Yes. Yes, we did.

17 Q. And what did you come up with?

18 A. It's on page 11 of my report. They received approximately
19 1.2 million dollars in payroll and check payments from JCS, and
20 there was withdrawals from the JCS bank accounts associated
21 with their signatures for 430 thousand dollars.

22 Q. Now, did you break down to see how much actually came
23 through a payroll company?

24 A. Yes, I did. There was \$216,250 paid through the payroll
25 company per the W-2s that they received.

1 Q. For both Joseph and --

2 A. **Laura, yes.**

3 Q. Combined?

4 A. **Yes.**

5 Q. So how much came directly from the JCS bank account to
6 them?

7 A. **\$1,029,416 in checks, and then the cash transactions**
8 **totalled \$430,000.**

9 Q. So that adds up to somewhere in the neighborhood of 1.8
10 million dollars?

11 A. **1.6 million dollars.**

12 Q. Okay. In addition, I see on here various -- a small travel
13 and lodging. Did you look for travel that was being conducted
14 by Joseph Signore and Laura Signore?

15 A. **Yes, we did. We identified approximately 65 thousand**
16 **dollars paid from JCS for travel to Joseph and Laura Signore to**
17 **various destinations.**

18 Q. And what were some of those destinations that you found?

19 A. **Italy, St. Lucia, Los Angeles and the Bahamas.**

20 Q. Just as a matter of curiosity, did you break them down by
21 trips?

22 A. **Yes, I did.**

23 Q. Italy cost them what?

24 A. **\$23,400.**

25 Q. And the Caribbean cost what?

1 A. \$30,000.

2 Q. St. Lucia's?

3 A. I think that was included in the Caribbean. And the Los
4 Angeles trip was \$11,700.

5 Q. How about the Bahamas?

6 A. \$12,000, which is included in the \$30,000.

7 Q. This JOLA business, did it have any source of income other
8 than the items that you're showing on this table that's marked
9 230 D?

10 A. I'm not aware of what business JOLA conducted, but it does
11 appear that there was some income coming in from a merchant
12 account. It's labeled merchant activity and the in-flows were
13 \$7,018.

14 Q. And that's the entirety of it?

15 A. Yes.

16 Q. The rest of?

17 A. That's all the in-flows that occurred in this bank account,
18 that's correct.

19 Q. If I can just have one second.

20 In addition to what you've already talked about, did
21 you find a reference to gold bars?

22 A. Yes.

23 Q. What was that reference?

24 A. There was a \$25,000 purchase from, I believe it was JCS for
25 one ounce gold bars.

1 Q. How about for purchases of jewelry?

2 A. **Yes.**

3 Q. And this was by which company?

4 A. **There was a purchase by JCS from Jupiter Jewelry for**
5 **purchases totaling approximately \$13,000.**

6 Q. I'm placing on our presentation system Exhibit 230 E. Do
7 you recognize this particular table and what it represents?

8 A. **Yes.**

9 Q. What is it?

10 A. **This is a chart that summarizes the transfers from JCS to**
11 **TBTI by month and it also summarizes the amount of funds that**
12 **TBTI paid to its investors by month.**

13 Q. So when you start -- you start at what point?

14 A. **December of 2011.**

15 Q. And does this track the entire history of what you were
16 looking at through April of 2014?

17 A. **Yes, it does.**

18 Q. And as you look at this second column, this represents
19 what?

20 A. **The disbursements from JCS to TBTI.**

21 Q. And as we go down this particular column, what month do
22 those disbursements stop?

23 A. **January 2014.**

24 Q. January 2014 and thereafter, is TBTI continuing to make any
25 disbursements?

1 A. They did make some payments to investors in February and
2 March of 2014.

3 Q. And were they as large as the previous disbursements that
4 had occurred?

5 A. No. Not for the prior month, the few months following that
6 period, or looks like maybe a year or so following that period.

7 Q. As we look at this particular item on the disbursements
8 from JCS to TBTI, we see how much being disbursed to them?

9 A. \$41,982,017.

10 Q. And how much did TBTI send to its investors?

11 A. \$38,570,457.

12 Q. So there's approximately how much netted between those two
13 figures?

14 A. There's --

15 Q. Just approximately.

16 A. -- 3 million dollars or so.

17 Q. 3 million dollars, approximately?

18 A. Yes.

19 Q. As you're looking at this, going back to chart one, other
20 than those Gee Bo territories that were sold, was there any
21 other significant income from something other than an investor
22 outside of the \$21,000 that was taken in for advertising by
23 this particular organization?

24 A. No. Other than the Gee Bo territory purchases and the ATM
25 business, there was no other source of income available.

1 Q. So the total source of income outside of those was \$21,000?

2 A. That's correct.

3 Q. And the total amount taken in by these organizations was
4 how much?

5 A. 80.7 million dollars.

6 Q. And the total retained by these organizations was how much?

7 A. 30.9 million.

8 MS. COHEN: May I just have a moment, Your Honor?

9 THE COURT: Yes.

10 MS. COHEN: I will tender the witness, Your Honor.

11

12 * * * * *

13 *(Thereupon, proceedings were held but not transcribed.)*

14 * * * * *

15

16 *(Thereupon, the above portion of the trial was concluded.)*

17

18 * * *

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

11/26/2015

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. .
WOODBIDGE GROUP OF COMPANIES, .
LLC, *et al.*, .
. Case No. 17-12560 (KJC)
. .
. Courtroom No. 5
. 824 Market Street
. Wilmington, Delaware 19801
. .
. Wednesday, January 10, 2018
Debtors. . 9:00 A.M.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Edmon Morton, Esquire
Sean Beach, Esquire
Ian Bambrick, Esquire
Allison Mielke, Esquire
YOUNG CONAWAY STARGATT & TAYLOR LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801

ECRO: AL LUGANO

Transcription Service: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
Telephone: (302) 654-8080
E-Mail: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording:
transcript produced by transcription service.



1 APPEARANCES (Continued):

2 For the Debtors: Samuel Newman, Esquire
3 Oscar Garza, Esquire
4 Daniel Denny, Esquire
5 GIBSON, DUNN & CRUTCHER LLP
6 333 South Grand Avenue
7 Los Angeles, California 90071

8 - and -

9 J. Eric Wise, Esquire
10 Matthew Kelsey, Esquire
11 Matthew Porcelli, Esquire
12 Jennifer Conn, Esquire
13 200 Park Avenue
14 New York, New York 10166

15 For Ad Hoc Committee: Steven Kortanek, Esquire
16 Patrick Jackson, Esquire
17 DRINKER BIDDLE & REATH LLP
18 222 Delaware Avenue, Suite 1410
19 Wilmington, Delaware 19801

20 For U.S. Trustee: Timothy Fox, Esquire
21 UNITED STATES DEPARTMENT OF JUSTICE
22 OFFICE OF THE UNITED STATES TRUSTEE
23 844 King Street, Suite 2207
24 Lockbox 35
25 Wilmington, Delaware 19801

For 805 Nimes Place,
LLC: David Stratton, Esquire
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709

For the Ad Hoc
Noteholders Group: Jeffrey Sabin, Esquire
VENEABLE LLP
1270 6th Avenue
New York, New York 10020

1 APPEARANCES (Continued):

2 For the SEC: David Baddley, Esquire
3 U.S. SECURITIES & EXCHANGE
4 COMMISSION
5 950 East Paces Ferry Road NE
6 Atlanta, Georgia 30326

7 - and -

8 Russell Koonin, Esquire
9 Christine Nestor, Esquire
10 U.S. SECURITIES & EXCHANGE
11 COMMISSION
12 801 Brickell Avenue, Suite 1800
13 Miami, Florida 33131

14 For the Committee: Richard Pachulski, Esquire
15 PACHULSKI STANG ZIEHL & JONES LLP
16 10100 California State Route 2
17 Los Angeles, California 90067

18 - and -

19 John Morris, Esquire
20 PACHULSKI STANG ZIEHL & JONES LLP
21 780 Third Avenue, 34th Floor
22 New York, New York 10017-2024

23 For the Joinders
24 Noteholders Group: Curtis Hehn, Esquire
25 LAW OFFICE OF CURTIS A. HEHN
1000 N West Street
Wilmington, Delaware 19801

- and -

Mark Shinderman, Esquire
MILBANK TWEED HADLEY & MCCLOY LLP
2029 Century Park East, 33rd Floor
Los Angeles, California 90067-3019

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code, Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors; and Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing [Docket No. 6, 12/4/17].

Emergency Motion of Official Committee of Unsecured Creditors for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104 [Docket No. 150, 12/28/17].

Motion by the U.S. Securities and Exchange Commission for Order Directing the Appointment of a Chapter 11 Trustee [Docket No. 157, 1/2/18].

Page

ARGUMENT: 27-67

RULING:

COMMITTEE WITNESS(s)

LAWRENCE RUSSELL PERKINS

Cross Examination by Mr. Pachulski 71
Cross Examination by Mr. Baddley 198

AMANDA MELISSA DAVIS

Cross Examination by Mr. Newman 246
Redirect Examination by Ms. Nestor 274
Recross Examination by Mr. Newman 279

EXHIBITS:

ID Rec'd

SEC Exhibits 1 through 53 18
SEC Exhibits 54 through 81 18
SEC Exhibits 83 through 95 18
SEC Exhibits 97 through 118 18
SEC Exhibits 120 through 123 18
SEC Exhibits 125 through 131 19
SEC Exhibit 135 19

1 (Proceedings commence at 9:03 a.m.)

2 (Call to order of the Court)

3 THE COURT OFFICER: Be seated, please.

4 THE COURT: Good morning, everyone.

5 COUNSEL: Good morning, Your Honor. Good morning,
6 Your Honor.

7 MR. BEACH: Good morning, Your Honor. May it
8 please the Court, Sean Beach from Young, Conaway, Stargatt &
9 Taylor, on behalf of the Woodbridge Group of Companies and
10 its affiliated debtors.

11 Your Honor, the agenda had a number of items on
12 it, and as you know from our several status conferences over
13 the past week or so, the company, in agreement with the other
14 parties-in-interest, have agreed to adjourn most of those
15 matters.

16 There were several matters that were submitted
17 under certification of counsel, and we appreciate Your Honor
18 entering orders for those.

19 And then there were three matters for which -- or
20 two matters for which certifications of counsel were
21 submitted, and the orders have not been entered yet. So that
22 is the Garden City Group retention, it's at Agenda Item
23 Number 16; and the electronic noticing procedures motion,
24 which is at Agenda Item 17. And so, we wanted to ask if Your
25 Honor had questions about those items, or whether they were

1 maybe missed on the docket.

2 THE COURT: Oh, we don't miss anything, I'd like
3 to think. Yes, I held them for today because the SEC had
4 filed an objection to the employment of Garden City. The
5 certification of counsel that was submitted was silent on
6 what happened to the SEC objection. So, I thought I'd hold
7 the order and ask what happened there.

8 MR. BEACH: Now we know whose oversight it was,
9 Your Honor. Apologies for that.

10 THE COURT: All right.

11 MR. BEACH: If I may just confer for a moment?

12 THE COURT: Yes, of course.

13 (Participants confer)

14 MR. BADDLEY: Your Honor, David Baddley for the
15 SEC. We have withdrawn the opposition to the Garden City
16 retention.

17 THE COURT: All right. Thank you.

18 And I held 17 for that same reason, because Garden
19 City was integrally involved in the noticing procedure that
20 was proposed. I had no other issues with it. If you have
21 forms of order, I'm prepared to act on them now.

22 MR. BEACH: I do, Your Honor, and thank you.
23 Apologies for the oversight on the certification of counsel.
24 May I approach?

25 THE COURT: Yes. Thank you.

1 (Pause in proceedings)

2 THE COURT: Those orders have been signed.

3 MR. BEACH: Thank you, Your Honor.

4 And then there was one other item, prior to
5 getting to the main event today, which was included on the
6 agenda and not identified as adjourned, and that was the
7 critical vendors motion.

8 We were in discussions with the committee
9 regarding certain modifications to the critical vendor
10 motion, and that is -- that has not been completed yet, so
11 the parties have agreed to adjourn that until the hearing on
12 the 18th.

13 THE COURT: All right.

14 MR. BEACH: And with that, Your Honor, that moves
15 us to the Chapter 11 Trustee motions filed by the committee
16 and the SEC, at -- and those are Agenda Items Number 19 and
17 20.

18 Your Honor, there are a few items to address at
19 the outset. The first thing I'd like to address, Your Honor,
20 is to indicate that there was a party, it was the joint -- it
21 was identified as the "Joint Representation Group," which was
22 a group of approximately 50 noteholders, who are retirees,
23 who filed a -- filed a response in support of the trustee
24 motions.

25 After several meetings with that group, and

1 discussions about the strategies for the Chapter 11 case, I'm
2 pleased to announce that they now oppose the trustee motions
3 and support the independent management. Mr. Hehn is in the
4 courtroom today, and he wanted to make some remarks at
5 closing. So, unless Your Honor has any questions for him
6 now, I would just end that with saying that the only three ad
7 hoc noteholder groups, or organized noteholder groups that
8 have been identified in these cases are now supporting the
9 opposition of the trustee motions. And as Your Honor may
10 recall, that is approximately 750 million of the debt, so
11 that that's the lion's share of the debt in these cases.

12 The other big, significant portion of debt, Your
13 Honor, as you know, is the unit holder groups. There is one
14 unit holder group that has identified themselves, and is
15 represented by the Venable firm, and they have also
16 indicated, based on meetings with the debtors, that they do
17 support the opposition of the trustee motions, as well.

18 So, Your Honor, there's -- the vast majority of
19 the debt are now opposing the motions, and I think you'll
20 hear from their counsel. I'm not sure if Venable wants to
21 make any representations now or will hold those until
22 closing, but I'll pause for a moment to ask.

23 MR. SABIN: Good morning, Your Honor. Jeffrey
24 Sabin from Venable, LLP, on behalf of an ad hoc group of unit
25 holders who, on Monday, filed a motion to see this Court's

1 request and approval for the appointment of an Official
2 Committee of Unit Holders. That group constitutes, at this
3 point, more than 5 million face, out of \$226 million,
4 according to the first-day affidavit, amount of units that
5 were issued. In the room today, Your Honor, is Dr. Raymond
6 Blackburn (phonetic), who is here, like you, to hear the
7 story.

8 But our failure, if you will, to actually file a
9 written response, in part, Your Honor, was we wanted to look
10 at the evidence. And as you know, from my participation in
11 the two telephone conferences leading up to this hearing
12 today, we have also participated in each of the depositions,
13 we have read the declarations, we've had a chance to talk to
14 numerous people. And at this point, unless the testimony
15 adduced is different from the declarations, from the
16 deposition testimony, and at odds with the arguments set
17 forth in the debtors' opposition to these motions, we,
18 indeed, support, in essence, the objection, and support the
19 status quo at this point.

20 THE COURT: Thank you.

21 MR. SABIN: Thank you, Your Honor.

22 THE COURT: Mr. Beach, anything else,
23 preliminarily?

24 MR. BEACH: Yes, Your Honor, a few other items.
25 There were two stipulations that the SEC, the committee, and

1 the debtors entered into.

2 As Your Honor may recall from the status
3 conferences, there were a number of discussions regarding how
4 to adduce certain facts. There were concerns from the
5 debtors' standpoint that certain facts that the SEC wanted to
6 admit, specifically Paragraph 7 through 37 of their trustee
7 motion, the parties, not only the debtors, but I think also
8 the noteholders and certain other creditor groups, were
9 concerned about that information becoming law of the case.
10 And the SEC indicated that, if they wanted to put on that
11 case, it could be up to a six-day trial.

12 So, for efficiency purposes, we were able to agree
13 to stipulate that the facts in Paragraph 7 through 37 could
14 be admitted, as Your Honor may recall, solely for the
15 purposes of this proceeding, and not be used by any other
16 party in any other proceeding, either in the Bankruptcy Court
17 or outside of the Bankruptcy Court. But for purposes of
18 efficiency, and because the debtors didn't believe that that
19 evidence of pre-petition conduct by the company, prior to
20 independent management, that it was relevant to these
21 proceedings; and, therefore, we entered into a stipulation in
22 connection with those facts.

23 And then the second stipulation, Your Honor --

24 THE COURT: I haven't -- I did get, I think, the
25 stipulation you were about to talk about --

1 MR. BEACH: Yes.

2 THE COURT: -- and had a brief chance to review
3 it, but I haven't seen the first one. Has that been reduced
4 to writing?

5 MR. BEACH: It has been now, Your Honor, but that
6 was late last night, where we finalized that. So I do have a
7 copy of it, and I can hand that up to Your Honor to review.

8 THE COURT: If you would, please. Yes.

9 MR. BEACH: May I approach?

10 THE COURT: Yes. Thank you.

11 MR. BEACH: And Your Honor, just for the record,
12 the other stipulation I was referring to was filed on the
13 8th, and it's related to Mr. Shapiro, indicating -- the SEC
14 and the committee being interested in deposing him, and Mr.
15 Shapiro indicating that he would assert his Fifth Amendment
16 rights with respect to certain facts that those parties
17 wished to adduce.

18 THE COURT: All right. The latter stipulation
19 does not call for court sanction. But the one with respect
20 to stipulation of alleged facts for purposes of this
21 proceeding only does call for court approval. So I'll ask if
22 anyone wishes to be heard in connection with the request for
23 the Court to approve that.

24 MR. BEACH: Your Honor, I could be wrong, but I
25 thought there was a so-ordered provision on the other

1 stipulation.

2 THE COURT: Oh.

3 UNIDENTIFIED: Yes.

4 THE COURT: Maybe I missed it.

5 MR. BEACH: And Your Honor, I'll cede the podium
6 to Mr. Sabin in connection with the stipulation.

7 MR. SABIN: Jeff Sabin again, from Venable, on
8 behalf of the Ad Hoc Group of Unit Holders.

9 We received this last night. But consistent with
10 conversations, what we don't know is whether the SEC, today,
11 a part of its case, also intends to proffer and include as
12 part of the record three -- at least three declarations from
13 investors. And to the extent that they do, and to the extent
14 that those investors are not here to be cross-examined, all
15 we ask is that the stipulation also cover that piece of the
16 record, so that, to the extent you are relying, in part, as
17 you review all of the record, on any portion of those
18 declarations, they, otherwise, would be covered by the
19 stipulation, also.

20 THE COURT: Thank you.

21 MR. PACHULSKI: Your Honor, can we -- Richard
22 Pachulski of Pachulski of Pachulski, Stang, Ziehl & Jones, on
23 behalf of the Official Committee of Unsecured Creditors.

24 Your Honor, I try to practice in a way that at
25 least I know things in advance. Mr. Sabin has not filed a

1 single pleading relating to this proceeding, and he seems to
2 have taken up most of the podium time. Actually, five
3 minutes before, he said his client had not decided what to do
4 with the trustee motion. If -- I'd like to just understand
5 if Mr. Sabin is going to be able to participate, when did not
6 file anything formally, and only told the Court --

7 THE COURT: The answer is no.

8 MR. PACHULSKI: Thank you, Your Honor.

9 THE COURT: I had already prepared to advise the
10 parties of the ground rules for today's hearing. One of them
11 is, unless somebody has filed a piece of paper, they will not
12 be able to examine or cross-examine a witness. Although I
13 may reserve the right to allow anyone, at the end, to be
14 heard, if they wish to be heard, in the way of argument.

15 MR. PACHULSKI: That's fine. I'm just -- as I
16 said -- thank you much, Your Honor. I'm just trying to
17 understand the rules of engagement.

18 THE COURT: I'll go over some more, too.

19 MR. PACHULSKI: Thank you, Your Honor.

20 MR. BEACH: Your Honor, we certainly understand
21 your rules. But Mr. Pachulski is the one who sought to have
22 this on an extremely expedited -- heard on an extremely
23 expedited basis, over a holiday period of time, too. So I do
24 appreciate Your Honor considering allowing these parties to
25 make statements at the end of the hearing.

1 THE COURT: All right. Does anyone else wish to
2 be heard with respect to either stipulation? I hear no --

3 MR. BEACH: Your Honor, apologies. I was asked to
4 make one clarification in connection with the stipulation of
5 facts. And my initial statement was that it will not be used
6 in any proceedings, including the bankruptcy proceedings, for
7 any purpose. It will solely be used in connection with the
8 trustee motions, so that particular proceeding, not the
9 bankruptcy proceedings as a whole.

10 THE COURT: Well, that was my understanding. And
11 I do see the so-ordered provision in the other stipulation,
12 with respect to Mr. Shapiro's First Amendment -- Fifth
13 Amendment declaration. So both of those orders have been
14 signed.

15 Okay. Anything else, preliminarily?

16 MR. BEACH: Yes, Your Honor. Just a few issues in
17 connection with agreements on admissions of exhibits and
18 confidentiality issues in connection with certain of those
19 exhibits. And I'll be brief, Your Honor, because I think we
20 have full agreement, in terms of admitting exhibits at this
21 point, subject to a few caveats, in terms of how the evidence
22 comes out.

23 But in connection with committee exhibits that are
24 identified with exhibit numbers in your binder 190 through
25 194, 196 through 199, 200, 202, 203 -- I'm sorry, and just

1 203, the committee has agreed that they will not seek to
2 admit those exhibits. To the extent that their witness needs
3 to -- they need to use those exhibits to refresh their
4 witnesses' recollection, they'll use them to refresh the
5 witness' recollection. If that doesn't work, then the
6 committee agrees that they will confer with us about a
7 potential other resolution. But at this point, those
8 exhibits are not intended to be entered.

9 In addition, Your Honor, since they are in your
10 binder, we have also agreed, since there is certain
11 commercial confidential information, including pricing and
12 values of real estate, that those documents would be kept
13 under seal, to the extent that Your Honor would agree to do
14 that.

15 THE COURT: Well, if they're not being admitted,
16 you're welcome, during a break, actually, to remove them from
17 the binders if you would like.

18 MR. BEACH: Thank you, Your Honor. That would be
19 preferable.

20 THE COURT: Okay.

21 MR. BEACH: Your Honor, I'll pause for a moment to
22 make sure I got it right with the exhibits.

23 MR. MORRIS: John Morris for Pachulski, Stang,
24 Ziehl & Jones. He did, he got it right.

25 (Participants confer)

1 MR. BEACH: And Your Honor, that brings us to the
2 ...

3 (Participants confer)

4 MR. BEACH: I'm sorry, Your Honor.

5 MR. SHINDERMAN: Your Honor, Mark Shinderman,
6 Milbank Tweed, on behalf of the Joinder Noteholder Group.

7 None of the pretrial, none of the exhibits, none
8 of the schedules, none of the stipulations were shared with
9 the two ad hoc groups who appear here today. So, while we
10 may be prepared to stipulate to the admission of the
11 evidence, no one bothered to give us a copy of the binder.

12 THE COURT: I hear what you have to say.

13 MR. SHINDERMAN: Thank you, Your Honor.

14 MR. BEACH: Your Honor, again, for the record,
15 Sean Beach from Young Conaway, on behalf of the debtors.

16 This brings us to the SEC exhibits. There are no
17 outstanding objections with respect to those exhibits. The
18 SEC has agreed to remove certain exhibits from admission in
19 the binder, but it -- this was a free-flowing dialogue. So,
20 Your Honor, if I may just pause for a moment, and make sure
21 they were actually removed from what was sent to chambers, or
22 whether we will need to remove some of those at breaks, as
23 well.

24 (Participants confer)

25 MR. BEACH: Your Honor, apologies. We still may

1 need to remove a few of those items on a break.

2 THE COURT: All right.

3 MR. BEACH: And then the SEC has agreed to keep
4 certain of the documents confidential, or to do redactions, I
5 should say, with respect to certain of the documents. Those
6 documents are three leases, Exhibits 132, 133, and 134. And
7 while they're not redacted in the binder, Your Honor, the
8 agreement is to redact only the property addresses, in
9 connection -- in those leases. And that, Your Honor, is for
10 personal safety reasons. Those are the property addresses of
11 the personal residence of, I believe, Mr. and Mrs. Shapiro.

12 THE COURT: All right.

13 MR. BEACH: And then, Your Honor, there were a few
14 other documents that debtors were concerned contained
15 commercially sensitive information, and that was Exhibit 54
16 and Exhibit 124. And the agreement is to redact -- and
17 again, your binder does not yet reflect this -- to redact
18 certain pricing and valuation information contained in those
19 exhibits.

20 And again, Your Honor, I'll pause for a moment to
21 see if the SEC wants to be heard on that issue.

22 MR. KOONIN: Your Honor, Russell Koonin on behalf
23 of the SEC.

24 In our conversations with Mr. Beach, he has
25 properly represented what we are agreeing to redact, as it

1 pertains to those exhibits, 132, 133, 134, 54, and 124. We
2 just -- I believe Mr. Beach represented it -- this to, Your
3 Honor, but just to, you know confirm. The remaining
4 exhibits, which are numbered 1 through 35, there are a
5 variety of skips within that, which I think are represented
6 in the omnibus exhibit list that you have, are being moved
7 into evidence without objection from either the committee or
8 the debtors, and we would so move, Your Honor, if this is the
9 appropriate time to do that.

10 THE COURT: Sure. Thank you.

11 (Participants confer)

12 MR. KOONIN: 1 through 135.

13 THE COURT: That will be without objection.

14 (Participants confer)

15 MR. BEACH: Your Honor, I think I mentioned this,
16 but there are three specific exhibits that are within that
17 range that we'll need to remove during the break.

18 THE COURT: That's fine.

19 MR. KOONIN: Yeah. And Your Honor, I believe
20 that's 82, 96, and 119 that will need to be removed.

21 (SEC Exhibits 1 through 53 received in evidence)

22 (SEC Exhibits 54 through 81 received in evidence)

23 (SEC Exhibits 83 through 95 received in evidence)

24 (SEC Exhibits 97 through 118 received in evidence)

25 (SEC Exhibits 120 through 123 received in evidence)

1 (SEC Exhibits 125 through 131 received in evidence)

2 (SEC Exhibit 135 received in evidence)

3 MR. BEACH: And Your Honor, one further
4 clarification for the record is that all of the -- all of
5 this evidence is subject to the terms of the stipulation the
6 parties entered into.

7 THE COURT: Very well.

8 MR. BEACH: And then, finally, Your Honor, we had
9 a meet-and-confer yesterday, to talk about the cadence of the
10 hearing today, to try to be as efficient as possible, since
11 our understanding is that the committee intended to call Mr.
12 Perkins and Mr. Beilinson in their case. And I believe that
13 the way the cadence will work is the SEC will seek to admit
14 its declaration and exhibits, which I believe just occurred,
15 and their witness will be available in the courtroom for
16 cross-examination by parties. And then the committee will
17 call Mr. Perkins, and then Mr. Beilinson, and then Mr.
18 Greenspan. I believe that would then complete the case-in-
19 chief for both the SEC and the committee, at which time the
20 debtors would then call Mr. Perkins and Mr. Beilinson, and
21 then, to the extent necessary, any rebuttal witnesses.

22 Your Honor, the -- since these are the committee
23 and the SEC's motions, and they're calling some of our
24 witnesses, we don't believe we will do any cross of our own
25 witnesses for efficiency purposes, at the time they call

1 those witnesses. But in our case-in-chief, we would then
2 call the witnesses, address any direct testimony with those
3 witnesses, and then any cross in response to the evidence
4 that was adduced in connection with the original case-in-
5 chief.

6 THE COURT: Well, normally, Mr. Beach, if you have
7 questions, I'd rather deal with the witnesses all at one
8 time; however, you're entitled to try your case as you wish.
9 So, if you're going to call the witnesses again in the
10 debtors' case-in-chief, then I'll insist that you conduct no
11 cross-examination with either witness while they're on for
12 the committee or the SEC.

13 MR. BEACH: Well, the -- thank you, Your Honor. I
14 will say that we --

15 THE COURT: I give you the choice.

16 MR. BEACH: Yeah. Thank you, Your Honor.

17 We did propose a different scenario because we
18 thought it would be more efficient to call the witnesses only
19 once. The problem is that Mr. Perkins -- the committee
20 intends to call Mr. Greenspan, and he is going to elicit
21 certain testimony that Mr. Perkins and Mr. Beilinson, and
22 perhaps a rebuttal witness, will need to respond to. But the
23 committee was unwilling to call Mr. Greenspan prior to
24 calling Mr. Perkins and Mr. Beilinson.

25 THE COURT: All right. I understand.

1 MR. BEACH: So, Your Honor, if I may just consult
2 with my colleagues for a moment, to make -- to figure out
3 which choice they want to make, in terms of ...

4 THE COURT: All right.

5 (Participants confer)

6 MR. BEACH: Thank you, Your Honor. So we do
7 intend to call those witnesses separately in our case-in-
8 chief, and do not intend to cross them --

9 THE COURT: Very well.

10 MR. BEACH: -- as indicated.

11 THE COURT: Thank you.

12 MR. SHINDERMAN: Your Honor, the -- Mark
13 Shinderman of Milbank Tweed, on behalf of the Joinder
14 Noteholder Group.

15 We were just handed a set of the exhibits, which,
16 as you know, number 200. We don't want to hold up the
17 proceeding, but at some break, I would like the opportunity
18 to talk to the other ad hoc groups about the admissibility of
19 this evidence. I've gone through the first 78, I don't see a
20 problem. They're mostly tied to the stipulation that was
21 made, so I don't anticipate a problem, but we'd like to look
22 at it.

23 Second, we were not included in the pretrial
24 order. There was a deposition yesterday of one of my
25 committee members. We understand that part of the record was

1 designated -- part of the transcript was designated; nobody
2 shared that with us. We object to the admission of it. We
3 didn't intend to call any witnesses. We were not advised
4 that Mr. Kornfeld's deposition testimony would be used in
5 court today.

6 THE COURT: Come on, you're about to bring a tear
7 to my eye. Look, here's what we'll do. Let's get through
8 the hearing, and if, at the end of the day, you still have
9 issues, we'll address them.

10 MR. SHINDERMAN: That's fine.

11 THE COURT: Okay?

12 MR. SHINDERMAN: That's all I'm asking for, Your
13 Honor.

14 THE COURT: All right.

15 MR. SHINDERMAN: Thank you.

16 MR. PACHULSKI: Your Honor, just so it's clear for
17 the record -- Richard Pachulski -- the person that Mr.
18 Shinderman is referring to is his client. So it's got to be
19 -- we arranged the deposition with his knowledge. He,
20 certainly, or anyone else could have participated.

21 THE COURT: Okay. So, again, if there are issues,
22 we'll address them at the end of the day.

23 (Participants confer)

24 MR. BEACH: And finally, Your Honor, I promise
25 this is the last --

1 THE COURT: No, you said "finally" once before.

2 (Laughter)

3 THE COURT: This is the second "finally." Is this
4 your final answer?

5 MR. BEACH: This is only part of my last
6 "finally."

7 THE COURT: Yeah, all right.

8 MR. BEACH: The debtors, and I believe the SEC,
9 based on our meet-and-confer yesterday, do not believe
10 opening statements are necessary for -- given the time
11 constraints of the hearing. I believe the committee thinks
12 differently. The debtors, of course, will make an opening
13 statement, if that is what Your Honor wants, but that's my
14 last "finally."

15 THE COURT: All right. Thank you.

16 MR. PACHULSKI: Your Honor, I apologize. If -- I
17 don't know if it's my last final because I don't know what
18 Mr. Beach is going to say next, but --

19 THE COURT: Knowing you well enough, I'm not sure
20 you ever have a final, Mr. Pachulski.

21 (Laughter)

22 MR. PACHULSKI: Wow, I appreciate that, Your
23 Honor.

24 (Laughter)

25 MR. PACHULSKI: That's what my partners tell me.

1 Your Honor, I typically would not be asking for
2 opening, I understand what the rules of engagement usually
3 are. Some judges are -- find it appropriate; others say,
4 let's get to the evidence. The reason that I'm asking, which
5 would be no more than 10 or 15 minutes is, to put it in
6 context, the pleading that we originally filed, *vis-a-vis* the
7 trustee motion, made certain assumptions because it was in
8 the record, based on the first-day declaration and the like.

9 After taking the depositions, frankly, the story
10 has now changed. And so that Your Honor has context of how
11 the story has changed, I wanted to take 10 or 15 minutes to
12 explain where we started when we filed the motion, and what
13 has dramatically changed, *vis-a-vis* Mr. Perkins and Mr.
14 Beilinson's testimony specifically.

15 I think it's important, otherwise, Your Honor is
16 going to hear a bunch of things, which isn't necessarily
17 going to tie to our motion, wondering what's going on. And
18 that's why, as I understand, 50/50 judges have opening, I was
19 going to limit it. It's the presentation that we have put
20 together, so that Your Honor can follow how things have
21 changed since the very -- our filing of our motion on
22 December 26th.

23 THE COURT: Well --

24 MR. PACHULSKI: That was the -- why we made the
25 request.

1 THE COURT: I don't find myself falling into one
2 camp or the other; I tend to make those decisions on a
3 hearing-by-hearing basis. So I was inclined not to hear
4 openings today, and to get to the evidence, since there seems
5 to be much of it. But under the circumstances, given the
6 fact that the situation has been, and continues to be fluid
7 and evolving, I'll allow you, briefly, the time. Do not go
8 over your time limit. If others wish to respond, they may,
9 I'll give them that opportunity. But I really would prefer
10 to get to the evidence after that.

11 THE COURT: Okay. Anything else, preliminarily?

12 MR. BEACH: No, Your Honor.

13 THE COURT: All right. Look, after having read
14 the papers, I wanted to give you some initial thoughts, to
15 help you focus your evidentiary presentations on what my
16 concerns are.

17 First, with respect to 1104(a) and fraud, et
18 cetera, you know, I was willing to assume, without deciding,
19 that there were pre-petition securities law violations. No
20 one seems to dispute that there were sales of unregistered
21 securities through unregistered brokers. There may have been
22 other fraud that can be claimed. And as I had said, I think
23 during one of the calls, for me, the relevance of that is
24 whether the taint of what occurred pre-petition carries
25 through to present management or not. It is a factor; it is

1 not a dispositive factor, in my view. Also, another factor
2 to be considered under 1104(a) is whether there are pre-
3 petition transfers to be avoided.

4 My primary focus, I think, as I come to the
5 hearing today, after review of the submissions, is whether an
6 appointment of a Chapter 11 Trustee is in the best interest
7 of creditors. There are a number of factors that can be
8 considered in that connection. Cause gives the Court, I
9 think, a great deal of discretion to determine what
10 constitutes cause, so I ask that the parties focus on that.

11 And with that having been said, let's begin.

12 I'm sorry. We will take a lunch break, and we'll
13 take breaks throughout the day. I don't know whether the
14 parties anticipated we'd be able to conclude by five o'clock
15 or not. Any views on that?

16 MR. PACHULSKI: When I -- again, Your Honor, I --
17 for the -- each time I stand up, Your Honor, or any of the
18 parties, would you like us to state who we are?

19 THE COURT: Al? Not necessary.

20 MR. PACHULSKI: Okay. Thank you, Your Honor.

21 I was the one, Your Honor, who said I thought we
22 would have a shot of getting it done in one day. I didn't
23 anticipate, for instance -- and I should have -- that there
24 would be other parties, aside from the three, so it's hard to
25 estimate.

1 Also -- and this is the -- when I first made my
2 estimate, I made the assumption that the story that was in
3 the first-day declaration would be what we would be dealing
4 with, which turned out not to be the case, which is why I
5 wanted to do a short opening.

6 So, to be honest -- and we've talked about this a
7 lot -- our goal -- I think, realistically, we can get most,
8 if not all, of the testimony in today. I don't know what --
9 if there will be rebuttal witnesses, so that's hard to
10 predict because I just heard, for the first time, there may
11 be. So I -- to be honest with Your Honor, I would be
12 surprised if it all gets done by 5. I would hope we would
13 get it in, and then would schedule for closing; or, if
14 there's any minimal testimony left, that we would continue.
15 Your Honor had mentioned that, if it did go one day -- if it
16 would go beyond one day, you thought it would be sometime
17 next week.

18 THE COURT: It would be the 18th.

19 MR. PACHULSKI: It would be the -- okay. Well,
20 that would be fine, Your Honor. So I -- my estimate is,
21 right now -- and I hope this time I'm wrong -- that it will
22 take more than a day.

23 THE COURT: All right. You may begin with your
24 opening, if you'd like.

25 MR. PACHULSKI: So, Your Honor, the first thing

1 I'd like to talk about, quickly, is how the status -- how we
2 got to December 1st, and ultimately, December 4th, 2017. We
3 have RS Protection Trust, which is directly or indirectly
4 owners of the debtors. Mr. Shapiro, through his -- Mr.
5 Shapiro, through his trust, controls -- controlled the
6 debtors prior to December 1st.

7 As we all know, the SEC began their investigation
8 sometime in 2016. They were required to go through
9 enforcement actions, and ultimately contempt requests,
10 because of Mr. Shapiro's refusal to cooperate with the SEC.
11 Ultimately, seeing the SEC at the door, Mr. Shapiro ended up
12 selecting Mr. Beilinson and Mr. Perkins as the independent
13 manager and the CRO, respectively.

14 *Vis-a-vis* the next slide, Your Honor -- and I'm
15 not going to go through all of these now, obviously, because
16 of the limited time. But you're going to hear during the
17 trial that there were -- that there had been entry into the
18 membership consent, where, basically, Mr. Beilinson would
19 gain control, though, effectively, Mr. Shapiro could
20 terminate Mr. Beilinson without cause.

21 There was the operating agreement. There was Mr.
22 Beilinson's agreement, where he received \$480,000, whether or
23 not he provided services. But the agreements that were even
24 most troubling was the contribution agreement, where, because
25 Mr. Shapiro had contributed certain assets, in theory, that

1 he could receive up to \$500,000 per asset; a consulting
2 agreement, in which Mr. Shapiro would receive \$175,000 a
3 month for a year, of which there was a liquidated damage
4 provision of six months, and cause did not include, very
5 specifically, Mr. Shapiro being indicted or being --
6 exercising his Fifth Amendment rights under the United States
7 Constitution.

8 And then there was the forbearance agreement,
9 where Mr. Shapiro was allowed to live in two homes that were
10 effectively owned by the debtors, probably worth
11 approximately \$15 million; that, if any investor or anyone
12 wanted to foreclose upon, they would be stuck with Mr.
13 Shapiro in those properties.

14 Now this -- the next slide is really the one that
15 I find the most troubling, Your Honor. Mr. Perkins, on the
16 first day of the case, in at least three different places in
17 his declaration, said that Mr. Shapiro -- that these
18 agreements were entered into because Mr. Shapiro,
19 notwithstanding the alleged bad acts, was essential to these
20 specific debtors. That is basically what happened throughout
21 the first-day hearing. And on December 14th, Your Honor,
22 there was an organizational meeting with approximately a
23 hundred angry investors, where those investors were told the
24 exact same thing, the story was consistent: Mr. Shapiro is
25 essential for these operations.

1 Then I take Mr. Perkins' deposition, and suddenly,
2 he wasn't quite so essential; he, frankly, was doing almost
3 nothing. But they entered into these agreements because that
4 was the, quote, "cost" of getting Mr. Shapiro out, millions
5 and millions of dollars of contracts to get -- even though
6 Mr. Beilinson and Mr. Perkins had no interest in Woodbridge,
7 none.

8 So where does that leave us, Your Honor? What
9 happened during the month or so before Mr. Shapiro was,
10 effectively, terminated? He had unfettered access to the
11 debtors' offices and books and records until December 28th,
12 2017. If he wanted to change something, if he wanted to
13 destroy it, he had total access.

14 THE COURT: Do you have any evidence that that
15 actually occurred?

16 MR. PACHULSKI: We don't because we don't -- we
17 haven't been given complete access, Your Honor. We know that
18 he had access. What he did with it, we'd have to do a month-
19 long forensic investigation, which I suspect we will have to
20 do.

21 We can't really find out what happened before
22 December 1st, 2017 because Mr. Shapiro has taken the Fifth.
23 And Mr. Beilinson, for instance, invoked the attorney/client
24 privilege, even though he wasn't retained yet, to -- with --
25 *vis-a-vis* any discussions that took place in front of Gibson,

1 Dunn & Crutcher. He did not have separate counsel.

2 At no time, prior to meeting with the SEC, did the
3 debtors or management ever, ever ask Mr. Shapiro to comply
4 with the SEC request.

5 Though it was subsequently changed because, again,
6 they were going to sign any agreement it took, to get rid of
7 Mr. Shapiro, Mr. Beilinson signed an agreement that he could
8 be terminated for any reason whatsoever, until the SEC
9 vehemently objected to that.

10 And then the only lawyer that Mr. Beilinson ever
11 spoke to was Mr. Shinderman, who has appeared today. And we
12 will learn that they -- that, actually, Mr. Shinderman was
13 referred by Woodbridge, and who would referred -- he was
14 referred, was someone who would send millions and millions of
15 dollars -- who had made millions and millions of dollars on
16 commissions, taking advantage of these investors. That's Mr.
17 Shinderman's client, he came from Woodbridge. And the only
18 person Mr. Beilinson thought he was interested enough to call
19 was Mr. Shinderman, coincidentally, nobody else.

20 So, Your Honor, Mr. Beilinson and Mr. Perkins gave
21 Mr. Shapiro everything he wanted. Yes, they say, now we can
22 reject the claims, hey, we may even be able to equitable
23 subordinate, but we entered into something that will now
24 incur millions of dollars, so that they could gain management
25 control, even though they had zero interest in it before.

1 But here is the most disturbing issue, Your Honor,
2 and the one -- the reason why I really wanted to go through
3 the opening. They never told you that. Their first-day
4 declaration did not disclose it, that they entered into these
5 contracts without court approval necessary, so that they
6 could gain control when they had nothing to do with the
7 debtor. Mr. Beilinson had nothing to do with the debtor
8 before December 1st. And Mr. Perkins had been, as you will
9 hear, a fairly distant financial advisor during that
10 particular time.

11 So, when, in the brief, the debtors say, well,
12 it's the business judgment rule that applies, it doesn't
13 apply to them pre-December 1 because they negotiated those
14 contracts with no duty of any kind to any of the Woodbridge
15 stakeholders. And the stakeholders should be bound by
16 agreements made by people who had no duty to them. There was
17 no accountability whatsoever.

18 Now one of the things I find very disturbing is,
19 at the very beginning of the brief that has been filed by the
20 debtors, they completely denigrate the SEC. They refer to
21 them as the "self-proclaimed of the guardian of the investing
22 public." Well, Your Honor, last I checked, the SEC is
23 statutorily required to do their job. They are not some
24 "self-proclaimed guardian of the investing public."

25 In contrast, Your Honor, Mr. Beilinson and Mr.

1 Perkins, who had no duty to anyone, became the self-anointed
2 guardians of the Woodbridge investors. They negotiated
3 completely irresponsible agreements with Mr. Shapiro, on the
4 first day of the case said they were essential. And then
5 when that story didn't look so great because everybody --
6 because they didn't anticipate that people would be upset --
7 which you would think, in a massive fraud, they would have
8 figured that out -- they decided, no, we did it because we
9 wanted to gain control of this, to do the right thing.

10 THE COURT: Isn't that what all the restructuring
11 professionals do, Mr. Pachulski?

12 MR. PACHULSKI: That's a great question. I don't
13 show up and get interviewed as counsel, and say, why don't
14 you turn over the keys to me, and by the way, by the way, I
15 will advise the debtor to sign contracts with you. Yes, I
16 may say I have [sic].

17 Your Honor, here's the interesting thing. I can't
18 recall, in 38 years of practice, that I've ever sought the
19 appointment of a trustee. This is my first. Because I think
20 it is completely inappropriate to sign a -- I would never,
21 ever advise anybody to sign an agreement that incurs,
22 potentially, millions and millions of dollars for the estate,
23 without Bankruptcy Court approval.

24 So, yes, do I make advice? For instance, Your
25 Honor, because you asked the question, I had a case called

1 Variant Holdings before Judge Shannon. There was an
2 allegation that Beach Point had been defrauded in that case.
3 We filed the case; we had a CRO. A trustee motion is filed.
4 What do we do? I knew that there were bad guys there. We
5 ring-fenced the problem; we told them they had to leave, and
6 they get nothing, they get absolutely nothing. And what
7 happened? We put in three completely independent managers
8 who had no relationship.

9 That's not happened here, Your Honor. It is what
10 restructuring professionals do. We're supposed to do the
11 right thing. But the right thing isn't to show up, have no
12 economics, and then say, oh, sure, we'll sign all of this.
13 We're going to become the determinate, and we'll make a
14 determination. Your Honor, I would never have recommended to
15 sign agreements that incur millions and millions of dollars
16 because one of the problems here is somebody committed
17 massive malpractice, whether it's Mr. Perkins, whether it's
18 Mr. Beilinson, whether it's Mr. Newman.

19 But there's going to be allegations that you've
20 entered into agreements that they now say may be able to
21 equitably subordinated. Well, Your Honor, these were done,
22 purportedly, at arm's length. So I enter into an agreement
23 with somebody, and then I'm going to allege that I should be
24 able to equitably subordinate them because I don't like them
25 anymore?

1 There were no facts that came out that would
2 equitably subordinate (indiscernible) December 1st. Your
3 Honor would have to find that there is a -- that, somehow,
4 the parties did something inappropriate, including the
5 parties who are now being asked to continue as management.

6 So that's the long answer, Your Honor, but yes, we
7 give advice, yes, we do that. But I don't give advice to
8 incur millions of dollars of liabilities without court
9 approval. I don't recommend that you put in a first-day
10 declaration that it is they are essential, when you know it's
11 not, and you did it for other reasons. They were either
12 telling you the truth on the first day, which there's no way
13 they did, or they decided to concoct this story post because
14 they had to come up with something.

15 So the answer [sic] is, Your Honor: Why did they
16 do it? Well, first they say, we did it because he was
17 essential. That didn't work out. Then they go ahead and
18 say, no, no, no, we did it because we're good Samaritans.
19 That's not our job, Your Honor. As a professional, my job is
20 not to replace them without the Court being part of the
21 process.

22 They did it because they knew one of two things
23 was going to happen: Either, one, they would be fired by Mr.
24 Shapiro if they didn't sign these agreements, and they would
25 lose extraordinarily lucrative agreements; or, number two,

1 they knew that the SEC would come in and do their job because
2 it wasn't Mr. Beilinson and Mr. Perkins that were supposed to
3 be judge, jury, and executioner in this particular case, Your
4 Honor.

5 If that's the case -- and that's what Your Honor
6 is going to have to make the determination because you asked
7 the right question. Are professionals -- are restructuring
8 professionals who have no skin in the game, did not invest a
9 single dollar, is it their right to go ahead and convince a
10 guy, basically dupe him to sign agreements, where I'm sure he
11 said, I'm not going to (indiscernible) Bankruptcy Court
12 approval, hope for the best, and then show up and say, we're
13 now management, we've been here for a month, we're all good,
14 because it's not all good, Your Honor, because here's what
15 will happen, when we talk about best interests:

16 If a trustee is not appointed, the committee's
17 fear -- the committee didn't want a trustee; the committee
18 would have actually wanted to make some change, but that was
19 refused. So what will happen is the SEC will simply go back
20 to Florida, tell the Judge that we have these people who have
21 been tainted by Mr. Shapiro, and we will have a horrific
22 result; we will have an SEC receiver, in our view, which is
23 why, aside from 1104(a)(1), we believe, under 1104(a)(2),
24 that there were -- the result that is likely to occur would
25 be a horrific result, particularly with the facts that are

1 going to come out at this trial as to how this all came
2 about. I --

3 THE COURT: How do I know, even if I agree to the
4 appointment of a Chapter 11 Trustee, that the SEC won't go
5 back to Florida, anyway?

6 MR. PACHULSKI: Your Honor, that's a great point.
7 So I was going to address it in my closing, and I'm going to
8 address it now. Okay. There is no question that, if a
9 trustee is not appointed, that you will -- that they will run
10 back, and they will use everything that comes up in this
11 trial to get an SEC receiver.

12 Now I actually have it on a Post-It, that I wrote
13 down specifically. And so, if I can find it, I will; if not,
14 I will summarize it. But I think you have to take into
15 account two facts:

16 Number one, the SEC has filed the motion to
17 appoint a trustee. By the way, Your Honor, they waited until
18 after the Judge's ruling in Florida to do that. That can't
19 be lost on any of us.

20 Number two, they stated, at -- I can't recall, I
21 think it was at the conference, the first conference we had,
22 on January 2nd, Your Honor, that, in the event a trustee, an
23 independent fiduciary, was appointed, they would take a long
24 and hard look whether it was necessary to go back to Florida.

25 Now let's be realistic, Your Honor. They sought

1 the appointment of a trustee, with us. They didn't sit on
2 the sidelines. They are as aggressive as we are on this
3 point. And they -- it's going to be very hard for them to
4 say, we got the trustee we wanted, now, Judge Cooke, please
5 appoint a receiver now. So it just -- it makes no sense.
6 I've dealt with the SEC, they're not going to stand up and
7 say, give us the trustee, we're all good.

8 But we have to deal with the reality of the
9 situation, Your Honor, which is: No trustee, they will go
10 down and seek a receiver. And I think, on the facts, they
11 have a very strong chance of getting it. On the other hand,
12 if a trustee is appointed, and they get what they wanted in
13 this court, I think that that is extremely unlikely,
14 extremely unlikely. And I think Your Honor will come to that
15 conclusion.

16 THE COURT: All right. Wind up now.

17 MR. PACHULSKI: Your Honor, I think I did. I
18 think -- I wanted Your Honor to understand what the issues
19 are here. And I think Your Honor will understand how
20 difficult it's been for us because, again, there's only so
21 much we can -- facts we can get. Forgetting it being a short
22 time, but since Mr. Shapiro can't -- won't testify, and the
23 attorney/client privilege, we've done the best we can under
24 the circumstances.

25 But this committee -- and we'll get to who

1 represents whom and what because I think one of the big
2 problems that we have is that now people are saying we
3 opposed it, now we support it, is Your Honor made -- I'll
4 leave Your Honor with this. Your Honor made a comment that
5 it is highly unlikely that there will be additional
6 committees in the event a trustee is appointed. It's
7 actually mentioned in the opposition. We have the unit
8 holders, who now want a committee. We have the three ad
9 hocs, who want a committee. I'm not going to go through and
10 argue that, but we have to talk about what their incentive is
11 in this case, for people that they've actually done very
12 little in investigating during the past month.

13 So I will leave it at that. I appreciate Your
14 Honor taking the time to listen to me, but I did want Your
15 Honor to understand how the facts have changed since we filed
16 our motion.

17 THE COURT: All right. Thank you.

18 MR. PACHULSKI: Thank you, Your Honor.

19 THE COURT: Okay. So I'll go back and say I don't
20 feel like I need openings, but since I allowed one, I'll
21 allow others to be heard, if they wish, briefly. I'll turn
22 first to the SEC.

23 MR. BADDLEY: Thank you, Judge. I had not planned
24 to give an opening, but I think it might help still,
25 nonetheless, to give the Court a roadmap of how we intend to

1 prove our case today, and so the Court can keep these points
2 in mind as it hears evidence throughout the day.

3 We intend to show that cause exists for a trustee
4 under 1104(a), for cause, for two reasons. First of all, we
5 believe that Mr. Shapiro should be considered to be part of
6 post-petition management, so that his fraud and his
7 dishonesty are attributable to the debtors-in-possession.

8 There seems to be a little bit of a free pass on
9 this issue, that we only need to focus on the independent
10 managers, that Mr. Shapiro is gone. Mr. Shapiro has a 2.1-
11 million-dollar salary right now with the debtors; he is the
12 highest paid person at Woodbridge today. Now the debtors are
13 not actually funding that payment. They have suspended the
14 contract or something. But that contract is still in effect
15 today, he is the highest paid person.

16 If you look at the services that this management
17 team requested and agreed for Mr. Shapiro to perform, they're
18 management-type services. If you -- and you will hear about
19 Mr. Shapiro's involvement, at least early on, how he was in
20 the office every day, and there was communications going on.
21 I think that there is substantial evidence for this Court to
22 conclude that Mr. Shapiro is part of the bankruptcy team, the
23 post-petition management team, there was not a clean divorce.
24 And if so, that settles it. That's the case. We don't have
25 to get on to anything else because his fraud is attributable,

1 and his fraud is massive.

2 But we also will get into the conduct of the rest
3 of the management team; specifically, Mr. Perkins and Mr.
4 Beilinson, also as grounds for cause. And there's three
5 general categories that that conduct will fall into:

6 First of all, we think that Mr. Perkins' first-day
7 affidavit was not honest, and it lacked candor, and it was
8 influenced by Mr. Shapiro. Importantly, Mr. Shapiro and his
9 counsel were allowed to review a draft of this affidavit
10 before it was filed. Now I'm just going to give a couple of
11 examples of what I'm talking about.

12 The first-day affidavit touted this independent
13 management team, but it made no disclosure whatsoever that
14 Mr. Shapiro could remove the independent manager for no
15 reason at all; that was not disclosed.

16 It did not disclose that, of the Woodbridge
17 entities that didn't file, and that were still controlled by
18 Mr. Shapiro, they held assets worth more than \$30 million.
19 In fact, the affidavit basically states or suggests,
20 confusingly, that those non-debtor entities were controlled
21 by the independent manager. So there will be a lot of
22 discussion in the first-day affidavit that was not honest,
23 and it lacked candor.

24 The second category, the debtors have not been
25 honest and candid in their communications with investors.

1 And on -- a lot of this is going to focus on the frequently
2 asked questions section of the website, the content of which
3 is controlled by post-petition management. A couple of
4 issues that we'll get into here, that the Court will hear
5 about:

6 They are still telling investors that they intend
7 to ask the Court for permission to resume the monthly
8 payments. You will hear from the evidence that that is not
9 being considered. In fact, the debtors are probably going to
10 have to even stop funding the reserve.

11 They're telling investors that the \$100 million in
12 financing is sufficient. But what you're going to hear is
13 that the only way that they're going to be able to survive in
14 this case is if they actually avoid the liens of the
15 noteholders. That's not being told to the investors.

16 They didn't tell the investors -- the only
17 entities that they told the investors were left outside of
18 the bankruptcy were the brokerage firms. They didn't tell
19 the investors that Mr. Shapiro is still holding -- or at the
20 time, was controlling entities that had assets of \$30
21 million. So we're going to get into a lot of the
22 communications with investors.

23 The third area on this management team, other than
24 Mr. Shapiro, is self-dealing. These contracts were all
25 entered into to get control, so that, if Mr. Shapiro went

1 down, they wouldn't go with them. These agreements are
2 doused in self-dealing, they need to be looked at by someone
3 independent, and more than likely, they're going to be the
4 subject of litigation. And this management team cannot take
5 on that role. They agreed to all of them, and they justified
6 them in court filings. So that's the cause side.

7 And then we'll talk a little bit about the best
8 interests, and I understand the Court's interest in that, and
9 that seems to be a pretty important issue on a lot of
10 people's minds.

11 The first thing, on the operational side, Mr.
12 Perkins has testified that, you know, with this recent move
13 of suspending Mr. Shapiro, and even under the anticipation
14 that he may be completely terminated, it has not, and they
15 don't expect that it will cause any problems in operations.
16 And if that's true, then, over roughly a five- or six-week
17 period, we will have a 100 percent shift in the management of
18 the debtors. And it has not, and the debtors do not
19 anticipate that it will cause any problems with the
20 operations. So that, under that logic, appointing a trustee
21 should also not have that result.

22 Now there are other concerns that were raised by
23 the noteholders and the unit holders, that appointing a
24 trustee mean that an official committee is not likely,
25 appointing a trustee terminates exclusivity, and we don't

1 know what the consequences of that could be.

2 On the first point, I hope -- and I want to make
3 it clear it has never been the SEC's position that the
4 appointment of a trustee obviates the need for any sort of
5 other official committees in this case. We strongly believe,
6 and have believed from the outset, that the unit holders need
7 to be adequately represented in this case, and the
8 noteholders need to be adequately represented in this case.
9 There are too many issues out there that need to be resolved.
10 And I think the only way that those issues can be effectively
11 negotiated and resolved in a quick way is through adequate
12 representation. There really is no other alternative on
13 that.

14 THE COURT: On that point, I will tell you my
15 inclination, if I were to appoint a Chapter 11 Trustee, would
16 ask for that person to weigh in on the issue of whether there
17 should be other committees before deciding whether there
18 should be other committees.

19 MR. BADDLEY: Okay. Thank you, Judge.

20 And then on the exclusivity, you know, I don't
21 know how that can play out. You know, to try to anticipate
22 what sort of plan may or may not be filed, and whether or not
23 someone can, you know, not have a favorable outcome from
24 that, I don't know if we can predict that at this time.

25 I will say this, though, that, if there is a real

1 concern about someone hijacking this case with a plan that --
2 after taking control from a trustee, you know, the way I read
3 1121, Judge, is it says that anyone other than the debtor can
4 file a plan, if and only if certain things happen. I don't
5 see anything that says that there can't be a time out on
6 everything.

7 THE COURT: Well, that's a good point because, if
8 someone were to file a plan and disclosure statement, you
9 know when it gets scheduled for hearing?

10 (Laughter)

11 MR. BADDLEY: Whenever the Court decides.

12 THE COURT: Exactly.

13 MR. BADDLEY: So that's all I have.

14 THE COURT: Thank you.

15 MR. BADDLEY: Thank you.

16 THE COURT: I'll hear next from the debtor, if the
17 debtor wishes to be heard.

18 MR. NEWMAN: Your Honor, Sam Newman, Gibson, Dunn
19 & Crutcher, for the Woodbridge Debtors.

20 I will say the most surprising thing in Mr.
21 Pachulski's opening is the suggestion that the story has
22 changed since the first day I was hear speaking to you, about
23 a month ago. The debtors have articulated from the very
24 beginning the deep trouble that Woodbridge was in, the issues
25 that the SEC has raised with Mr. Shapiro, and has looked for

1 a path forward to work with its constituents, in order to
2 realize the maximum value for these assets, and in order to
3 get money back in the hands of the investor community as
4 quickly as possible.

5 To that end, we continue to work with the
6 constituencies. We've met with creditor, noteholder, unit
7 holder constituencies on an ongoing basis, to discuss our
8 business plan, to discuss Mr. Beilinson and Mr. Perkins'
9 approach to the litigation alternatives, and have told all
10 the material information, not only to the creditor
11 constituencies who today support us, but also to the SEC and
12 the UCC.

13 The very first thing that was done, as debtors-in-
14 possession, was to ask for a meeting with the Securities and
15 Exchange Commission, to discuss the path forward in this
16 case. They rebuffed that request, until after this Court
17 identified the fact that this forum could actually be a
18 positive place for the resolution of the claims against the -
19 - both the proposed perpetrators and the claims against the
20 estate.

21 We then have had several meetings with them, in
22 which we have responded to every one of their specific
23 requests, including a number of the items that we have
24 previously articulated in front of Your Honor. We have
25 provided additional access to information for them. We have

1 convinced Mr. Shapiro to turn over emails that were not
2 previously disclosed. We have convinced Mr. Shapiro to turn
3 over almost \$30 million of incremental property, which we are
4 now accused of somehow failing to put into the pocket, when,
5 at the time, the SEC had only articulated that an
6 investigation was ongoing, and no indication of wrongdoing
7 had been determined, and had not, as of that time, taken any
8 steps to stop the millions and millions of dollars that were
9 pouring into Woodbridge, which they now allege were obviously
10 fraudulent.

11 Now we're not here to contest, and are not
12 prepared to contest, given the time line -- and as we've said
13 from the beginning, the nature and scope of the debtors' pre-
14 petition operations and fund raising. We don't think, as
15 Your Honor has indicated, that that's necessary, in order to
16 resolve the fundamental question, which is what Your Honor
17 articulated: What is in the best interest of creditors.

18 We have spoken repeatedly to the committee and
19 implored them to sit down with us, to sit down with Mr.
20 Perkins, and to sit down with Mr. Beilinson, and to
21 understand both the facts and the circumstances of the
22 valuations and approach. And in every instance, we have been
23 told that, as a precondition for such a meeting, we need to
24 be prepared to identify or to agree to a change in management
25 acceptable, not to creditors generally, but to the committee.

1 I will note, the committee, which is represented
2 by -- which includes one trade creditor, owed a small amount
3 of money, whose contract, when proposed for assumption, the
4 committee objected, although they articulated that they
5 thought assumption of their contract, in their pleading, was
6 in the best interests of the estate.

7 We also have two noteholders who, through a
8 variety of circumstances that occurred, and I believe are
9 subject to ongoing review, both in the Office of the United
10 States Trustee and in front of this Court, excluded 38
11 noteholders to appeared to attempt to be seated on the
12 unsecured creditors' committee, but however, refused to agree
13 that they would waive any rights they might have under their
14 pre-petition notes. Two creditors agreed to, with a total
15 combined claim of a little less than a million and a half
16 dollars. That was who was seated on the committee.

17 So, when Mr. Pachulski suggests that Mr. Beilinson
18 and Mr. Perkins somehow exist without a portfolio, I think
19 the thing that this Court and the parties should focus on is
20 a path forward. The reason that there is parties without
21 portfolios in this case is that Mr. Shapiro has been severed.

22 Now Mr. Pachulski characterizes that as a dramatic
23 reinterpretation of the facts. It has been clear from the
24 beginning that the debtors believed, as the sole proprietor
25 this business, Mr. Beilinson and Mr. Perkins believed -- and

1 I believe you'll hear believe today -- would have been very
2 helpful, would have -- and continued access to his
3 institutional knowledge would have been helpful in
4 recognizing value from the debtors' estates. And in the time
5 in which he served with the debtors as a contractor, he
6 provided valuable information. However, it became clear,
7 rapidly, and particularly after the unsealing, the dramatic
8 unsealing of the SEC's complaint, when we were all last
9 together, that that was untenable.

10 It has then fallen on the committee and the SEC to
11 challenge the arrangements made with Mr. Shapiro, in order to
12 promote the filing of these cases and begin this process; the
13 process, which, as I've already articulated, and as you will
14 hear today, is recognizing dramatic value for the
15 constituents, and who, by the way, even the committee's
16 witness will not contest is probably the best path forward to
17 recognize value for the assets.

18 In addition to potentially giving the debtors
19 access to valuable information, which, unfortunately, given
20 the circumstances, will not be available, there was a
21 reasoned rationale that, under any circumstances, the
22 agreements that were entered into pre-petition, as viewed
23 with the benefit of hindsight today, are in the best interest
24 of the estate. That is not a dramatic change; that is no
25 change from what was said in the Perkins declaration, that is

1 no change from what we've articulated at every hearing to
2 date, which is -- and frankly, said, from the very first
3 meeting we had with the committee, that that is an
4 alternative explanation why the process that has been put in
5 place and is being pursued is in the best interest of
6 creditors.

7 The parties have been told all information, the
8 need to maintain liquidity, some of the challenges thereto,
9 the disclosure of the SEC's needs, the idea that the SEC is
10 potentially going proceed forward with an action. It's not a
11 secret. We filed TRO papers, we're prepared to contest that,
12 we're prepared to contest that in Florida because we don't
13 believe that even the Florida Judge will be of the view that,
14 in -- after looking at the evidence that will be adduced
15 today and otherwise, that taking the assets that are
16 currently enjoined, the protection and privileges and powers
17 of being prosecuted in a Chapter 11 case should be moved to a
18 receivership in Florida.

19 THE COURT: I wouldn't presume to guess what the
20 District Court would do.

21 MR. NEWMAN: I would not presume myself, Your
22 Honor. However, I also believe this Court has an opportunity
23 to review the matter, and we have that TRO scheduled for the
24 18th.

25 I will not, at this time -- I will save for the

1 closing a detailed response to the allegations of self-
2 dealing and misconduct and malpractice. I think that is not
3 a helpful tone to set in this hearing. I think that was not
4 what Your Honor anticipated when this hearing was set on
5 shortened time, on two weeks' time, in order to evaluate
6 whether the best interests of creditors would be solved,
7 would be addressed.

8 THE COURT: Debtor did not impose -- did not
9 oppose setting this for hearing on shortened time.

10 MR. NEWMAN: Your Honor, I understand that. And
11 based on the papers that were submitted, and the allegations
12 that were made, and the issues that were raised in the
13 papers, we believed that it was a reasonable period of time
14 to address the fundamental issue of whether or not these
15 parties are independent. And we will prove that today, and
16 we will provide evidence to that effect. And we believe that
17 is, in fact, what Your Honor intends to review, which is what
18 serves the best interests of creditors, and whether or not
19 Mr. Beilinson and Mr. Perkins are independent, and whether or
20 not Mr. Shapiro continues to be involved.

21 And we believe that the clear and convincing
22 standard in the Third Circuit will not be overcome, that the
23 trustee motion will not meet its burden of overcoming, by
24 clear and convincing evidence the evidence that the debtors
25 will provide that suggests that the parties are independent,

1 and Mr. Shapiro is out, and that the best interests of
2 creditors are served.

3 THE COURT: So here's a concern I have that you
4 might want to think about and find a way to address, not
5 right at this moment, but during the course of the hearing.
6 I had a case several years ago, in fact, I'm told it was the
7 largest 11 filed in 2007, in which there were motions for
8 appointment of an examiner, which was opposed by the
9 creditors' committee on the grounds, primarily, that the
10 committee was fully capable of conducting its own
11 investigation of pre-petition improprieties. Actually, the
12 debtor had reported that its public filings had been
13 inaccurate.

14 And I ended up appointing the examiner, and I did
15 so for, among other reasons, while it's usually a good thing
16 that the constituents come to business settlements in finding
17 a way to exit a Chapter 11, in view of the allegation of
18 impropriety, I thought it was important to have a fiduciary
19 that reported to me, so that none of the -- well, my concern
20 was -- without disparaging any of the professionals, was
21 that, if there were improprieties, I wanted to hear about
22 them publicly, rather than have them buried in settlements
23 before facts had come to light.

24 I have that concern here. So you needn't address
25 it at the moment, but you might think about it, and address

1 it at some point during the hearing.

2 MR. NEWMAN: Your Honor, we'd be happy to do that.
3 I would say, without reacting to that particular issue
4 without having an opportunity, I think the point we've made
5 and would like to make in response to that and some other
6 points that were made by Mr. Pachulski and by the SEC, is
7 that, what this valuable set of assets needs is some
8 continuity, some momentum, and some certainty of the approach
9 going forward. And our approach has been to engage with the
10 constituents who would engage with us, to discuss that
11 process. And that is the path forward we want to set.

12 So an examiner is an alternative. Having the
13 committees have particular opportunities or path forward to
14 make the examinations necessary. The question of whether or
15 not there are one or more committees --

16 THE COURT: Well, let me push back for a moment on
17 going forward.

18 MR. NEWMAN: Yes, Your Honor.

19 THE COURT: This is a big company, with lots of
20 different ownership interests, but it's a real estate
21 development case. Okay? The debtor builds and sells real
22 estate. Now I know that may be an overly simplistic view,
23 but I think it's at the core of what this 11 debtor has to do
24 to create value for its constituents. That's not all that
25 complex. Tell me why I'm wrong about that.

1 MR. NEWMAN: I think, Your Honor, there are
2 complexities. It's not impossible of being ascertained. But
3 for example, if you look at the pleading filed by 805 Nimes,
4 that is a large, early stage development in Beverly Hills,
5 with one of the most complicated set of regulatory land use
6 restrictions --

7 THE COURT: Right. And they don't want it screwed
8 up. I get that.

9 MR. NEWMAN: Exactly. And so the idea that there
10 are people who have been working this problem out for over a
11 month, who are up to speed, who had some opportunity for a
12 transition of institutional knowledge from Mr. Shapiro, and
13 have the expertise needed to move forward, is in the best
14 interest of the estate.

15 What is not in the best interest of the estate is
16 to have a stop-hit now, default the DIP, the liquidity that's
17 necessary to continue to build and protect the assets. Of
18 course, you know, it's the rainy season in California. If we
19 start to not -- have subcontractors work off -- walk off the
20 job because they're not available, they don't know what are
21 the certainties of being paid, substantial damage will be
22 done to the properties that are under construction, and there
23 will be a loss of momentum towards getting those properties
24 finished and sold as quickly as possible.

25 So, while I agree it is certainly possible -- as

1 is done in this case; that, in a relatively short period of
2 time, an experience management team could come up to speed on
3 the issues. I'm not saying that there is only one person in
4 the world, as is evidenced by the need and effort to replace
5 Mr. Shapiro; I'm not saying there's only one person in the
6 world who can do this. What I'm saying is Mr. Beilinson and
7 Mr. Perkins are doing it, they're up to speed, they're doing
8 the work.

9 If we push pause today, if Your Honor ordered the
10 appointment of a trustee today, yes, it's possible that the
11 United States Trustee would quickly nominate someone.
12 However, under 1104, it would be the right of any creditor or
13 party-in-interest to object to the appointment of that person
14 and call for a meeting. That could take up to 30 days to be
15 appointed. In that period of time, one or more candidates
16 may be submitted.

17 And you have to recall, also, there's 270 some
18 debtors. So the right to vote for appointment of a trustee
19 is on a debtor-by-debtor basis at the creditor level.

20 Now Your Honor may be able to manage this. I'm
21 not saying there aren't ways to fix this. But I'm saying
22 it's not as simple as saying, tomorrow, a new Mr. Beilinson
23 comes in and starts the work. Tomorrow, a new person may
24 come in, and they may be uncertain in their administration
25 for some significant period of time. There may be a lack of

1 unity of the administration of these debtors going forward.
2 And there may not be an opportunity to recover the confidence
3 of our DIP lender, who has, to date, said they will continue
4 to fund this structure.

5 THE COURT: Okay. So let me --

6 MR. NEWMAN: There may -- so --

7 THE COURT: -- just briefly mention, I know the
8 debtor cites cases in support of the -- weighing -- a factor
9 -- one of the factors weighing heavily against appointing a
10 Chapter 11 Trustee is creating a default under the DIP.
11 Frankly, I think those cases can be distinguished for the
12 reasons that the Courts explained in their opinions. I
13 consider it a factor, but not a dispositive one.

14 MR. NEWMAN: Understood, Your Honor. And we're
15 not saying that there's one dispositive factor here. What
16 we're basically saying, Your Honor -- and I had not intended
17 to make an opening, and I apologize for imposing on the
18 Court's time.

19 THE COURT: No, you know, and I hadn't intended
20 it, either. I apologize to you.

21 (Laughter)

22 MR. NEWMAN: So I -- we are -- we have articulated
23 a plan, we've articulated it -- we've attempted to articulate
24 it to the committee. They mostly want to talk about the
25 management and governance. We've attempted to talk -- to

1 articulate it to the SEC, and we've responded to all of their
2 requests. We have sat down, on a consistent basis, and
3 articulated our plan to the four or five ad hoc committees
4 that have been formed, that represent, collectively, tens of
5 millions of dollars of notes, and claim to be in contact with
6 hundreds of millions of dollars of note and unit holders.

7 And I think, when you're looking at the issue Your
8 Honor identified, which I think is the right issue, which is
9 the best interest of creditors, assuming there is no
10 technical violation of 1104(a)(1); i.e., there's no existing
11 misconduct on behalf of current management, which we believe
12 we'll prove without a doubt, let alone will they contradict
13 by clear and convincing evidence, then the issue really is
14 what's in the best interests of the creditors.

15 And we will adduce evidence that shows that we are
16 making progress, we are on the job, we are doing what needs
17 to be done, and we will continue to do that. And we will
18 continue to take input from all the creditor constituencies.
19 But the proof in the pudding, Your Honor, is that every
20 creditor with significant money in this case, other than the
21 small micro-constituencies represented in the committee, has
22 weighed in now that they would prefer not to see current
23 management disturbed.

24 And it's because they're sufficiently comfortable
25 that independence exists, which is what all these cases say;

1 that, no matter when the CRO or independent fiduciary -- when
2 Mr. Pachulski says this case will set a tone for future
3 cases, I don't think he's wrong, one of the few things that I
4 agree with him on. I think the point is that, if you look at
5 this case, it's not that different from the cases that you
6 see all the time, which is that a party with a problem, with
7 an inability to continue to operate, and frankly, with a
8 known inability to file a bankruptcy because of their own --
9 the allegations against them and their misconducted, chooses
10 an independent management team, with whom they have no prior
11 engagement and have no financial dealings.

12 And those independent managers become the
13 fiduciaries through appointment. They were -- as of December
14 1, they were appointed formally through state law, corporate
15 governance to their positions. That is, by the way, a
16 simpler and more efficient process than the trustee process,
17 as I've articulated, and as you'll hear more about.

18 THE COURT: Well, the bankruptcy overlay involves
19 more process, no doubt.

20 MR. NEWMAN: No doubt. And now are fully subject
21 to that overlay. They have come immediately before Your
22 Honor, they have disclosed everything they know about what
23 was going on pre-petition. All of the facts in the original
24 pleadings and, frankly, in Mr. Pachulski and the SEC's
25 discussion today, are facts that were adduced from the first-

1 day declaration. Even the allegation that we didn't disclose
2 the termination conditions, that came from an agreement that
3 was attached to the Perkins deposition.

4 THE COURT: All right, Mr. Newman. Wrap up, if
5 you would.

6 MR. NEWMAN: Yes, Your Honor. Our point is the
7 independent management team is independent, they are doing a
8 good job. And the principal criticism you will hear today
9 from the committee and their witnesses is that they want us
10 to do things differently. That's fine, that's what the
11 process is there for. We are happy to have those
12 conversations and to learn from their thoughts and
13 experience, as well as the other five note and unit holders
14 who have appeared and given us a vote of confidence.

15 What we're not prepared to do is move in a process
16 that will disrupt the existing business development effort
17 that the debtors are in. And we don't believe Your Honor
18 will hear anything today that contradicts the fact that
19 that's the best path forward for these debtors.

20 THE COURT: Thank you.

21 MR. NEWMAN: Thank you, Your Honor.

22 THE COURT: Does the U.S. Trustee wish to be heard
23 briefly? I hear no response. Oh, I'm sorry.

24 MR. FOX: Apologies, Your Honor. Good morning.
25 May it please the Court, Timothy Fox on behalf of the United

1 States Trustee. I just didn't really want to feel left out
2 of the openings, and so sorry for imposing on the Court.

3 THE COURT: Well, I didn't think that you didn't
4 care, Mr. Fox.

5 MR. FOX: As you're well aware, these cases are
6 very fluid. Every day brings a new development and new
7 revelations that have kept my office quite busy. I've been
8 receiving numerous calls from investors. And the theme that
9 runs through all the communications I've had are that the
10 investors are concerned that they put their trust in a
11 company that didn't have their best interests at heart, and
12 that now they're getting multiple messages from the parties
13 currently in place.

14 One of the facts that was adduced during the
15 depositions was that the sales force that had sold these
16 securities or investment opportunities to investors had been
17 re-tasked with doing triage for parties reaching out during
18 the bankruptcy cases, to try to get some information.

19 Our concern here relates to the issue that Your
20 Honor raised back at the scheduling conferences we had last
21 week, that it doesn't appear that there is a wall high enough
22 or big enough to effectively resolve the taint that Mr.
23 Shapiro's actions have resulted in the position of these
24 debtors.

25 As we proceed in the Chapter 11, it's clear that

1 the hold that Mr. Shapiro dug is so deep that the bankruptcy
2 schedules and any number of normal informational items that
3 would be filed on the docket and provided in these cases will
4 take months, regardless of who is charge, to get those on
5 file. We understand that the debtors' professionals are
6 working diligently on those issues. But a clean break here
7 and an independent fiduciary on behalf of the stakeholders is
8 what we believe is in the best interest of creditors and all
9 stakeholders in these cases. Thank you.

10 THE COURT: Thank you. The -- and I'll read from
11 the agenda, under Item 19A. Do the noteholders jointly
12 represented by the Law Office of Curtis Hehn wish to be
13 heard?

14 MR. HEHN: Thank you, Your Honor. At this time,
15 no, we leave the parties to the presentation of their
16 evidence, but thank you.

17 THE COURT: Brevity is welcome. Thank you.

18 (Laughter)

19 THE COURT: Does 805 Nimes Place wish to be heard?

20 MR. STRATTON: Good morning, Your Honor. David
21 Stratton. Not at this time. Thank you.

22 THE COURT: All right. Thank you.

23 And the Joint Noteholder Group?

24 MR. SHINDERMAN: No opening statement. Thank you.

25 THE COURT: All right. And finally, the Ad Hoc

1 Committee of Holders of Promissory Notes.

2 MR. KORTANEK: Yes, Your Honor. Steven Kortanek -
3 -

4 THE COURT: Oh, you broke the chain, Mr. Kortanek.

5 MR. KORTANEK: Yes.

6 (Laughter)

7 MR. KORTANEK: Your Honor, I'll add to the
8 apologies of other parties, Your Honor. We had not
9 anticipated an opening, Your Honor, but I'll be very brief.
10 Steven Kortanek with Drinker Biddle on behalf of the Ad Hoc
11 Committee of Promissory Noteholders. Your Honor, as of this
12 morning, we represent, as an update, 78 individual holders,
13 all original purchasers of these securities, holding about
14 \$25.6 million in promissory notes at various funds.

15 Your Honor, opening should be a roadmap for what
16 the evidence is going to be today, so we, obviously, are
17 awaiting what that trial record will look like, and we
18 emphasize that in our filing. We remain and believe we need
19 to remain open-minded, in effect, about what that evidence
20 actually shows, in deference to our client constituency.

21 However, where we are today, reading the
22 deposition transcripts, listening in for the Perkins and
23 Beilinson transcripts and depositions, in particular, does
24 not suggest that cause is going to be shown today, and we
25 emphasized that in our pleading; nor do we think that it's in

1 the best interest of our client group, or noteholders
2 generally, to have a trustee appointment.

3 And I think we tried to lay this out as much as
4 possible in our pleadings, so I don't need to sort of beat
5 that horse more, and we'll certainly reserve time for
6 argument. But where we are, in context, matters. And Mr.
7 Pachulski had made a comment that one or more of the
8 unofficial groups doesn't seem to have done a lot of
9 investigation. Well, that's because all these parties, Your
10 Honor well knows, the parties well know, there's simply no
11 official body representing a quarter -- three-quarters of a
12 billion dollars in defrauded noteholder victims, nor unit
13 holders, for that matter.

14 It's stating the obvious, Your Honor. But how
15 many key inception points in these cases did victims have to
16 watch play out without official representation? We were the
17 only ones who tried to take on the DIP at the second interim,
18 nobody else. We attempted to cross, you know, we did what we
19 could. We don't have the firepower, to state the obvious, to
20 deal with all of these issues.

21 Now here we are at two trustee motions. There is
22 no more important thing that could happen in these cases. We
23 believe we formed a principled view in opposition to these
24 motions. But here we are again with victims not officially
25 represented.

1 THE COURT: Well, let me make a comment about
2 that, Mr. Kortanek. And I will tell you it strikes me that,
3 on one level, with the position that your clients and others
4 are taking, are that they want to pick the plaintiff in the
5 adversary who's going to contest whether they have secured
6 claims or not. And in part, I view your client's position as
7 a choice, well, we'd rather have the debtor be that plaintiff
8 than somebody else. Respond to that, if you would.

9 MR. KORTANEK: Well, that -- it's a fair question,
10 Your Honor, of course. It's less of that, although that's --
11 that may be a factor. But nothing in our discussions has
12 crossed that line. It's --

13 THE COURT: And they're going to have to --
14 forgive me for interrupting.

15 MR. KORTANEK: Sure.

16 THE COURT: They're going to have to defend such
17 an adversary, if it's ever filed, individually. They can't
18 do that collectively, in any event, can they?

19 MR. KORTANEK: Well, see, Chapter 11, this is --
20 the type of case that we foresee it as playing out is such
21 that it affords an opportunity for the -- what everyone
22 acknowledges -- and we respect all the efforts of the SEC and
23 all of its investigations, and for that matter, anybody else
24 who is investigating the wrongs done to these investors.

25 Why is it a problem, in any way, shape, or form,

1 for the victims of the fraud, alleged Ponzi, whatever labels
2 we put upon it, to have a measure of control over what the
3 resolution is? When you think of mass tort bankruptcies, or
4 any other scenario where you have a wide net of victims of
5 one shape or form, involuntary creditors, if you will, who
6 are a voluntary group, were hybridized in that sense; they
7 voluntarily --

8 THE COURT: But -- wait, whoa. Victims of
9 asbestos are involuntary creditors; your clients are not.

10 MR. KORTANEK: But there's an involuntary element
11 to it, and that's the fraud.

12 So what I'm getting at, Your Honor, is this is a
13 forum in which, with official status -- of course we're not
14 going to, you know, whitewash suits that are validly brought
15 against certain constituencies, Your Honor; that's not the
16 question, although I realize you're asking it. It's what's a
17 vehicle to have a rational outcome in these cases, for the
18 whole host of issues, such as a threshold question: Is it
19 even necessary or appropriate to launch litigation to avoid
20 liens against every single individual noteholder? Is there
21 not a set of circumstances where an official body for those
22 victims and a body for the unit holders can work, as part of
23 a global resolution, to address treatment of victims.

24 So what we have here is we have the committee, on
25 one side, saying, well, we do represent you, you'll

1 eventually be unsecured because that's what we've decided
2 we're going to do at the beginning of the cases --

3 THE COURT: And --

4 MR. KORTANEK: -- but we've --

5 THE COURT: And yet, that representative has said,
6 look, what has to be done here is beyond our capacity, and no
7 criticism of the professionals involved.

8 MR. KORTANEK: Right. And so here we are. You
9 know, we levied some criticism at the committee and concerns,
10 that's a big theme of our objection, Your Honor, but --
11 because they do represent -- the way the U.S. Trustee formed
12 that committee, to be honest, it just represents unsecured
13 creditors, that's fine. And they have their bailiwick, and
14 they're going to, you know, carry out their job
15 appropriately.

16 But there's also this unique constituency of
17 people who have liens. The great majority, or substantially
18 all, have liens. The question is whether they're avoidable -
19 -

20 THE COURT: You seem to think that, if there's no
21 committee, they'll get lost in the process here. I couldn't
22 disagree more strongly with you, Mr. Kortanek.

23 MR. KORTANEK: Well, that's -- you know, that's
24 our issue, Your Honor, is we have -- you know, without
25 representation, you know the -- we don't have any official

1 role in the case. We should be --

2 THE COURT: And yet, here you are, regularly, with
3 others.

4 (Laughter)

5 MR. KORTANEK: Your Honor, you'll note, you know,
6 how big our team is, and the fact that we don't have, you
7 know, a financial advisor of record. We don't -- we -- you
8 know, I think it's sort of stating the obvious. We don't
9 need to get ahead of ourselves on the 18th, Your Honor,
10 because that's yet to be determined. But the
11 disenfranchisement part of it really rings true with us.

12 On cause, we formed a view, again, based on the
13 preview that one gets through the discovery that's been done,
14 that we don't think cause is likely to be shown.

15 In terms of best interests of creditors, it's not
16 necessarily just a voting of number of bodies here opposing
17 or supporting. But we've also taken that to heart and also
18 believe that it's not in the best interest of creditors to
19 launch into a trustee motion.

20 We've laid out, from a legal standpoint, the
21 unanticipated consequences we see from the appointment of a
22 trustee. And I don't think anything about the argument
23 earlier today changes those concerns, and again, leaves
24 everybody else deciding what happens to the victims, and
25 that's not an acceptable situation, nor do we think it's

1 fair.

2 (Recess 10:27 a.m. to 10:35 a.m.)

3 (Call to order of the Court)

4 COURT CLERK: Be seated, please.

5 MR. NEWMAN: Your Honor, as requested, we
6 discussed during the break Mr. Derrough, here from Moelis and
7 Mr. Beilinson and I, in suggestion with respect to an
8 examiner --

9 THE COURT: I wasn't suggesting an examiner. I
10 was just giving you an illustration, but go ahead.

11 MR. NEWMAN: Okay. Well, the point was and I just
12 wanted to confirm that the debtors are amenable to that as
13 alternative to going forward with the -- with, I think,
14 you've articulated is a potentially destructive hallucination
15 of evidence today to provide the examiner an opportunity to
16 provide a report and guide Your Honor appropriately.

17 THE COURT: All right. Well, the statute gives me
18 the option in any event, does it not?

19 MR. NEWMAN: Absolutely, Your Honor.

20 THE COURT: All right. Mr. Pachulski.

21 MR. PACHULSKI: Thank you, Your Honor. And I
22 apologize, because I thought we'd have formal introductions
23 and so I just want to take thirty seconds, Your Honor, to
24 advise Your Honor because of the importance of this hearing
25 who we actually have --

1 THE COURT: Oh, I kind of got a feeling for the
2 importance, Mr. Pachulski.

3 MR. PACHULSKI: Yeah, I know you did.

4 And in addition to Your Honor and myself, the
5 committee members who come from different parts of the
6 country including California are in attendance. Mr. Ron
7 Myrick is in attendance. There has been a lot of comments
8 about the committee members.

9 Mr. John O'Neill is in attendance whose here. Mr.
10 Terry Gobel (ph) and Mr. Kelly Gobler in attendance because
11 of as I said the importance of this hearing, so. And I
12 appreciate their coming to this hearing. It is a major issue
13 for all parties in this case.

14 For our first witness, Your Honor, we are going to
15 call Mr. Perkins.

16 MR. NEWMAN: Sorry; just a question.

17 It was decided the other day that you were going
18 to present the SEC person first. Is that being reserved for
19 later or?

20 MR. PACHULSKI: Well, I'm not presenting the SEC
21 person and apparently, I don't think the SEC understood that.
22 And I'm not sure their person is here yet, is part of the
23 issue.

24 MR. NEWMAN: I just want to make sure we were
25 clear.

1 MR. PACHULSKI: Yeah.

2 THE COURT: Mr. Perkins, come be sworn in, please.

3 LAWRENCE RUSSELL PERKINS, COMMITTEE WITNESS, SWORN

4 THE CLERK: Please be seated. State your full
5 name for the record and spell your last.

6 THE WITNESS: Lawrence Russell Perkins; P-E-R-K-I-
7 N-S.

8 THE CLERK: Thank you, sir.

9 MR. PACHULSKI: Thank you, Mr. Perkins.

10 Your Honor, to make the proceeding as efficient as
11 possible, what we've done is Your Honor has, I believe,
12 binders of -- presently, I think there are 208 exhibits.
13 There's one that's missing, we're going to make 209, but we
14 don't have to get to that at this point.

15 And to make it more efficient, we've created what
16 we believe will be the documents that we'll be asking the
17 witnesses to look at, which are probably about 15 to 20, so,
18 we've created witness binders so that Your Honor --
19 otherwise, it's going to get very hard. So, we have that for
20 Your Honor.

21 Obviously, for Mr. Perkins, for counsel, so that
22 we can --

23 THE COURT: For my law clerk as well, if you
24 would.

25 MR. PACHULSKI: Thank you.

1 THE COURT: Thank you.

2 MR. PACHULSKI: I apologize in advance, Your
3 Honor. We have made up three: one for myself -- well, four.
4 One for myself, Your Honor, Mr. Perkins and Gibbs & Dunn
5 lawyers. My colleague, Ms. Robinson, is going to make some
6 more in case others want to look at it. They all have the
7 binders, but this is a little more efficient. There's
8 nothing in there that isn't in the other.

9 CROSS EXAMINATION

10 BY MR. PACHULSKI:

11 Q Thank you, Mr. Perkins.

12 Could you state what your present role is at
13 Woodbridge?

14 A I'm the chief restructuring officer, the proposed chief
15 restructuring officer of the Woodbridge Group of Companies.

16 Q And have you engaged your firm, SierraConstellation
17 Partners, to assist you?

18 A Yes.

19 Q Okay. And how many SierraConstellation employees are
20 working on the job at this point?

21 An Approximately five in varying capacities.

22 Q And they're all employees, so they receive W2's and not
23 1099?

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

25 Q Well, would you be aware if they were actually acting

1 as independent contractors or employees?

2 A Yes.

3 Q And, so, I would assume they all get W2's?

4 A I think we have one independent contractor
5 relationship, maybe two.

6 Q And who would those people be?

7 A Reece Fulgham and Rob Shenfeld.

8 Q When your deposition was taken, did you mention that
9 the person who's basically running the company day to day is
10 actually an independent contractor when I asked that
11 question?

12 A I don't recall it coming up.

13 Q I asked -- sorry.

14 A Go ahead, Mr. Pachulski.

15 Q Do you recall that I asked how many employees from
16 SierraConstellation were working and you said five?

17 A Yes.

18 Q And do you recall that I said were any independent
19 contractors and you said there were two administrative
20 people, am I correct?

21 A I separate the two, in my mind.

22 Q I don't understand.

23 A When we use an outside firm and we have an independent
24 contractor that's exclusive to us, I separate it.

25 Q So, you do have an independent contractor that you had

1 said was an employee, is that correct?

2 A I consider them employees.

3 Q Okay. So, during your career, how many homebuilders
4 have you represented or served as a CRO or some other
5 capacity as an officer?

6 A I don't recall the total number over my career.

7 Q In the past ten years?

8 A Approximately eight, I believe.

9 Q Is there a reason that your representation of real
10 estate companies is not on your website?

11 A No.

12 Q Okay. How many of those homebuilders had homes that
13 they intended to sell for over ten million dollars? Let me
14 be more specific. That, at least, 25 percent of their homes
15 would be sold for over ten million dollars?

16 A None.

17 Q And is it true that the majority of Woodbridge's Los
18 Angeles homes are projected to sell for more than ten million
19 dollars?

20 A I believe so.

21 Q And would the number approximately 80 percent be
22 accurate?

23 A Of the California homes?

24 Q Yeah.

25 A It sounds accurate.

1 Q Mr. Perkins, post-Chapter 11 filings did Mr. Shapiro
2 had full access to the office and computer systems until, at
3 least, December 28th, 2017?

4 A I don't believe. So, there's two questions there as it
5 relates to the office, yes, but as it relates to the computer
6 systems, no.

7 Q Okay. How did you restrict his use of the computer
8 system?

9 A He didn't have access to the systems beyond email.
10 And, actually, he didn't have access to Woodbridge email. He
11 had access to his America online account.

12 Q So, he had no ability to access the computer, is your
13 position?

14 A Yes.

15 Q Okay. So, if you could look at what we've designated
16 as Exhibit 160, which is the forbearance agreement. You have
17 that, Mr. Perkins?

18 A Yes.

19 Q Okay. Is there a reason that Exhibit 160 -- well, let
20 me. . . I apologize.

21 Am I correct that that was the forbearance agreement
22 that was attached to your first day declaration?

23 A Yes.

24 Q Is there a reason that there are redactions on that
25 document?

1 A Yes.

2 Q What are the reasons?

3 A I believe the redacted portions were the specific
4 addresses of the properties that were covered under the
5 forbearance agreement. And there was a concern for health
6 and safety.

7 Q What was the health and safety concern?

8 A We were concerned that having the physical address on
9 public record of the residence of Mr. Shapiro would present a
10 health risk that could expose myself to liability and,
11 otherwise, put him in harm's way.

12 Q And would it expose you to liability? It's a --
13 forbearance agreements aren't unusual.

14 A I'm more concerned about if something were to happen to
15 him and it would be, you know, part of his -- you know, God
16 forbid if something was to happen to him that would hurt him
17 or his family, and they would sue the state. There could be
18 any number of issues if it was -- if something bad happened.

19 Q Did Mr. Shapiro ask you redacted?

20 A I don't remember.

21 Q I assume you did not sign this document as redacted
22 document?

23 A I did not.

24 Q So I am correct that Mr. Shapiro had full use of his
25 office until December 28th, 2017?

1 A I think we notified him not to come in shortly before
2 that, but we formally noticed him, I believe, on December
3 28th.

4 Q Do you know if Mr. Shapiro's benefits have been cut
5 off?

6 A I don't know right now. I believe so, but I don't know
7 right now.

8 Q Wouldn't that be something that you should know as to
9 whether his benefits were cut off?

10 A You know, we have a lot of employees. There's a lot of
11 things going on. I can look into it.

12 Q But Mr. Shapiro is a sensitive issue, you would agree
13 with that?

14 A Yes.

15 Q Have you had conversations with Mr. Shapiro since
16 December 4th?

17 A Yes.

18 Q Could you describe the general nature of those
19 conversations?

20 A He would typically call me, he would ask for
21 information about the case, which I would not answer. He
22 would ask questions or make suggestions more accurately about
23 the direction on certain properties, information he sees in
24 the news about other sales in the area. And that was the
25 majority of the nature of it.

1 Q Okay. Has Mr. Shapiro made any recommendations to you
2 since December 1, 2017 regarding Woodbridge?

3 A What was the first -- sorry; I didn't hear that.

4 Q Has Mr. Shapiro made any recommendations to you
5 regarding Woodbridge since December 1, 2017?

6 A Yes.

7 Q What are those recommendations?

8 A I can't recall all of them, but he would review certain
9 contracts. He would make recommendations as far as whether
10 or not to go forward. I would consider his opinion, look at
11 the contract, try and do my own diligence, and then make my
12 decision otherwise.

13 Q Okay. Did Mr. Shapiro volunteer his recommendations or
14 did you ask him for his recommendation?

15 A Both.

16 Q Can you tell us what specific issues you asked for his
17 specific recommendation?

18 A The one I recall is there was a staging contract for a
19 house that was getting ready to be sold. In my review of it,
20 it looked kind of expensive. I asked him if it looked kind
21 of expensive. He agreed that it looked kind of expensive, so
22 we pushed back on it to get it cheaper.

23 Q Did you get it cheaper?

24 A Yes.

25 Q Anything else that you recall that you asked for his

1 recommendation, other than staging of a home?

2 A I'm not sure it's in the same category of staging, but
3 we added an art consultant that was related to one of the
4 homes and similar dynamic played out. I'm not an art expert,
5 but it looked expensive. He agreed that it looked expensive.
6 I looked back at the contract and we determined that it was
7 expensive and we pushed back.

8 Q Any other items you asked for his specific
9 recommendation?

10 A Yes.

11 Q What were those?

12 A We had trouble with one of the properties and a
13 contractor with one of the properties. They did not seem to
14 be performing. I asked him for the context as far as what
15 the original, call it, deal was with the contractor and how
16 they were doing.

17 He made the suggestion that they seemed to be not doing
18 a good job. And in his experience when someone is not doing
19 a good job, it's better to fire them sooner than later. I
20 recall that conversation.

21 Q Any other recommendations you requested?

22 A Yeah, lots.

23 Q But do you recall them?

24 A I recall a conversation about a retaining wall being
25 built and the urgency around a retaining wall. With upcoming

1 rainy season, we wanted to make sure that the retaining wall
2 was in play. And I remember talking to him about that.

3 Q Anything else?

4 A Yes.

5 Q Go ahead.

6 A I recall a conversation around a permitting issue one
7 of our properties that was forthcoming that we needed to deal
8 with rapidly. We engaged in conversations with the
9 development team and other people inside the company. I
10 recall that conversation.

11 Q Was he part of the meeting with the rest of the team?

12 A No.

13 Q Okay. So, did you call him after speaking to the team?

14 A I don't remember. There was many conversations around
15 it. I think he was included in one of them.

16 Q Anything else you recall as to any other
17 recommendations during the period that we're talking about?

18 A There's are the ones that come to mind.

19 Q Okay.

20 A There are more. I just can't remember them all.

21 Q Okay. Fair enough.

22 We're going to get to the transition services agreement
23 a little later, but am I correct that under the transition
24 services agreement you agreed to pay Mr. Shapiro a \$175,000
25 dollars a month for his services?

1 A Yes.

2 Q Okay. And can you tell me, sitting here today, why it
3 was that you needed Mr. Shapiro for a \$175,000 dollars a
4 month?

5 A He was providing a number of services to us in the form
6 of institutional knowledge and background on the properties,
7 and it facilitated my transition into my role with the
8 company and Mr. Beilinson's role into the company. So, there
9 was as number of services that were articulated in the
10 transition services agreement, but it was largely around the
11 subject of allowing us to "hit the ground running" and keep
12 advancing on these projects.

13 Q Before taking on the role of CRO, did you determine if
14 there were other people within the company that had the
15 institutional knowledge to assist you if the going forward
16 assignment you had as CRO?

17 A Sorry; what was the question -- what was the first part
18 of the question?

19 Q The question was before December 1, 2017, did you
20 investigate if Mr. Shapiro left the company that day, whether
21 they're other people within the company that had
22 institutional knowledge to assist you with the things that
23 you anticipated Mr. Shapiro would assist you in?

24 A Not entirely. So, we investigated it. We spoke to a
25 number of people, but the clear central, call it, knowledge

1 party was Mr. Shapiro.

2 Q So, you came to the conclusion that Mr. Shapiro was
3 needed because there weren't people within the company who
4 had the institutional knowledge that Mr. Shapiro had?

5 A That's not what I said.

6 Q Okay. Tell me what you said?

7 A Okay. What I said was there were other people at the
8 company that had institutional knowledge, sometimes that
9 overlapped with the knowledge that Mr. Shapiro had, sometimes
10 it didn't. And to the extent that there was knowledge that
11 Mr. Shapiro had that they didn't have, he could provide that
12 knowledge. And to the extent that there was information that
13 he had that they didn't have, they could not provide that
14 knowledge.

15 Q Okay. Based on your investigation before December 1,
16 2017, what knowledge did Mr. Shapiro have that other people
17 within the company did not have?

18 A He had knowledge on specific assets that other people
19 in the company didn't have knowledge on. For example, there
20 wasn't a central repository of information beyond Mr.
21 Shapiro.

22 Q Has Mr. Shapiro been replaced?

23 A I suppose by myself and my team.

24 Q Okay. But you haven't hired anyone on the outside to
25 assist you?

1 A No.

2 Q Okay. Now, am I correct that you testified that Mr.
3 Shapiro would be spending over forty hours per week for
4 Woodbridge, that was your anticipation?

5 A That was the idea.

6 Q That was your conversation with Mr. Shapiro or just
7 your idea?

8 A I don't think we laid out a number of time, but full
9 time and I think -- full time.

10 Q Okay. And am I correct that you anticipated that Mr.
11 Shapiro would spend a year and maybe even more than a year
12 getting his consulting fees and working for Woodbridge?

13 A That was the idea at the outset.

14 Q Okay. Whose idea was that, yours or Mr. Shapiro's?

15 A I can't recall.

16 Q What's the date under which you terminated Mr. Shapiro?

17 A I believe we put him on -- I think it was called
18 administrative leave. I don't think it was an official
19 termination on December 28th.

20 Q Okay. Until Mr. Shapiro was terminated, do you have
21 any idea if Mr. Shapiro spent forty hours a week related to
22 Woodbridge?

23 A I don't expect it was forty hours a week. Maybe
24 earlier on in the weeks it was that or more. But as things
25 were evolving, it was less.

1 Q Mr. Perkins, he was only there for four weeks, so,
2 could you specify then week by week there would only have
3 been four weeks?

4 A Are you asking me to look at his time entries?

5 Q No, I'm asking what your information is.

6 A So, I believe for the first couple of weeks he was
7 probably working more than forty hours. After that, we had
8 conversations with him about our intentions as far as not
9 continuing with the contract. And I think his time reduced
10 after that.

11 MR. PACHULSKI: Your Honor --

12 BY MR. PACHULSKI:

13 Q Well, let me ask you this. Have you gotten that
14 information since your deposition was taken last week about
15 how many hours Mr. Shapiro worked?

16 A I think I asked my time, you know, have had
17 interactions with Mr. Shapiro or have they had any
18 interactions with Mr. Shapiro.

19 Q So when you testified said you didn't know if Mr.
20 Shapiro had worked forty hours a week or, frankly, how many
21 hours he worked, is that correct?

22 A Yes.

23 Q Isn't it true, Mr. Perkins, that during the four weeks
24 you did not spend more than ten hours a week with Mr. Shapiro
25 and you weren't even sure if you spent five hours a week with

1 Mr. Shapiro until he was terminated?

2 A Yes.

3 Q And I am correct, at least, your position, Mr.
4 Beilinson's position is that Mr. Shapiro had no authority to
5 make any decisions whatsoever, minor or otherwise, without
6 either your approval or Mr. Beilinson's approval, is that
7 correct?

8 A Yes.

9 Q Okay. Am I correct that after December 1, 2017, Mr.
10 Shapiro's wife had an assistant that was paid for by
11 Woodbridge?

12 A I believe she had multiple duties, but one of them was
13 helping Mrs. Shapiro.

14 Q So, she worked in a number of roles, the specific
15 assistant we're talking about?

16 A I believe so.

17 Q Did Mr. Shapiro provide services for December 1, 2017?

18 A Sorry; did he provide services after December 1, '17?

19 Q Yes.

20 A Yes. Mr. Shapiro or Mrs. Shapiro?

21 Q Mrs. Shapiro.

22 A Oh, excuse me. I believe so.

23 Q Okay. And what were those services?

24 A I believe she was involved typically with the interior
25 design of some of the properties. I don't recall exactly

1 what it was. She didn't report to me directly. There was
2 other people in the company that she would work with.

3 Q So, she had access to the office?

4 A Yes.

5 Q Did she have access to the computers?

6 A I don't know.

7 Q So, she might have had access to the computers?

8 A Yeah, I don't recall that she would have any occasion
9 to have access to the computers, but there was, as far as I
10 know, no reason for her to have access to the system, so, I
11 don't know.

12 Q Okay. Did you ever speak to Mrs. Shapiro after
13 December 1, 2017 as to what services she was actually
14 providing Woodbridge?

15 A I don't recall.

16 Q Okay. Does it refresh your recollection that when your
17 deposition was taken, you said no.

18 A Okay.

19 Q Does that refresh your recollection?

20 A Yes.

21 Q So the answer is no?

22 A Yeah. So, what was your original question? Was it --
23 do I know what she was doing specifically?

24 Q Did you ever speak to Mrs. Shapiro after December 1,
25 2017 about the services she was providing to Woodbridge?

1 A I don't think so.

2 Q So it is fair to say that you believe she provided
3 services, but you have no idea if she provided services?

4 A I was not aware of the services she was providing.

5 Q Okay. I'm just asking do you think that's a fair
6 statement?

7 A Repeat the statement.

8 Q Okay. That you believe that Mrs. Shapiro provided
9 services, but you don't have any idea if she did?

10 A That's fair.

11 Q Okay. So, that's fair comment, correct?

12 A I wouldn't say it that way, but that's fair.

13 Q Does it refresh your recollection that when I took your
14 deposition, your response that's fair?

15 A Yes.

16 Q So, I want to go back for a second just so it's clear
17 on the record, Mr. Perkins. So, as of the time that the
18 transition services agreement was entered into with Mr.
19 Shapiro, was there any restriction on Mr. Shapiro's access to
20 the debtors' computers or his office, or to the office?

21 A There was not a restriction on the office. I think the
22 restriction on the computers -- again, he didn't have access
23 to the systems, the company at that point. He would have to
24 go to someone else for it, so he didn't have access to the
25 CRM system or accounting software or other things.

1 Q Was there a written memo to the company that Mr.
2 Shapiro should not have access to the computer?

3 A We put a litigation holdout relatively early on. I
4 can't recall the exact date. They had been under
5 investigation for a long time, so, I think there was already
6 litigation holds in place, but we did it again.

7 Q Okay. Did you advise employees of Woodbridge that they
8 were not to grant Mr. Shapiro any access to the computers
9 without your consent or Mr. Beilinson's consent?

10 A I believe we did as it relates to the destruction of
11 documents. We did not eliminate his access to his America
12 online account.

13 Q My question is very specific. I apologize, Mr.
14 Perkins, but I'll try it again.

15 Was there any memo to employees that they were not to
16 grant Mr. Shapiro any access to the computers without your
17 approval or Mr. Beilinson's approval or without somebody's
18 approval?

19 A I don't think so.

20 Q Okay. As of the time of your deposition, because I
21 know it might have changed, how many employees did Woodbridge
22 have?

23 A Approximately a 162, I think.

24 Q Okay. And how many of those employees do work
25 specifically related to real estate? So, not real estate

1 accounting, not the real estate fund accounting, but,
2 specifically, in advising what to do with the real estate or
3 managing the real estate, anything like that?

4 A I think between five and ten.

5 Q Is it fair that to say that when your deposition was
6 taken last week that you said I have no recollection?

7 A Could be.

8 Q Okay. Would you like me to read it, so it can be put
9 on record or?

10 A No.

11 Q So was it -- do you recall saying you had no
12 recollection?

13 A I recall.

14 Q Okay. As of the time of your deposition, how many
15 employees did you have in your Florida office, if you recall?

16 A I don't remember; about thirty.

17 Q And how many of those worked on real estate,
18 independent of anything legal accounting, fund accounting,
19 but specifically the real estate we just described?

20 A I don't believe any of them were real estate people,
21 besides their capacity as accountants and bookkeepers for the
22 real estate company.

23 Q Okay. Can you tell me what the sources of revenue were
24 for Woodbridge before December 1, 2017?

25 A The sale of homes and assets that would produce payoffs

1 of loans.

2 Q Does it refresh your recollection that when I asked
3 that exact question at your deposition, you said no idea?

4 A Okay.

5 Q Does that mean it refreshes your recollection?

6 A No, I subsequently looked into a little bit and
7 reflected on it after our deposition and that's what I think
8 now.

9 Q Okay. So, as of the time you were retained -- well,
10 let me go. I apologize.

11 As of last Thursday, you had no idea what the sources
12 of revenue were for Woodbridge during the prepetition period?

13 A I guess, I hadn't thought about it at that point in
14 that construct. As far as thinking about revenue in the
15 traditional sense, as I've said before, as I came into here
16 the books and records of the company were messy and our job
17 is to put them back together. So, I'm looking at more of
18 what we have now and moving forward as opposed to the
19 history, because this standard that I would hold myself to
20 would not be applied to what was there before I got there.

21 Q Okay. But you took on the role of CRO and it's fair to
22 say that you did not investigate what Woodbridge's
23 prepetition revenue was. Now whether it's relevant or not,
24 you simply just didn't do it?

25 A No, that's wrong.

1 Q Okay. Well, you said last week you had no idea what
2 the prepetition revenues were, so I'm trying to --

3 A I also recall that I said that we looked through the
4 financial statements for the company when we got them last
5 week and they weren't held to a standard that I would hold
6 myself accountable to. So, I kind of moved on from the
7 analysis, because I didn't think it was important moving in
8 my job going forward, at that point.

9 Q Okay. And am I correct that you contend that you had
10 no discussions with Mr. Shapiro about his business plan prior
11 to the bankruptcy being filed?

12 A I think that's right.

13 Q Okay. Am I correct that you did have a discussion with
14 Mr. Shapiro prior to December 1, 2017 that Mr. Shapiro could
15 gain control after emergence from Chapter 11 if everyone was
16 fully paid?

17 A Yes. And some other things, to be clear.

18 Q Okay. But, basically people had to be fully paid?

19 A People had to be fully claim, litigation claims had to
20 be settled or otherwise dealt with. And assuming all those
21 things happened then yes as the economic -- the alleged
22 economic beneficiary of this, he would be able to do that in
23 a vacuum and in a perfect world.

24 Q And am I accurate that you actually told Mr. Shapiro
25 that he had a shot of gaining control of Woodbridge upon

1 emergence from the Chapter 11?

2 A Yes.

3 Q Okay. And what information did you have as of the time
4 you told that to Mr. Shapiro so that you could make that
5 representation to Mr. Shapiro?

6 A I had seen the -- I can't recall exactly when that
7 conversation was, so I don't know exactly what I had when I
8 had that conversation or those conversations. But we had
9 seen a list of the assets that were available. I had seen
10 some of the physical assets that were available. I had seen
11 some of the early information that we received on the
12 financial statements and otherwise, done some preliminary
13 analysis on it and that's what came to the conclusion that
14 there was a shot.

15 Q Okay. And did you come to a conclusion as to what you
16 thought -- strike that.

17 Did you do an analysis as to what you thought the
18 assets would be worth post-emergence to come up with the
19 conclusion you did that Mr. Shapiro had a shot?

20 A There was a partial analysis that was done. It's not
21 complete, but it was a preliminary analysis.

22 Q Okay. Am I correct, Mr. Perkins, that as of the time I
23 took your deposition last Thursday, you had no idea if
24 Woodbridge had ever sold a single home after doing ground-up
25 construction?

1 A You are correct.

2 Q Excuse me?

3 A You are correct.

4 Q Thank you. How many people at Woodbridge, to your
5 knowledge, have been involved in ground-up construction, let
6 alone a profitable ground-up construction?

7 A I don't know. I don't know at Woodbridge. In the
8 outside contractor, I know there's contractors that work for
9 the company that have that experience. So, at Woodbridge
10 specifically employees, I don't know. But beyond that, I
11 know there are.

12 Q Well, what real estate infrastructure are you aware of
13 at Woodbridge?

14 A There's a number of people that work there in the real
15 estate capacity, I think I said between five and ten in
16 different roles.

17 Q Okay. Can you start and name them?

18 A Let me think. I know Mike Rosenfeld is the primary guy
19 we deal with at the company. Rick Salvato does some work;
20 works on mostly the Colorado properties for us, as I recall.
21 I think Joe, although I think he's a Riverdale employee, has
22 done work for Woodbridge along the way. That's what I
23 recall.

24 Q Okay. So, you recall Mr. Rosenfeld.

25 A Yes.

1 Q You recall Mr. Salvato.

2 A Yes.

3 Q And you recall Mr. Hughes who you think works at
4 Riverdale.

5 A Yeah, I think he wore two hats, but he had done some
6 real estate work.

7 Q Okay.

8 A And others. I just don't remember the names. They're
9 a little bit more junior and I didn't have as much
10 interaction with them.

11 Q But these would be the three main ones that you had
12 interactions that would give you real estate information?

13 A Of the internal employees. Obviously, there's external
14 consultants and other people that we deal with regularly, on
15 a frequent basis, and those people are who we use frequently
16 on an outsource basis.

17 Q Okay. So, it's three people inside that you recall
18 that are senior and that you, including Mr. Hughes who you
19 think does both roles, and, otherwise, there are outside
20 people you rely on, is that correct?

21 A Yeah contractors that we use for property management;
22 otherwise, and they have a pretty big team.

23 Q Mr. Perkins, I apologize and to the court, because I
24 didn't include it as an exhibit, but can you look at Exhibit
25 205?

1 A I don't have it in front of me.

2 Q Okay. Well, we should get that in front of you.

3 MR. PACHULSKI: Your Honor, it's 205 that I didn't
4 first ask him about. But he should keep the binder, because
5 there will be another item I'll ask him about.

6 UNIDENTIFIED SPEAKER: If I may approach the
7 witness?

8 THE COURT: Yes, you may.

9 BY MR. PACHULSKI:

10 Q Can you look at 205?

11 A I see it.

12 Q And at the very top of it, who does -- it's a LinkedIn
13 profile. And at the top of it you read that Joe Hughes is
14 managing director and vice president of Riverdale Funding,
15 LLC.

16 A I see that.

17 Q You see anything that references Woodbridge?

18 A Nope.

19 Q Who owns Riversdale, Mr. Perkins?

20 A As far as I know, Mr. Shapiro or his trust.

21 Q Okay. Why did you think Mr. Hughes worked for
22 Woodbridge?

23 A Well, there's a number of different assets that
24 Woodbridge as invested in that I understand that Riversdale
25 has managed. If I recall, it's thirty or forty million that

1 they manage and I wanted to make sure that those assets
2 weren't squandered. So, to the extent that I could speak to
3 Mr. Hughes about what's going on with those assets, I would
4 talk to him. I didn't look at his LinkedIn profile prior to
5 calling him. That's not what I usually do. But he was
6 available and he had a lot of information, so I called him to
7 get information on them.

8 Q Did you ever ask Mr. Hughes if he works for Woodbridge,
9 if he's employed by Woodbridge?

10 A I don't recall.

11 Q So you took advice from somebody who works for an
12 entity controlled by Mr. Shapiro, is that correct?

13 A I'm not sure if it was advice, but I spoke to him about
14 assets and I don't recall the nature of the conversation
15 specifically, but I asked for information about him, and
16 yeah, I talked to him.

17 Q Where does Mr. Hughes reside?

18 A I think Kentucky or Tennessee. I can't recall which
19 one.

20 Q So, you asked Mr. Hughes about assets in Colorado and
21 Los Angeles, so he resided in Tennessee or Kentucky?

22 A No.

23 MS. CONN: Your Honor, objection. We had an issue
24 with this document and we didn't come to resolution with the
25 committee on this document, and we did reserve the right to

1 object to the admission of this document to the truth of the
2 matter asserted.

3 But to the extent that's the use that's being made
4 here, we object.

5 MR. PACHULSKI: Okay. We'll get to that. I
6 haven't asked for its admission.

7 (Attorneys conferring)

8 UNIDENTIFIED SPEAKER: I don't recall it being
9 objected to, Your Honor.

10 UNIDENTIFIED SPEAKER: I don't believe so, Your
11 Honor. Here's the communication where they set forth their
12 objections.

13 UNIDENTIFIED SPEAKER: It was not objected to. We
14 assumed we could admit it. To do it now, would be, I think,
15 inappropriate.

16 MR. BEACH: Your Honor, we did reserve the right
17 to object to the truth of the matter asserted. We received
18 these exhibits yesterday morning. And we went through them.
19 We objected to them. This was one of the documents I
20 understand was under discussion. There were other attorneys
21 in California at Gibson Dunn who were working through those
22 objections, but this argument was preserved.

23 MR. PACHULSKI: Your Honor, we received very
24 specific objections. I can show Your Honor the email. If
25 they want to debate the usefulness of this, they can. But we

1 spent a lot of time and this was part of an arrangement. We
2 did object. We had to review all of there's the same time.
3 And I think it should be admitted. If not, I guess I'll have
4 to get --

5 THE COURT: Okay. So, there's a LinkedIn profile
6 that says nothing about Woodbridge. Is there more to it than
7 that?

8 MR. PACHULSKI: Well the more to it is -- he's
9 relying -- he said that the real estate expertise he's
10 relying to relates to somebody who's actually employed by
11 Riverdale controlled by Mr. Shapiro.

12 THE COURT: It has nothing to do with the
13 document.

14 MR. PACHULSKI: Well, it says where he is
15 employed. The document says this is where -- he states where
16 he's employed, Your Honor.

17 THE COURT: But the witness said he didn't review
18 it before he made the call.

19 MR. PACHULSKI: Okay. That's fine.

20 BY MR. PACHULSKI:

21 Q And do you have any specific knowledge that Mr. Hughes
22 works for Woodbridge?

23 A I believe I've seen him on an employee list. I didn't
24 look for his title or anything else, but that's about it.

25 Q Okay.

1 A The full employee list is included the non-debtor
2 entities that we're working through as we've talked about
3 before.

4 Q So, he might have been on the Riverdale list and not on
5 the Woodbridge list?

6 A That could be.

7 Q Okay. But you have no knowledge sitting here today
8 that Mr. Hughes actually works for Woodbridge?

9 A My knowledge of Mr. Hughes is that he's been helpful on
10 the assets that are there. We have, again, thirty plus
11 million dollars of Woodbridge assets that Mr. Hughes had some
12 level of information over, and he's been helpful in helping
13 me administer those assets.

14 Q Okay. And you mentioned Mr. Salvato. If you can look
15 at Exhibit 204 on Mr. Salvato? Is it your understanding that
16 Mr. Salvato works for Woodbridge?

17 A Yes.

18 MS. CONN: Objection, Your Honor. We have the
19 same objection to the admission of this.

20 MR. PACHULSKI: I asked him if he was worked --
21 his understanding --

22 THE COURT: Overruled. You may answer, if you
23 can.

24 BY MR. PACHULSKI:

25 Q You do. And the fact that his LinkedIn says that he

1 works for Riverdale that makes no mention of Woodbridge does
2 not affect your conclusion?

3 A It says he works for Woodbridge here.

4 UNIDENTIFIED SPEAKER: It doesn't on this.

5 BY MR. PACHULSKI:

6 A Yeah.

7 Q Where does it say that?

8 A It says DVP sales Woodbridge Presettlement Funding,
9 LLC.

10 Q I apologize. You're correct.

11 And where does Mr. Salvato reside?

12 A I think the New Yorkish area.

13 Q Okay. So, two of the people you mentioned live in
14 Tennessee or Kentucky and New York and that's who you're
15 going to get your advice from regarding properties in Los
16 Angeles and Colorado, is that correct?

17 A Yes.

18 Q Okay. Where does Mr. Rosen --

19 A Mr. Salvato works on the properties. I think there's a
20 couple properties in New York and the properties in Colorado,
21 primarily. I don't think he sees over anything in
22 California.

23 Q Okay. So, to get advice internally at Woodbridge, who
24 do you rely on for advice relating to Los Angeles and/or
25 Colorado property?

1 A Primarily, Mike Rosenfeld.

2 Q Okay. So, anyone else?

3 A Prior to putting him on administrative leave, I would
4 talk to Mr. Shapiro.

5 Q Okay. And I am correct that there's no one in
6 Connecticut or Florida that has any -- does any real estate
7 related work, correct?

8 A Not that I'm -- besides Mr. Salvato, because he's in --

9 Q Yes.

10 A I'm not aware of any that I've spoken to on the phone
11 that are internal employees.

12 Q Well even Mr. Salvato would live in Connecticut or
13 Florida, I believe.

14 A Yeah, he may reside in the Connecticut office. I think
15 it's relatively close. I haven't asked where he sits every
16 day.

17 Q And until recently between Connecticut and Florida,
18 there were approximately 45 to 50 employees of the 160 you
19 named?

20 A I think that's right, approximately.

21 Q Does Woodbridge still have any relationship with Mercer
22 Vine in Riverdale?

23 A Yes.

24 Q And am I correct that Mercer Vine is the real estate
25 broker from many of the California Woodbridge properties?

1 A For the time being and not exclusively, but for a
2 handful of them.

3 Q And am I correct that at this time, Mr. Shapiro
4 controls both Riverdale and Mercer vine?

5 A Yes.

6 Q And would Mercer Vine be paid a brokerage commission if
7 a Woodbridge property is sold for which it's the real estate
8 broker?

9 A Yes.

10 Q And it is still the real estate broker for some of the
11 properties?

12 A For the very short time being.

13 Q But as of today, it is.

14 A I haven't checked my email today. I've been busy. But
15 as of yesterday, I think that is true.

16 Q Okay. So, from the time you became CRO until January
17 8th that would be a correct statement?

18 A Yes.

19 Q Now is Woodbridge reserving for noteholders with
20 disputed claims even when they haven't filed, requested
21 adequate protection?

22 A I'm not -- let me make sure I'm clear. Basically, are
23 you asking if we're setting aside money for potential
24 disputed claims?

25 Q For potential disputed secured creditors.

1 A Yes.

2 Q And are you effectively priming some investors for the
3 benefit of other investors by putting the money into the
4 reserve?

5 A I'm setting aside the money. I think the lawyers have
6 to sort out how it's going to be primed and otherwise, but
7 I'm setting aside the money.

8 Q Are you aware that there's priming with respect to 28
9 properties?

10 A Yes.

11 Q And are you aware that the investors claim security
12 interest in approximately 139 properties?

13 A Yes.

14 Q And, so, by priming the --

15 A I think it's actually more than that from what I
16 understand because they're non-debtor entities, but I think
17 investors have claims on other things too. But if you're
18 asking about my debtors, yes.

19 Q Okay. So, in essence, you've decided to prime certain
20 properties and you're priming certain investors if they have
21 secured creditors, but reserving those monies to pay other
22 investors that have nothing to do with the 28 properties, is
23 that correct?

24 A Yes.

25 Q Okay. Do you believe the noteholders have a valid

1 security interest?

2 MS. CONN: Objection.

3 THE COURT: Sustained.

4 MR. PACHULSKI: Okay. Your Honor, I would refer
5 to -- he's made the determination in his first day
6 declaration, vis-à-vis, footnote nine on page 8.

7 THE COURT: I'm aware.

8 MR. PACHULSKI: Okay.

9 BY MR. PACHULSKI:

10 Q So do you also understand, Mr. Perkins that the
11 reserves that you're putting away for the investors who have
12 disputed claims you're going to pay ten percent plus an
13 additional two points or so for fees?

14 A Yes.

15 Q Okay. So, if you prime me you're basically priming me
16 if I'm one of the -- if I have a security interest in the 28
17 properties, you're priming me to effectively pay me. So not
18 only will the estate have to pay the four to six or four to
19 eight percent or whatever it is, but you're also paying
20 effectively twelve percent to put those monies aside.

21 A What's your question?

22 Q Okay. Am I correct on the people who have claims on
23 the 28 properties, if they have legitimate security interest
24 that you're setting money aside that they may or may not get
25 one day and their interest would be accruing plus you're

1 paying twelve percent to put the monies aside?

2 A I don't think it's twelve percent, but -- I don't think
3 it's twelve percent.

4 Q Well is my statement correct other than it might be ten
5 percent?

6 A I believe so.

7 Q Okay. Mr. Perkins, am I correct that you were
8 introduced to Mr. Shapiro through his criminal counsel DLA
9 Piper?

10 A I wasn't aware that there was a criminal counselor at
11 the time. I got a referral from someone at DLA Piper and
12 they introduced me to -- actually not to Mr. Shapira, but to
13 the concept of a potential engagement for a turnaround of a
14 real estate developer.

15 Q But it was DLA Piper who introduced you to Woodbridge
16 who is Mr. Shapira's counsel in some form as far as you knew?

17 A Introduced me to the situation. They didn't facilitate
18 an introduction saying, you know, Mr. Shapira meet Mr.
19 Perkins and vice versa, but they made me aware of the
20 situation.

21 Q Do you know of anyone else who might have recommended
22 you to Mr. Shapira or to the situation?

23 A I believe the debtor counsel, what's now debtor counsel
24 at Gibbs Dunn & Crutcher.

25 Q Were they debtors' counsel as of the time that you were

1 introduced tot the situation?

2 A When they weren't a debtor at that point.

3 Q Well to the company counsel.

4 A They were among many. They were one of the company
5 counselors.

6 Q Okay. Do you recall that when I took your deposition,
7 you said it was DLA Piper that had introduced you?

8 A They introduced me to the overall situation. They did
9 not introduce me to Mr. Shapiro.

10 Q Prior to the call to your firm to have an interview
11 with Mr. Shapiro, you did have one in the July/August
12 timeframe?

13 A I think the first time I met him was in August.

14 Q Were you aware that there was an investigation by the
15 SEC in twenty-five different state agencies?

16 A I think I googled it before my meeting.

17 Q And what did you discover in your google?

18 A I saw press releases that were out there from the SEC
19 and, you know, some other google work around Woodbridge and
20 some of the properties that were out there. Stuff like that.

21 Q Okay. And am I correct that you were actually brought
22 in, in October of 2017 to evaluate strategic alternatives and
23 do a cash flow analysis?

24 A Among other things.

25 Q What were the other things, because that's what you had

1 stated at your deposition, so I'd like to know.

2 A That was the primary focus at the time. I think as the
3 case evolved and one of those strategic alternatives looks
4 like it may be a potential bankruptcy filing. There was a
5 series of other workstreams that were added to the list of
6 things to do.

7 Q Okay. Do you remember what those things were?

8 A Yes.

9 Q What were they?

10 A There was the preparation of all of the information
11 required to file the 279 or so approximately debtors. That
12 was far and away the biggest amount of work that was done.
13 There was work related to identifying and getting the debtor-
14 in-possession loan in place. There was work on the cash
15 flow, which you already said. Those are the primary things I
16 remember right now.

17 Q Okay. And you were -- am I correct, you were formally
18 retained on October 23, 2017?

19 A I believe that's right.

20 Q Okay. And am I further correct that you began
21 preparing for the Chapter 11 filings of certain of the
22 Woodbridge entities approximately three weeks before the
23 Chapter 11 petitions were actually filed?

24 A Yes.

25 Q Okay. So, you knew that a Chapter 11 was likely to be

1 filed shortly after December 1, 2017 when you began preparing
2 these petitions?

3 A I didn't say likely, but I said I knew it could be
4 filed.

5 Q Okay. Were you aware prior to December 1, 2017 that
6 the SEC had sought contempt orders against Woodbridge and Mr.
7 Shapiro?

8 A Yes.

9 Q And, frankly, you were aware of the SEC contempt order
10 request in the August/September timeframe, is that correct?

11 A I don't remember exactly when I saw the document, but I
12 saw the press release that was out there related to the
13 contempt motion and other stuff.

14 Q Does it refresh your recollection that when I took your
15 deposition, you said it was during the August/September
16 timeframe?

17 A I think you put it in front of me and it had a date at
18 that point and I don't have it in front of me right now, and
19 I could read the date and I recall seeing it around the date
20 that it was out there, but I just don't remember the date
21 right now of those various press releases.

22 Q You said that I gave you --

23 A Maybe the SEC did. It was a long day that day. A
24 press release was put in front of me. It had a date on it.
25 I recall reading it around that day.

1 Q You recall that I took your deposition before the SEC,
2 correct?

3 A I do.

4 Q So I'll ask it again, am I correct that you had said
5 without anything in front of you that you thought it was
6 during the August/September timeframe?

7 A That sounds right. Yeah, that could be.

8 Q Okay. And, so I'm technically correct, you were
9 retained by Gibson Dunn & Crutcher?

10 A Yes.

11 Q And is it fair to say that you wouldn't have been
12 retained by Gibson Dunn & Crutcher without Mr. Shapiro's
13 consent?

14 A Yes.

15 Q And am I also correct that prior to December 1, 2017
16 you never reviewed the SEC documents and you never did any
17 work to determine if the fundraising efforts by Woodbridge
18 was appropriate?

19 A I reviewed the press releases. I reviewed the
20 allegations. I didn't go to the SEC docket, so yes.

21 Q But you knew that when you got retained as CRO in
22 December 1, 2017 that fundraising efforts were going on from
23 the October 23rd date to the December 1st date, correct?

24 A No.

25 Q You were not?

1 A It was stopped before December 1st, before I started.
2 Part of that time, yes, aware at that time, yes. But I
3 believe it stopped several days before I took over the role
4 of CRO.

5 Q All right, let's try it this way. Between October 23,
6 2017 and, let's say, November 20th, 2017, is it fair to say
7 that fundraising was going on and you knew of the
8 fundraising?

9 A Yes.

10 Q You knew there was fundraising but not specifically how
11 they were fundraising, is that also fair?

12 A Yes.

13 Q So on the little -- you had made the determination that
14 fundraising had to stop, correct?

15 A Well me and the collective team of people that are now
16 the debtors.

17 Q When you were retained on October 23rd, 2017, did you
18 know that the fundraising was going to stop?

19 A No.

20 Q You said you were brought in to deal with strategic
21 alternatives, how were you going to make the determination as
22 to what were going to be the strategic alternatives if you
23 didn't determine that the major method to raise money for
24 Woodbridge was through fundraising efforts?

25 A I'm not sure I understand your question.

1 Q Okay. You stated that you were going to look at
2 strategic alternatives, correct?

3 A Yes.

4 Q And you stated that while you knew fundraising was
5 going on, you didn't know the fundraising and you knew there
6 was an intense SEC investigation, correct?

7 A Yes.

8 Q So how were you going to come up with strategic
9 alternatives without investigating whether or not it was
10 likely or not that the fundraising would be going forward
11 post-October 23rd, 2017?

12 A Again, you're losing me on the long question. So,
13 you're saying how did I know what after. . .

14 Q You were preparing strategic alternatives. Did it
15 include the fact that there was going to be fundraising by
16 the debtors?

17 A No.

18 Q Okay. How did you know that on October 23rd, 2017 when
19 you were retained when that's what you were retained for was
20 to do strategic alternatives?

21 A We were to do strategic alternatives. I didn't come in
22 with a pocketful of strategic alternatives and say this is
23 what we're going to do. What I had to do was conduct the
24 analysis, figure out what I could find out, and then
25 determine what to do after that.

1 Q Okay. Did you ever present the strategic alternatives
2 to Mr. Shapiro or anyone associated with Woodbridge?

3 A I believe we presented them to Gibson Dunn & Crutcher.

4 Q Okay. Was it in writing?

5 A I'm sure we emailed stuff back and forth, but I can't
6 recall. There was not a formal report that was produced.

7 Q Sitting here today what were those strategic
8 alternatives?

9 MS. CONN: Objection, Your Honor; he said it calls
10 for privilege communications.

11 THE COURT: Any response?

12 MR. PACHULSKI: Your Honor, he provided strategic
13 alternatives. I think that at that point if he's going to
14 say -- he's now the CRO. If he's not going to tell us what
15 those strategic alternatives -- he's not here as an expert
16 witness. He's here as a percipient witness.

17 So, if he doesn't want to that's or Your Honor
18 rules, but typically you do that, because he's going to
19 testify as an expert witness. He's not testifying as an
20 expert.

21 THE COURT: Well if you like to explore the
22 circumstances under which those alternatives were delivered
23 so that I can determine whether they're privileged
24 communications, you may do so.

25 BY MR. PACHULSKI:

1 Q Did you provide those strategic alternatives as an
2 expert witness to Gibson Dunn & Crutcher, was that your
3 intent?

4 MS. CONN: Objection to the extent it calls for a
5 legal conclusion as to whether he was qualified.

6 THE COURT: Overruled. You may answer if you're
7 able, sir.

8 BY MR. PACHULSKI:

9 A I provided strategic alternatives to the Gibson Dunn &
10 Crutcher. What's your question again?

11 Q Were you providing it as some form of expert? You
12 would testify it was expert testimony?

13 A No, I was saying in this particular situation, the
14 strategic alternatives that we were laying out seems
15 appropriate.

16 Q And you were doing it as a financial advisor, correct?

17 A Yeah financial advisor to Gibson Dunn & Crutcher, yes.

18 Q Well Gibson Dunn & Crutcher wasn't being reorganized.
19 I assume it was on behalf of Woodbridge, correct?

20 A Yes. So, to be clear, I was retained by Gibson Dunn &
21 Crutcher for their client, Woodbridge Group of Companies.

22 Q But you were providing financial advisory work, really
23 not expert testimony work, is that correct?

24 A Yeah, we were evaluating strategic alternatives. I
25 suppose it could be used a couple of different ways, but we

1 were trying to look at alternatives for Woodbridge.

2 MR. PACHULSKI: Your Honor, I think he can answer
3 the question.

4 THE COURT: Sustained.

5 MR. PACHULSKI: So, he cannot?

6 THE COURT: He cannot.

7 MR. PACHULSKI: Okay.

8 BY MR. PACHULSKI:

9 Q Mr. Perkins, do you know who Mr. Frieze is?

10 A Yes.

11 Q Whose Mr. Frieze?

12 A He was a lawyer that worked for Woodbridge or works for
13 Woodbridge or is, I think we're seeking to have him do some
14 limited work for Woodbridge on an ordinary course basis and
15 had worked for Woodbridge prepetition, and I believe also did
16 work for Mr. Shapiro prepetition.

17 Q Am I correct that in the ninety days before the Chapter
18 11, Mr. Frieze received \$10.45 million dollars?

19 A Approximate. I don't have the number in front of me,
20 but that sounds about right.

21 Q Well why did he receive \$10.45 million dollars?

22 A I think that's where the money would go from the
23 proceeds of sales prior to December -- you know, prior to my
24 taking over.

25 Q When did you become aware that Mr. Frieze had received

1 \$10.45 million dollars?

2 A I don't recall. I don't remember exactly when. I
3 think we had looked and we had asked for an accounting of
4 what money he had. He remitted a bunch of money to the
5 debtor immediately before and said he cleared out his trust
6 account immediately before, but that's what I recall.

7 Q And how much of it did he return?

8 A I think it was six and a half million dollars or so.

9 Q What happened to the other four million?

10 A I understand there was subsequent money that was -- I
11 don't know. I don't what happened to the other four million.
12 But at this point, we've asked. We haven't gotten accounting
13 from Mr. Frieze. We have asked the question. We haven't
14 gotten that yet. It's on our list of things.

15 Q Did you know that Mr. Frieze got that money before
16 December 1, 2017?

17 A I did not know.

18 Q How soon after did you know?

19 A I think we ran a check. Actually, I don't know exactly
20 when it was. It was all around then. We ran a check
21 register, plus or minus two weeks as far as where the money
22 was and where the money went in association with getting
23 ready for the case. I can't recall tallying it up exactly
24 and saying that Mr. Frieze had that. There was a lot of
25 stuff going on, but I recall seeing the money went to Mr.

1 Frieze before, and I don't recall when the \$10.4 number came.
2 It was right after, right before. I just don't remember the
3 day.

4 Q You weren't alarmed by that?

5 A I was alarmed by that.

6 Q Have you taken action to get back the other four
7 million?

8 A We had asked for an accounting for it and he has
9 insisted that he's cleared out his trust account. We've
10 asked the question again and we've asked the question again
11 and working on it. He seems to be working with us and he
12 says he doesn't have it, so we're trying to get an accounting
13 of it.

14 Q Did you take any legal against Mr. Frieze because you
15 haven't gotten back the other four million dollars?

16 A Right.

17 Q Did you ever speak to Mr. Shapiro about the \$10.45
18 million dollars?

19 A I don't believe so.

20 Q Does Woodbridge pay for any non-debtor expenses like
21 Mercer Vine or Riverdale?

22 A Yes.

23 Q And do you get reimbursed from Mercer Vine and
24 Riverdale?

25 A Yeah, it's been a little bit choppy lately because some

1 bank accounts got shut off for those companies, but that's
2 the arrangement that we have. And I understand as of today
3 it's supposed to be all cleaned, but there was some issues
4 there.

5 Q So isn't it correct, Mr. Perkins, that you pay for
6 Mercer Vine and Riverdale and then they reimburse you?

7 A It's supposed to be the other way and that's the
8 arrangement that we have. There was some exogenous
9 circumstances that came up with their bank accounts being
10 shut off, and we wanted to make sure that there wasn't a
11 collapse and I also wanted to make sure that there wasn't any
12 liability to the estate, because the checks have been coming
13 from the estate to those employees.

14 I'm not a labor law expert by any means, but I think to
15 the extent that there are checks coming from a certain entity
16 and then they bounce checks or don't get checks, then there
17 could be exposure to the estate. So, we made the call to pay
18 that and then it got trued up I believe yesterday or today.

19 Q Isn't it true, Mr. Perkins, that you testified at your
20 deposition that no money is paid to anyone from Mercer Vine
21 or Riverdale unless Woodbridge receives an advance those
22 monies so that the payment can be made?

23 A I said that's how it was supposed to work.

24 Q No, you said that's how it was working.

25 A I don't believe I said that. I said that's how it's

1 supposed to work.

2 Q And you didn't check that that's how it worked?

3 A I checked afterwards and I realized there was some
4 issues with it. And I thought in the best interest of what's
5 going on, we got it trued up and we fixed it.

6 Q So, you checked it based on my questions at the
7 deposition?

8 A No, it was on my workstream of things to do. It's been
9 a little bit distracting lately.

10 MR. PACHULSKI: Your Honor, if I could just take a
11 moment on this?

12 THE COURT: Certainly.

13 MR. PACHULSKI: Thank you, Your Honor.

14 Your Honor, if I could take a moment and a break.
15 I'd like to be able to come back to this only because what I
16 have down is not the exact area, and I know it's in here
17 because of what he testified to.

18 THE COURT: How much more do you have left in the
19 way of, well I guess I'll call it cross?

20 MR. PACHULSKI: Your Honor, I've gotten through
21 almost exactly half of the questions.

22 THE COURT: All right, you have five minutes.

23 Mr. Perkins, I ask during the break that you not
24 discuss your testimony with anyone.

25 THE WITNESS: Roger that.

1 THE COURT: All right, thank you.

2 MR. PACHULSKI: So, we will take a break in five
3 minutes, Your Honor.

4 THE COURT: Five minutes now.

5 MR. PACHULSKI: Take five. Thank you, Your Honor.

6 (Recess 11:39 a.m to 11:47 a.m.)

7 (Call to order of the court)

8 THE COURT OFFICER: All rise. Be seated, please.

9 MR. PACHULSKI: Thank you so much, Your Honor, for
10 the indulgence. Unfortunately, I had -- a couple of my notes
11 refer to the rough draft of Mr. Perkins' deposition, so I had
12 to find it in his final draft, which I did. And I'd like to
13 read into the record Page 39 from Lines 4 through 25 and then
14 Page 40 -- of his deposition transcript --

15 THE COURT: Do you have a copy for Mr. Perkins?

16 MR. PACHULSKI: Excuse me?

17 THE COURT: Do you have a copy for Mr. Perkins?

18 MR. PACHULSKI: It's in the -- oh, of his
19 deposition?

20 THE COURT: Yes.

21 MR. PACHULSKI: It's in the binder.

22 THE COURT: Which exhibit number?

23 MR. PACHULSKI: It's Exhibit Number 172, Your
24 Honor.

25 THE WITNESS: I have one. I have it here.

1 CROSS EXAMINATION CONTINUED

2 BY MR. PACHULSKI:

3 Q Okay. So, if you'd turn to Page 39. I'll read in
4 Lines 4 to 25 and then on the next page, 1 and 2:

5 "Question: Okay. Now, that you have the DIP budget,
6 which I think was Exhibit 12, to your knowledge, are there
7 any monies that are going out in any way to nondebtors,
8 affiliate nondebtors, Woodbridge affiliate nondebtors at this
9 time?

10 "Answer: Yes.

11 "Question: Under the budget?

12 "Answer: Yes.

13 "Can you describe that?

14 " We -- we reimbursed -- I'm not sure of the right way
15 to say it. We get reimbursed by nondebtor entities for
16 certain assets before we fund the payroll as we are working
17 on the separation of the entities from what is now the
18 debtor.

19 "So, if I understand, you will pay -- let me give you
20 some examples. Do you pay any of the nondebtors' payroll?

21 "After we receive money from the nondebtors, we pay the
22 payroll is my understanding of how it works.

23 "If they don't pay, you don't pay the payroll?

24 "That is my understanding of how it is to work, yay
25 [sic]."

1 A That was "yeah" not "yay."

2 Q I'm sorry, Yeah. I apologize.

3 So, you're saying that that's -- now you're saying that
4 how it's supposed to work but it actually didn't work that
5 way?

6 A Yeah, I think there was some -- as I looked into it --
7 it was on my roadmap of things to do -- there were some
8 intervening circumstances that I identified -- or not
9 identified, but I identified subsequent to me looking into it
10 and I identified that there was a banking issue they have.
11 Their bank accounts got shut off, so we paid some of them
12 before and then I believe we got trued up yesterday or today.

13 Q Okay. Are you aware that there was a court order that
14 said that Woodbridge could not fund any nondebtors?

15 A I believe I'm -- I'm aware of an order, but I'm also
16 aware that it was discussed on this specific issue and I -- I
17 believed -- or as far as I understand, we were doing what we
18 were supposed to be doing on that.

19 Q Who was it discussed with?

20 A I don't recall who it was. I remember it was an issue
21 that came up before the filing. I can't recall if it was
22 with the trustee's office or somebody else, but I remember,
23 vaguely, the conversation that was happening.

24 Q Do you think it might have been with the U.S. Trustee's
25 Office?

1 A Again, I -- I don't recall specifically. I wasn't in
2 the conversation, I just remember hearing about a
3 conversation.

4 Q Okay. I'm going to ask you to look at the DIP budget,
5 which I'm going to try to locate. I don't have -- let me
6 just --

7 MR. PACHULSKI: If I can just ask my colleagues,
8 Your Honor?

9 THE COURT: Yes.

10 BY MR. PACHULSKI:

11 Q One forty-five. Mr. Perkins, Exhibit 145 is the DIP
12 budget that you and your colleagues prepared?

13 A Yes.

14 Q Now, can you show me where in the DIP budget it
15 provides for reimbursement by Mercer Vine and Riverdale for
16 the payroll that you're paying for those entities?

17 A Yeah, I think they included it. It's supposed to be
18 netted out of the payroll number, but I don't think there's a
19 specific line number for it.

20 Q And if I told you it was not netted out, would that be
21 surprising to you?

22 A Well, I think I just said that it was -- actually, I --
23 so, would it be surprising to me if it was not netted out?

24 Q Yes.

25 A I suppose so. It's supposed to be netted out.

1 Q And how do you know it's supposed to be netted out.

2 Did you instruct someone to do that?

3 A No.

4 Q Okay. Who prepared the DIP budget?

5 A My team.

6 Q Anyone from Woodbridge?

7 A Well, they provided, certainly, information that fed
8 into the DIP budget, HR, et cetera. For example, on payroll,
9 you know, construction people, as it relates to the
10 contracting costs and otherwise. Yeah, there was a number of
11 people that input into it, but we ultimately prepared it.

12 Q Did Mr. Shapiro ever review the DIP budget?

13 A I don't believe so.

14 Q Okay. Did you implement --

15 A Well, hang on. It's public record, so, I don't know
16 what he's done after it filed, but I think this was in a
17 public filing somewhere, so I don't know what he reads on the
18 internet.

19 Q But you didn't review it with him or no one from your
20 team reviewed it with him before the filing of the DIP budget
21 to your knowledge?

22 A I don't believe so.

23 Q Okay. Did you implement a reduction in force?

24 A Yes.

25 Q And did that include Riverdale and Mercer Vine

1 employees?

2 A I'd have to look at the actual sheet, but I believe it
3 did. Hang on. It did not include -- we can't fire Mercer
4 Vine employees because they're not my employees and I think
5 the same case for Riverdale.

6 But on my spreadsheet, I have Mercer Vine and Riverdale
7 employees on there that I believe show a reduction. That
8 wasn't something we did, though.

9 Q Okay. And did the DIP budget include Warren payments
10 for the Riverdale employees that you let go?

11 A I can't recall. I think we did an estimate at the
12 time. What I do recall is that when we actually did the RIF,
13 we did not include Warren payments for Mercer Vine or
14 Riverdale employees in the final -- when we did the final
15 analysis.

16 Q But do you recall if it was in your DIP?

17 A I don't. It was an estimate based on the employee
18 sheet that we had at the time.

19 Q Am I correct that there are employees that worked for
20 both, debtors and nondebtors?

21 A Yes.

22 Q How many?

23 A I think it's -- I think it's two or three, I think. I
24 don't recall exactly.

25 Q Is there a sharing of services agreement?

1 A It's more of an arrangement than a specific agreement.

2 Q What's the arrangement?

3 A That they reimburse us for their time for time that
4 they work on nondebtor entities.

5 Q And who makes the determination how much should be
6 reimbursed?

7 A We review their timesheet that they've -- we've asked
8 them to keep and they -- the nondebtor entity would pay us
9 for that time.

10 Q And how much has the nondebtor entities paid you to
11 date for that time?

12 A I don't know. It -- it was a very -- in the spectrum
13 of dollars, it wasn't a lot of dollars, so I believe I saw it
14 at one point, I just can't recall. It was in the single-
15 digit thousands, I think we were talking about.

16 Q Do you know if it's been -- or you don't know --

17 A I -- I don't know. It's a -- I don't know.

18 Q Am I further correct that you demanded that the
19 fundraising would have to stop for you to be the CRO but not
20 before that time? So, there were discussions of you becoming
21 CRO. You said, I need the fundraising to stop, but before
22 then, you made no comment that the fundraising should stop;
23 is that correct?

24 A I don't think that's right. I think we -- I expressed
25 my discomfort with it and that I was not going to be

1 comfortable with it well before, you know, I was appointed,
2 and it was not something that I was comfortable having
3 ongoing before. And Mr. Shapiro, at that point, was working
4 with a slew of lawyers and advisors and other people and
5 presumably they had a conversation and either they -- he took
6 my suggestion or not and proceeded anyway.

7 Q When did you first make that suggestion?

8 A I -- I don't remember. I don't remember exactly, but,
9 you know, well before -- a week before the actual -- the
10 ultimate filing.

11 Q More than a week before?

12 A Yes.

13 Q Am I further correct, Mr. Perkins, that as part of the
14 turnover of control by Mr. Shapiro, Mr. Shapiro decided what
15 to turn over and what not to turn over and you accepted his
16 decision?

17 A I wouldn't say I accepted his decision, but I had no
18 influence over that decision. So, ultimately, the decision
19 happened, and I was there, so if that means accepting, then I
20 suppose I accepted, but I did not accept that decision.

21 Q Well, how did you -- what did you do to not accept that
22 decision?

23 A We said he should put all of his assets into the
24 bankruptcy process. He said, No. I said, I really think you
25 should. He said, I really don't want to.

1 And that happened, and he put some assets into the
2 bankruptcy and put -- did not put other assets into the
3 bankruptcy or into the entity that is now bankrupt -- excuse
4 me -- but, you know what I mean.

5 Q So, you were willing to accept it, even though you
6 didn't like it?

7 A I didn't have control over it. I'm not sure I was in a
8 position to accept it or not. I mean, if someone says they
9 don't want to give me a doughnut, I can't have the doughnut.

10 Q Okay. But you can leave their house if they don't give
11 you the doughnut?

12 A Yeah, but if they give me a dozen other doughnuts, I'll
13 eat the doughnuts.

14 Q Was Mr. Beilinson there when the -- there was an
15 attempt to get Mr. Shapiro to turn over those other entities?

16 A I believe he -- I mean, there were a number of
17 conversations on the subject and I think Mr. Beilinson
18 participated in some; probably some directly with me, some
19 without me. But Mr. Beilinson and I spoke about it. They
20 spoke about it probably together -- I can't speak for Mr.
21 Beilinson -- but they probably talked about it. I talked
22 about it with them -- ample conversations on the subject.

23 Q Before December 1, 2017, did you speak to Mr. Beilinson
24 about not all the entities going into Chapter 11 -- not all
25 the entities being turned over by Mr. Shapiro?

1 A I believe so.

2 Q Okay. Would it be surprising if I told you Mr.
3 Beilinson says he had no idea that there were entities not
4 put in to the -- under his control?

5 A It wouldn't surprise me, but, I mean, there was a lot
6 of stuff going on. We probably spent hours and hours on the
7 phone, so there was a lot of stuff going on.

8 Q Okay. Can we turn to the transition-services
9 agreement, which is Page 164 -- I'm sorry, Exhibit 164.

10 Mr. Perkins, you executed the transition-services
11 agreement?

12 A Yes.

13 Q Am I correct that you spoke to Mr. Beilinson before
14 December 1 and decided to keep Mr. Shapiro even if he might
15 be indicted?

16 A That's what ended up in the agreement, yes.

17 Q And when you said it ended up in the agreement, are you
18 referring to Paragraph 6 of that agreement, in terms of
19 termination of service?

20 A Yes.

21 Q And it's your understanding that any acts that took
22 place prior to December 1, 2017, including his being indicted
23 under -- for those acts or for exercising his rights for the
24 Fifth Amendment of the Constitution, that Mr. Shapiro could
25 not be terminated for cause?

1 A So, was the question: Was I aware that those
2 provisions were in there?

3 Q Yes.

4 A Yes.

5 Q Okay. And in the event that you terminated him without
6 cause, he was entitled to liquidated-damage provision of --
7 in excess of a million dollars; is that correct?

8 A In a vacuum, yes.

9 Q Okay. What do you mean by "in a vacuum"?

10 A Well, I was under the assumption at that point that we
11 would likely be under the supervision of a Chapter 11 process
12 and I thought that there would be plenty of opportunities to
13 look at this agreement, reject this agreement, see what other
14 remedies related to this agreement at that time.

15 Q Did you -- is there anywhere in the transition-services
16 agreement, a requirement that it was subject to bankruptcy
17 court approval?

18 A No.

19 Q Mr. Perkins, I'm going to read a statement that you
20 made in your deposition. I want to -- I'm wondering if you
21 believe that it is an accurate statement today. And this
22 relates to a discussion that -- relating to yours and Mr.
23 Beilinson's decision to go forward with these agreements.

24 THE COURT: Refer to the pages, please.

25 MR. PACHULSKI: Let me locate it, Your Honor.

1 THE WITNESS: Sorry.

2 MR. PACHULSKI: Your Honor, I would begin on Page
3 77, Line 14 through 25, until Page 78, Line 8.

4 BY MR. PACHULSKI:

5 Q Do you have that in front of you, Mr. Perkins?

6 A Now, you said Page 77, Line what? Line 14?

7 Q 77, Line 14 until Page 78, Line 8.

8 A Yeah.

9 Q "Question: Did you have any discussions before
10 December 1st, 2017, with Mr. Beilinson if it was appropriate
11 or inappropriate to (indiscernible) Mr. Shapiro in any
12 capacity with Woodbridge?

13 "Answer: Yes.

14 "Do you recall -- Question: Do you recall when that
15 discussion took place?

16 "Answer: I think there were multiple discussions
17 around that subject.

18 "Question: Can you give me some sum and substance of
19 those discussions.

20 "Answer: We evaluated the pros and cons of keeping Mr.
21 Shapiro around and available particularly for compensation,
22 in light of the allegations that were out there around the
23 investigation, ultimately concluded that in the greater good
24 of making the investors -- I think that -- it says
25 "investigate" --

1 A I think that's a typo, yeah.

2 Q -- it should be "investors" -- get as much money as
3 possible by developing the properties. That was the cost
4 that was required to maximize the value of the estate for the
5 investors."

6 Is that your position, sitting here today?

7 A Yes.

8 Q And so, you knew that there was some chance that Mr.
9 Shapiro would be indicted and be subject to -- the estate
10 could be subject to a million-dollar liquidated-damage
11 clause, which may be an unsecured creditor, but the hope is
12 that there would be a large dividend in that -- in this case;
13 is that correct?

14 A Could be. I think there are other things that could
15 happen before then, but it could be, yes.

16 Q That was one of the risks that you took?

17 A That was one of the risks, yes.

18 Q Did you have any interest in Woodbridge, in financial
19 interests?

20 A No. You mean by way of as an investor or a unit
21 holder?

22 Q Anything.

23 A No. No.

24 Q Had you had any meetings with any investor to discuss
25 that you were going to enter into these agreements and that

1 that was for the greater good?

2 A I don't believe so, no.

3 Q Did you --

4 A Well, I mean, actually, I think Mr. Shapiro was an
5 investor, technically through some of the funds, but beyond
6 him, I don't believe so.

7 Q You were doing this for Mr. Shapiro?

8 A Oh, no, certainly not. But you asked me if I spoke to
9 any investors and I did speak to his investor; his name was
10 Robert Shapiro.

11 Q Okay. Did you ever, before becoming CRO, check with
12 the SEC, whether they thought this would be for the greater
13 good?

14 A No.

15 Q To your knowledge, before December 1st, 2017, did Mr.
16 Beilinson have any financial interests in Woodbridge?

17 A I have no knowledge. I mean, I -- I don't think so,
18 but I have no knowledge about it.

19 Q Before December 1st, 2017, did Mr. Beilinson have any
20 role at Woodbridge?

21 A No.

22 Q Okay.

23 A He was -- in consultation, I spoke with him before, but
24 there was no formal role there.

25 Q And you -- I just want to make sure I'm correct that if

1 you fired Mr. Shapiro with no cause, he had a liquidated-
2 damage provision of, in excess of \$1 million?

3 A Again, in a vacuum, I think that's right.

4 Q Contractually, to your knowledge?

5 A We talked about this before, yeah. Contractually, to
6 my knowledge, in a vacuum, that is correct.

7 MR. PACHULSKI: Your Honor, I was going to read
8 this, but I will go into the record -- I will go into the
9 deposition transcript and I will cite it. I would like to
10 read from Page 80 and see if Mr. Perkins agrees with this
11 statement today.

12 BY MR. PACHULSKI:

13 Q Page 80, Lines 17 through 25 and then Page 81, Line 1
14 through 10; that's the answer.

15 "Question: If he was indicted, would he be entitled to
16 any money, forgetting that he might have had remedies, but
17 under his contract, was it your understanding that if he was
18 indicted and you wanted to fire him, he would be entitled to
19 liquidated damages.

20 "That was what he negotiated and, yes, that is my
21 understanding.

22 "And you agree to that?

23 "Answer: In looking at the overall potential to
24 develop these assets, turn them into more money and pay back
25 the investors, there was a cost associated with that, his

1 compensation being one of those costs. And the view I had at
2 the time, along with the rest of the debtor, was that the
3 cost of that was far less than the destruction of value of
4 seeing these assets fall apart and be sold and not developed
5 and then the investors would be -- would really suffer."

6 Sitting here today, do you agree with that?

7 A Yes.

8 Q Okay. So, let me ask you this, I'm curious about your
9 comment as to who you were referring to when you say, "And
10 the view I had at the time, along with the rest of the
11 debtor."

12 Who is the rest of the debtor?

13 A I think it was our team. Well, it wasn't the debtor at
14 that point, but what's now the debtor. Maybe I should have
15 been clearer in my deposition. But what's now the debtor.

16 We were talking -- gosh, there was a lot of
17 conversations, as you would imagine. I was pretty intimately
18 involved in a lot of things at that point, so I don't recall
19 who, exactly, the conversation was with, but a lot of people.

20 Q Who were the lot of people?

21 A Counsel to the company, Gibson Dunn, members of my
22 team, as we were looking at the cash flow and, otherwise.

23 Q So, no one affiliated with the debtor. It was --
24 you're -- is SierraConstellation part of the debtor?

25 A Are we talking about who's the debtor? So, in my

1 testimony I said -- I should have said, What's now the
2 debtor. So, if you're going to pick apart that, yeah, then,
3 I screwed that part up. It should have said, What is now the
4 debtor.

5 Q So, effectively, the debtor was run by Mr. Shapiro.

6 Did he think it was a good idea --

7 A Well, what's now the debtor run by Mr. Shapiro? That's
8 wrong.

9 Q Okay. I'm talking about then and "the view I had at
10 the time along with the rest of the debtor." I'm just trying
11 to figure out who the rest of the debtor is.

12 A Okay. Wait. Sorry. At the time -- so, Woodbridge, at
13 that time, was run by Robert Shapiro, okay. We had
14 conversations with people that are now part of the debtor.

15 Mr. Shapiro was not one of those people and at that
16 point, those were the conversations that were had. Of
17 course, this conversation was not had with Mr. Shapiro. Of
18 course. And through the course of that conversation, we came
19 to this conclusion.

20 Q Okay. So, you had -- you came to this conclusion with
21 Mr. Beilinson, who had no interests and you had no interests
22 and Gibson Dunn had no interests and your team had no
23 interests, so the only person who you could have discussed it
24 with that was part of the debtor was Mr. Shapiro and he was
25 not included in this conversation; is that correct?

1 A Again, what we're talking about is my use of the word
2 "debtor." Okay. What is now the debtor -- I can't go back
3 and change my deposition, right, but it looks like there's
4 clearly a misunderstanding of what I meant. What I meant is,
5 what is now debtor.

6 Q But there were no -- there was no manager of the
7 debtor. There was no employee of the debtor that was part of
8 this discussion; that's all I'm asking for.

9 A Besides now, Mr. Beilinson and I are the managers of
10 the debtor --

11 Q Before --

12 A -- and our counsel, then there was nobody besides Mr.
13 Beilinson and our counsel.

14 Q Okay. So, before December 1, 2017, when the decision
15 was made, and you go through the pros and cons, is there's no
16 one affiliated with the debtor who was part of that
17 discussion; is that correct?

18 A I'm having trouble with the word "debtor" here, again.
19 Can we use the word "Woodbridge"?

20 Q Yes. Was there any employee or board member or anybody
21 affiliated with Woodbridge that was involved in the
22 discussion on the pros and cons of signing these agreements?

23 A Prior to December 1st? So, employees -- I am --

24 Q Yes.

25 A -- I know you're going to make me be specific, so I'll

1 do the same. So, employees of Woodbridge -- not employees --
2 but professionals or advisors of Woodbridge between Beilinson
3 and myself before this time; is that what you're asking?

4 Q Yeah. And I'm talking about, specifically, people who
5 were retained in some way by Woodbridge, not outside
6 professionals. Excluding Gibson Dunn, excluding
7 SierraConstellation, excluding Mr. Beilinson, was anyone else
8 part of the conversations regarding the pros and cons of
9 signing these agreements?

10 A No.

11 Q Okay.

12 A You could have asked that the first time.

13 (Laughter)

14 Q Excuse me?

15 A You could have asked that the first time.

16 (Laughter)

17 Q Well, I was struggling with "the debtor," so I
18 appreciate that.

19 A Okay.

20 Q Sitting here today, now that you've said that Mr.
21 Shapiro is on administrative leave, which is not to recall
22 termination, that's correct?

23 A Yeah, I think that's right. I'm not a labor lawyer,
24 but, yeah.

25 Q Okay. So, he's been put on administrative leave and

1 you're having no conversations with him; is that correct?

2 A No, I -- I -- I have had a conversation with him a
3 handful of days ago. I can't recall exactly when.

4 Q After the December 28th administrative leave letter?

5 A Yes.

6 Q But you don't recall what the discussion was?

7 A Yeah, I think he called asking for updates on the case.
8 I think you asked me -- the days are running together, but I
9 think you asked me this earlier -- he asked about what's
10 going on with the case. I said, I can't talk to you about
11 that. He asked, What's going on with the sale of one of the
12 properties? I said, I can't really talk about that. Things
13 like that.

14 Q Sitting here today, now that Mr. Shapiro is on
15 administrative leave, do you believe you need to retain
16 someone to take over Mr. Shapiro's duties under the
17 transition-services agreement?

18 A Not right now. I don't think -- we may want to bring
19 in some people. I kind of reserve my right to change my mind
20 on that down the road. But we've picked up the slack on a
21 lot of the things that I was counting on him doing at the
22 outset. And I think we're okay for now, but it could change
23 as development proceeds and other things streamline costs to
24 operate the business. But I don't have specific designs on
25 that right now, but it's been discussed.

1 Q Did you bring in any people from SierraConstellation
2 subsequent to December 28th to fill any of the void under the
3 transition-services agreement?

4 A Not -- no, not specifically. I think we have one
5 person who's a little bit more involved in Colorado right now
6 just because there's some stuff going on in Colorado, but I
7 think it was just more -- he was -- he was picking up on that
8 a little more since the 28th.

9 Q But he was employed by SierraConstellation --

10 A Correct.

11 Q -- before December 28th?

12 A Yeah, yeah, yeah, yeah.

13 Q Okay. Did you interview anyone prior to December 1,
14 2017, so you did not have to enter into those agreements with
15 Mr. Shapiro?

16 A No.

17 Q You recall in your first day declaration that you said
18 on at least three different occasions that Mr. Shapiro was
19 essential, which was the reason that you entered into the
20 agreements?

21 A Yes.

22 Q Why was Mr. Shapiro essential and now he's gone, he
23 doesn't seem to be so essential?

24 A Well, I think essential is a function of time and I
25 think that the runway and the institutional knowledge that

1 Mr. Shapiro was able to impart on myself and my team from,
2 you know, December 1st to, you know, December 28th, allowed
3 us to hit the ground running a lot faster than we would have
4 otherwise coming in cold. So, to the extent that he was
5 essential the one day doesn't mean he's essential the next
6 day. And at that point, to me, it felt like he was
7 essential.

8 Also, subsequent facts came to light, subsequent to
9 December 1st or -- I'm not sure -- I'm not a lawyer, so I'm
10 not sure what facts are -- but other stuff came to light
11 subsequent to December 1st that changed my mind on certain
12 things.

13 Q But you signed a one-year contract with Mr. Shapiro and
14 apparently, notwithstanding the fact that you met with him
15 not -- somewhere between 5 and 10 hours a week, he no longer
16 became essential; is that correct?

17 A I'm not sure -- I'm not sure I understand your
18 question.

19 Q Well, you said he was essential on December 4th.
20 Twenty-four days later he's put on administrative
21 leave. You signed a one-year agreement with Mr. Shapiro that
22 had a one-million-dollar liquidated-damage provision. You
23 testified that you spent 5 to 10 hours a week with Mr.
24 Shapiro. That was it. And you believe that he imparted --
25 that he was critically essential on December 4th, but no

1 longer critically essential on December 28th; is that
2 correct?

3 A I guess the words I'm having trouble with are
4 "critically essential."

5 Q Essential. Let's not use "critically." I apologize.

6 A I guess I still have trouble with the word "essential."
7 Can we do okay without him? Can we do a good job without
8 him? Absolutely. Would it be nice to have that level of
9 institutional knowledge around, particularly if it's free?
10 Yeah, that would be nice, too.

11 But, to the extent that the word "essential" means
12 we're going to fall on our face if we don't have him around,
13 then I suppose he's not essential.

14 Q I was going to do this for later, Mr. Perkins, but
15 let's try it now. If you could look at Exhibit 20; it's your
16 declaration, dated December 4th, 2017.

17 And if you could first look at Paragraph 26.

18 A Sorry.

19 Q And just tell me when you're there.

20 A What paragraph?

21 Q Paragraph 26; it's on Page 12.

22 A Thank you, sir.

23 Q Mr. Perkins, Paragraph 26, first sentence says, "Mr.
24 Shapiro has unique experience essential to the continued
25 operation of the debtors' business."

1 So, I can't define essential, because I didn't write
2 that. Tell me what you meant by "essential" when you
3 arranged for this and you filed with the Court on December
4 4th.

5 A It meant to come in cold without having the ability to
6 download -- and what I mean by "download" is interview, talk
7 to him, get the context -- Mr. Shapiro -- it would be much
8 more difficult to the -- to maintain the continued operations
9 of the company.

10 Q And you thought it was worth paying him \$2.1 million
11 for that; is that correct?

12 A I felt there was an opportunity to revisit that subject
13 in the context of a bankruptcy with the bright light of day
14 over that process.

15 Q Can you tell me where in the declaration you said that
16 the Bankruptcy Court would have its day to review this, these
17 contracts?

18 A It is not in the declaration.

19 Q I'll skip --

20 A I don't think. I mean, I'd have to read it again, but
21 I'm pretty sure it's not in there.

22 Q Okay. The third sentence of Paragraph 26:

23 "The independent manager and I believe Mr. Shapiro's
24 extensive familiarity with the debtors and their assets is
25 essential to maximizing the value of the debtors' assets for

1 the benefit of all stakeholders, especially on the
2 contemplated, expedited path the proposed plan confirmation
3 to during 2018."

4 What did you mean by the word "essential" in the third
5 sentence of Paragraph 26 of your declaration?

6 A I think you have to look at the three words in
7 combination, so "essential to maximizing."

8 Q Oh, okay. That's fine.

9 A So, I think in that context -- again, I'll repeat what
10 I just said; I can't remember exactly but I'll paraphrase --
11 would it be nice to have his knowledge and information
12 around? Yes. Would it be faster, potentially easier to get
13 some information? Yes, it would be nice to have him around.
14 And I think that it would generally expedite the overall
15 property development and maximizing the value of all the
16 assets for all the investors if he was around.

17 Now, obviously, things changed and as I think everyone
18 has described. There was serious allegations that came to
19 light with a little bit more stuff around that that I could
20 review and as a result of that, we decided to do what we did
21 and put him on administrative leave.

22 Q What did you learn that caused him to go on
23 administrative leave?

24 A We reviewed the SEC unsealed, I think it was
25 "complaint" that it was called, that was out there. Reviewed

1 that, and that gave us a lot of pause once we saw the kind of
2 actual, fact pattern that was out there, not just press
3 releases, that made us reconsider seriously what was going
4 on.

5 Q Well, what facts was so startling in the complaint that
6 you decided it was more important to terminate him or put him
7 on administrative leave, frankly -- not even terminate him --
8 as compared to his being so essential on December 4th? What
9 did you learn from that complaint?

10 A It was a long document. I think we learned a lot of
11 stuff. I don't recall specifically what it was, but there
12 was a lot of troubling things in there and I think there was
13 a lot of evidence that they put in that document. So, I
14 think in totality, we talked and talked internally about it
15 with counsel and Mr. Beilinson and, otherwise, and we felt
16 that that was the right call.

17 Q You knew there was an SEC investigation before December
18 1, 2017; is that correct?

19 A Yes.

20 Q You knew that there was fundraising that was being
21 investigated because of claims that it was violative of the
22 law -- criminally violative of the law; is that correct?

23 A I don't know that part. Again, I don't know if it was
24 criminally violative, if that's a word. I know that the SEC
25 was looking at it. It was still happening.

1 So, if it was such a thing that was going on that it
2 was still happening and I figured if it was already decided
3 in a court and they couldn't do it anymore, then they would
4 have stopped it.

5 And, again, I'm not a lawyer. I'm not a securities
6 lawyer, certainly, and as I saw it, there was conversations
7 going on, on that subject and it was -- you know, there was a
8 lot of really smart people and law firms that were working on
9 that.

10 Q And you knew there were two contempt orders outstanding
11 from the SEC, correct?

12 A I don't know if it was two. I know that there was a
13 contempt order. Again, I don't know the difference between
14 two -- one.

15 Q But there was at least one?

16 A Yeah, I read that one, yeah.

17 Q And you --

18 A Or not the order. I read the press release about the
19 order.

20 Q And you knew there were 25 other state regulatory
21 agencies that were investigating Woodbridge and Mr. Shapiro
22 before you took on your CRO role?

23 A Yeah, so I knew that there were 25? I knew that a lot
24 of them were settled and I didn't know what the full
25 settlement was; I just know they were settled on a lot of

1 those. So, I don't -- I don't -- that's about what I know
2 about it.

3 Q But there were at least -- there were more than 10
4 pending at the time that you became CRO?

5 A I don't -- I don't know that number.

6 Q But you didn't do any investigation before December 1,
7 2017, including contacting the SEC to figure out if there
8 might be a problem with becoming CRO and continuing with Mr.
9 Shapiro.

10 A So, my job, as it was described to me at the time
11 outset, was to come in, maximize the value of these assets,
12 sell off all the real estate. We've got a ton of real estate
13 that we can sell to turn into a bunch of money to pay off the
14 investors. And, also, to look at all the other sources of
15 recovery that are out there. There's claims. There's other
16 stuff. And there's plenty of time to do that.

17 So, what we wanted to do is -- and what my mandate was
18 -- was to maximize the value of the assets; that's develop
19 the real estate, turn it into a bunch of money, or as much
20 money as we possibly can and pay back the investors. That
21 was -- that's the initial goal.

22 Q I understand.

23 A And -- okay, and as it relates to -- I didn't -- I
24 didn't see how me playing armchair lawyer and reviewing the
25 documents, as far as what was going on in the investigation,

1 was relevant to what my job was. And, you know, I'm big on
2 focus and the focus was important for me to focus on what my
3 job was. And there was a lot of competent people around that
4 were working on this other bad stuff that is serious, real
5 serious, and real bad.

6 And --

7 Q So --

8 A -- I wanted to make sure I focused on my job.

9 Q So, you knew there were really bad things going on
10 before December 1st?

11 A No, I knew there were really bad allegations of things
12 that were going on before December 1st.

13 Q And you were willing to sign an agreement that would
14 pay him \$2.1 million and you were prepared to sign, and did
15 sign, a contribution agreement that could pay him millions of
16 dollars and you were prepared to sign a forbearance agreement
17 that gave him control of two assets that were worth probably
18 \$15 million without making a phone call to the SEC or doing
19 any other independent, in-depth analysis as to whether or not
20 you would actually get the use of Mr. Shapiro post-December
21 4th, 2017; is that correct?

22 A That was a super long question. Can you break that
23 down for me?

24 Q Okay. You signed -- I'm happy to -- you signed a
25 transition-services agreement that would pay him \$2.1 million

1 per year and that would have a liquidated-damage provision of
2 over a million dollars; is that correct?

3 A Yes.

4 Q Okay. And am I correct that you signed a contribution
5 agreement that could technically pay him as much as \$14
6 million at a minimum; is that correct?

7 A I'm not sure about the fourteen-million-dollar number,
8 but I'll give you the -- up to -- up to 500,000 on assets if
9 they were approved and, you know, if we were allowed to do
10 that, yes.

11 Q There were 28 assets, so if he got 500 it could be \$14
12 million; is that correct?

13 A Yeah, I don't think the math plays out that way, so I'm
14 not going to give you the 14 million, because it's not as
15 simple as that, but yes.

16 Q Okay. And you gave him -- but it was some substantial
17 amount of money that he could get. It was more than 500,000;
18 he could get millions of dollars. You could debate 14, but
19 it was more than 500?

20 A If they cleared the debt. I mean, it all comes down to
21 if they clear the debt.

22 Q But you only had to clear the debt of those specific
23 properties; is that correct?

24 A I think on a -- on a one-off basis, yeah, I believe
25 that's right.

1 Q And am I correct that under the forbearance agreement,
2 that Mr. Shapiro got the usage of two homes that have
3 probably the value today of approximately \$15 million; is
4 that correct?

5 A In exchange for rent, yes.

6 Q Okay. But if there's a foreclosure, whoever takes
7 those properties has to take them with Mr. Shapiro's lease,
8 because you also signed subordination agreements; is that
9 correct?

10 A I don't recall the exact mechanics of that, but -- I --
11 I can't answer that right now.

12 Q We'll get there.

13 A Okay.

14 Q So, notwithstanding signing agreements with Mr. Shapiro
15 for millions of dollars and knowing that there were serious
16 allegations, you did not do any independent analysis, whether
17 it was likely or not that Mr. Shapiro might be indicted or
18 might have serious issues associated with him that would then
19 not allow you to use Mr. Shapiro's services; is that correct?

20 A Again, what was the question again? That was long
21 again. It was like a statement and then a question.

22 Q No, I -- you signed all the agreements, correct?

23 A Yes.

24 Q They were in the millions of dollars, correct?

25 A Assuming they got paid.

1 Q Well, there would be claims of millions of dollars.

2 You could dispute them, but there would be claims?

3 A We're in bankruptcy court today, yeah.

4 Q Okay. And you knew, you've testified that you knew
5 that there was a chance that Mr. Shapiro could be indicted?

6 A I suppose all of us could be indicted, but, yeah, he
7 had a particularly higher chance of being indicted than
8 others.

9 THE COURT: Don't speak for me on that.

10 (Laughter)

11 THE WITNESS: Me neither.

12 MR. PACHULSKI: Or for me, Your Honor.

13 (Laughter)

14 BY MR. PACHULSKI:

15 Q How many transaction -- how many employment agreements
16 have you seen in your career, which is probably -- have you
17 seen lots of employment agreements?

18 A Yes.

19 Q Okay. How many have a provision that you can't
20 terminate someone for cause because of prior bad acts,
21 including if he was indicted or he exercised his Fifth
22 Amendment rights under the U.S. Constitution? How many
23 contracts have you seen like that?

24 A I can't say I've seen one like that.

25 Q Okay. So, you knew on December 1st that there was a

1 reasonable possibility that Mr. Shapiro could be indicted or
2 exercise his First or Fifth Amendment rights, correct?

3 MS. CONN: Objection, Your Honor. This whole line
4 of questioning, is he asking the witness for a legal
5 conclusion?

6 THE COURT: Mr. Pachulski, I guess I get your
7 point.

8 MR. PACHULSKI: Okay.

9 THE COURT: To put it without too sure color, even
10 if the entering into the agreements were well-intentioned,
11 it's your position that they were, at best, ill-considered.
12 I get the point.

13 MR. PACHULSKI: Okay. I understand, Your Honor.
14 I will move on. I think I've made my point.

15 BY MR. PACHULSKI:

16 Q Am I correct --

17 MR. PACHULSKI: If I could just go back, Your
18 Honor?

19 BY MR. PACHULSKI:

20 Q Were you concerned that if you didn't enter the three
21 agreements with Mr. Shapiro, he would not turn over the
22 assets?

23 A Yes, sir.

24 Q Okay. And did you make any of the hundred and seventy-
25 five-thousand-dollar payments to Mr. Shapiro?

1 A I made one.

2 Q Wasn't that effectively investor money?

3 A I'm not sure how to answer that. I suppose so, because
4 there was money that came in from investors and that was
5 paid. So, yes, I'll give -- yes.

6 Q And prior to December 1, 2017, other than your
7 relationship with Mr. Shapiro, an investor, did you have any
8 relationship with any other investors?

9 A I had spoken to -- you know, I think a couple of the
10 employees of the company were also investors. I don't know
11 that for a fact, but I think I saw them on a sheet at some
12 point. But notwithstanding employees that I talked to via my
13 engagement with Gibson Dunn, I don't think I knew any other
14 investors.

15 Q Am I correct that you testified at your deposition that
16 Mr. Shapiro could be helpful in finding new opportunities?

17 MS. CONN: Objection.

18 THE WITNESS: Yes.

19 MS. CONN: If we're going to keep citing the
20 transcript, please point the witness to the transcript.

21 THE COURT: I'm sorry, I didn't hear the
22 objection.

23 MS. CONN: Please point the witness to the
24 transcript.

25 MR. PACHULSKI: Your Honor, I could do it. I'm

1 just trying to -- I could ask him to go to the transcript.
2 I'm trying to make this -- I know that this is taking time
3 and I'm trying to --

4 THE COURT: I appreciate that, but often,
5 especially on cross-examination, witnesses find it helpful to
6 see the context in which you're asking the question, so --

7 MR. PACHULSKI: It's fine, Your Honor.

8 THE WITNESS: Thanks, Your Honor.

9 MR. PACHULSKI: I will do it.

10 BY MR. PACHULSKI:

11 Q Am I correct, Mr. Perkins, that you believe that Mr.
12 Shapiro could find additional new opportunities?

13 A I think depending on how the case shook out, that could
14 have happened.

15 Q Wasn't that one of the considerations in employing Mr.
16 Shapiro?

17 A I recall that there was a handful of specific
18 opportunities that the company made deposits on we were
19 looking at, at the time, so, those are the ones that I was
20 thinking of, I think, when that was written. But, yeah, I
21 suppose if things came up along the way -- joint venture
22 things where we didn't have to put up any money -- then, I
23 would consider that helpful.

24 Q Okay. Am I also correct that before becoming CRO, Mr.
25 Shapiro had rented two properties from Woodbridge, one in

1 California and one in Colorado?

2 A Yeah -- yes.

3 Q And am I correct that the California prompt had
4 approximately \$6 million of investor money that was put into
5 it?

6 A I don't have the number in front of me, but I think
7 that's the number.

8 Q Well, we won't have to guess. Let's look at the
9 forbearance agreement.

10 A Which one was that again?

11 Q I'm finding that myself.

12 A Okay.

13 Q So, if you read Recital A, it refers to a note of
14 4,690,000. And if you look also, there's also a second lien
15 of a million five hundred thousand. Does it refresh your
16 recollection that --

17 A Yeah, I think that's six point -- six point one and
18 change, yeah.

19 Q And what is Mr. Shapiro's rent on the California
20 property?

21 A The California property is 28,000 a month.

22 Q Do you know what the interest rate is on that \$6
23 million?

24 A I don't know right now.

25 Q Do you know if his rent covers all debt and expenses

1 associated with the property?

2 A I don't know that right now.

3 Q Okay. Am I correct that the forbearance agreement was
4 one of the documents that you had to execute to gain control
5 of Woodbridge?

6 A Among the other things, yeah.

7 Q And, also, could you take a look at Exhibit 159, which
8 is the subordination, non-disturbance and attornment
9 agreement. And, am I correct that you signed that document?

10 A Yes.

11 Q Tell me your understanding of that document. What is
12 it supposed to be doing? What does it accomplish?

13 A I'm reading it. There's a lot of documents.

14 Q Just the first subordination agreement. When you
15 signed it, did you know what it was accomplishing?

16 A Yeah. Again, I have to refresh my memory on this
17 particular one. Looks like it's a subordination agreement on
18 the loan for one of the properties that was rented to him.

19 Q Do you know what this document -- so what does that
20 mean, to your knowledge?

21 A My knowledge is we can't foreclose on it for it
22 subordinates the loan below the -- I'd have to -- I'd have to
23 read it through and refresh my memory on everything. I don't
24 remember right now.

25 Q Have you ever -- before today -- I apologize.

1 Before December 1st, 2017, had you ever signed a
2 subordination, non-disturbance and attornment agreement?

3 A I'm not -- I've signed subordination agreements. I'm
4 not sure with all three of those words together, though.

5 Q Okay. So, am I correct that if investors actually have
6 a security interest in the California property, that because
7 you signed the subordination agreement, if they were to
8 foreclose on that property, they would have to foreclose it
9 subject to Mr. Shapiro's tenancy?

10 MS. CONN: Objection.

11 THE COURT: Basis?

12 MS. CONN: Calls for a legal conclusion.

13 THE COURT: Overruled.

14 THE WITNESS: That's my rough understanding.

15 BY MR. PACHULSKI:

16 Q Well --

17 A That's my understanding.

18 Q Okay. Do you believe that if someone forecloses with a
19 tenant in place that they can't kick out on a single-family
20 residence, that that would devalue the asset upon the party
21 that was foreclosing, if they wanted to sell it?

22 A Does that particular hypothetical include a tax lien on
23 that asset that makes it unsalable otherwise?

24 Q I don't know that there's any other -- I'm just asking
25 you if --

1 A I can't separate the facts because on this particular
2 asset, there's a tax lien that makes it largely unsalable, so
3 me collecting twenty grand a month feels like a better thing
4 than me collecting nothing and not being able to sell it.
5 Yeah, I think we could -- hopefully, we're doing an analysis
6 to see if we get a higher rate. Perhaps we can evict him.
7 There's lots of things that we can do.

8 But, you as it relates to having a tax lien on the
9 asset -- and I have experience in this -- that I can't sell
10 assets with tax liens on them.

11 Q You can't sell assets --

12 A It's a real pain and it's real slow and it's going to
13 take a lot more than a couple of months to collect some rent
14 out of it.

15 Q Could you sell it free and clear in a bankruptcy?

16 A I'm -- I'm not a tax expert. I think it's hard to,
17 because think tax liens kind of go through bankruptcy, from
18 my experience.

19 Q What's the property worth?

20 A I -- I don't know. I'd have to look at my spreadsheet.

21 Q So, if it was foreclosed by the 2nd -- if it was worth
22 more than \$6 million and it was foreclosed, they could sell
23 it and just deal with the tax lien after the foreclosure;
24 would that be fair?

25 A I suppose, but I'm not sure you get full value if you

1 have a tax lien on a property.

2 Q How about Colorado, does that have a tax lien?

3 A It does not, and he subsequently left that property,
4 for what it's worth.

5 Q But when you signed it, was he in possession?

6 A Yes, on a market, but as I understand, we're still
7 doing the analysis on a market-based lease or market, you
8 know, market-level lease.

9 Q Okay. If you could take a look, Mr. Perkins, at
10 Exhibit 158.

11 A I visit.

12 Q Okay. Am I correct in looking at Section 4.1, that
13 after a payment of debt, Mr. Shapiro could receive up to 50
14 percent of the net proceeds, not to exceed \$500,000?

15 A Yes.

16 Q Okay. And am I further correct that under this
17 agreement, he contributed, as far as I can tell, 28
18 properties?

19 A I think it's more than that.

20 Q Oh.

21 A Well, not more than that number of properties, but I
22 have to look at this particular agreement, but I think he
23 contributed 28 properties, but also kind of the management
24 interests in the remaining properties. So, I think that was
25 all encompassed in this agreement. I haven't read it since

1 I've been here for the last couple of minutes, but that's my
2 understanding of this document.

3 Q So, your understanding, forgetting whether he would be
4 able to collect it or not, he could receive \$500,000 on all
5 139 properties?

6 A Up to \$500,000, subject to 50 percent over the debt, as
7 I understand it, on a one-off basis, if that was the case,
8 yes.

9 Q So, he could technically, based on this agreement,
10 collect tens of millions of dollars where one property could
11 sell -- for instance, one property could sell for a million
12 over the debt. Another property could sell for 10 million
13 under the debt, but he would get 500,000 on the one and zero
14 on the other; is that a fair hypothetical?

15 A You asked about nine questions. So, what was the first
16 question?

17 Q It's very simple. First, you said that he could
18 receive up to \$500,000 per property, meaning that he could
19 receive 500,000, is it your understanding, on up to 140
20 properties?

21 MS. CONN: Objection; mischaracterizes his
22 testimony.

23 BY MR. PACHULSKI:

24 Q Okay. How many properties could he receive the
25 500,000, as far as your understanding of the document you

1 signed?

2 A I thought it was the 138 approximate -- the 138
3 properties that are under my control.

4 Q So, when you signed it, you thought it was the 138
5 properties, correct?

6 A I -- I believe so.

7 Q Okay. I'm not -- it's not a trick. I'm just trying to
8 understand your understanding.

9 A Okay.

10 Q Which means that if all of them were profitable, he
11 could obtain up to \$70 million, give or take; is that
12 correct?

13 A I think that number is wildly off, but I haven't run
14 the numbers, so I'm not going to give you a number. But he
15 could earn 50 percent after it clears the debt over each
16 property, so however that tallies out when you look at the
17 specific assets.

18 Q Well, you said that there were 138 assets --

19 A Yes, but I also know that a bunch of them are not worth
20 more than a million dollars.

21 Q Okay. So, if half of them were, is my math correct
22 that he would receive approximately \$35 million?

23 A I have to get -- I have to -- I'm not going to -- I'm
24 not going to do math up here on the stand.

25 Q Well, let me ask you this. Do you know if Mr. Shapiro,

1 at any time, received \$500,000 for any -- upon the sale of
2 any of the properties?

3 A Nondebtor properties, I'm aware that he received
4 \$500,000 for an asset that he did not contribute to the
5 independent manager.

6 Q Okay. So, there are properties that actually would be
7 worth enough to pay the 500,000 as demonstrated by the one
8 that sold; is that correct?

9 MS. CONN: Objection; mischaracterizes his
10 testimony.

11 MR. PACHULSKI: I'm just --

12 THE WITNESS: Yeah --

13 THE COURT: One moment. Don't respond, please,
14 until I resolve the objection.

15 THE WITNESS: I'm sorry, sir.

16 THE COURT: Any response?

17 MR. PACHULSKI: Your Honor, he's testified that he
18 received it, and I just asked whether or not it's reasonable
19 to believe that he could receive it on other assets.

20 THE COURT: You may answer that question if you're
21 able, sir.

22 THE WITNESS: Okay. I know he received one five-
23 hundred-thousand-dollar disbursement for an entity that was a
24 nondebtor. I don't know -- I -- I don't -- I don't believe
25 he's received any other disbursements of \$500,000, and I had

1 no control over the one that he did receive. It was not
2 contributed to the independent manager.

3 And so, I'm not sure that I understand the rest of
4 your question.

5 BY MR. PACHULSKI:

6 Q So, he received it on one. We can put that aside.

7 You signed an agreement that the anticipation that
8 there would be assets that would be more than the debt. Do
9 you believe there are assets worth more than the debt?

10 A Yes.

11 Q Okay. Do you have -- is it more than 10?

12 A I believe so, yes.

13 Q Is it more than 25?

14 A I believe many of the assets are worth more than the
15 debt.

16 Q Okay. And you believe that the assets you gave the DIP
17 lender was worth more than the debt, correct?

18 A I believe so, yes.

19 Q Okay. Which means that any multiplication you do, Mr.
20 Shapiro could receive 500,000 times the number of properties
21 that go above the debt, he would get up to 50 percent of that
22 excess, up to 500,000; is that correct?

23 A Yes, but -- that is correct. That's what the document
24 says there, yes.

25 Q Okay. That's fine.

1 Mr. Perkins, could you explain to this Court why
2 neither you, nor Mr. Beilinson, required the agreements to be
3 subject to Bankruptcy Court approval since they were entered
4 into the weekend before the filing?

5 A It was ultimately an ongoing negotiation with Mr.
6 Shapiro and his counsel. As part of that negotiation, in
7 order for him to contribute the properties to the independent
8 manager, he required a series of things to happen, including
9 this document, including the compensation, and including the
10 lease -- the lease forbearance that was out there. Those
11 were his requirements.

12 In exchange for that, he was going to give the estate
13 the ability to manage and run the estate, contribute the
14 collateral to provide the liquidity to the debtor in
15 possession loan, provide services to the company, and I think
16 those are the primary things he was giving.

17 MR. PACHULSKI: Your Honor, I would ask to strike
18 as nonresponsive. I simply asked if there was a requirement
19 or there was anything in any of the agreements that provided
20 for the Bankruptcy Court having authority to review these
21 contracts.

22 THE COURT: I won't strike the answer, but I'll
23 allow you to ask the question until he answers it.

24 MR. PACHULSKI: Thank you.

25 BY MR. PACHULSKI:

1 Q Mr. Perkins, can you explain to me why there was no
2 provision in the three agreements that these agreements would
3 be subject to Bankruptcy Court approval, in light of the fact
4 that the agreements were literally signed the weekend before
5 200-plus Chapter 11s were filed.

6 A Because he would not agree to it.

7 Q And that was fine with you.

8 A What does "fine" mean in this context? I'm not -- I'm
9 not trying to be funny. It --

10 Q It's fair.

11 It was agreeable with you?

12 A I think in the interests of maximizing value for the
13 creditors, it was better to get the properties and be able to
14 manage them. On the cost-benefit standard, it was -- the
15 benefit was greater than the cost in my view at that time.

16 Q In your declaration or anywhere before your deposition
17 last week, did you ever disclose that you signed these
18 agreements because Mr. Shapiro would not turn over control
19 unless they were signed in the form that they were ultimately
20 signed? That that's what happened and that's why there was
21 no provision for Bankruptcy Court approval?

22 A I don't think so.

23 Q What do you mean, you don't think so?

24 A I -- I mean, I didn't look through the declaration
25 again before this, but I don't believe that's in the

1 declaration.

2 Q Okay. So, it wasn't disclosed to this Court; is that
3 fair?

4 A Yes.

5 Q Okay. Now, if there had been no unsealing of the SEC
6 complaint, would you have paid the January \$175,000?

7 A I suppose just like any other contract, you're asking
8 me to speculate, so let me -- let me ask -- let me -- let me
9 think about it. But if he was doing his job and he was
10 adding a bunch of value, I would probably pay it if no
11 further allegations had come to light and no further
12 litigation had come to light. There's a number of different
13 things that could happen, so with all things being equal and
14 nothing else happened and he was providing value, I would pay
15 him for those services.

16 Q Do you believe, as of December 28th, 2017, he was
17 providing value?

18 A Well, I -- that date specifically?

19 Q I --

20 A Yeah, before I kind of let him go; is that what you're
21 asking?

22 Q Well, do you believe he provided value between December
23 4th, 2017, and December 28th, 2017?

24 A Yes.

25 Q You did? And you believed he provided enough value to

1 be paid 175,000 a month?

2 A Well, as a partial period, I mean, I think we have to
3 look at and analyze what he did and determine if that value
4 was all there. But he was very helpful in helping me get up
5 to speed on the case at the outset. I'm not sure -- I'm not
6 quite sure how to quantify that. I suppose partial -- part
7 of it will come out in the final outcome of the case and how
8 we continue to succeed on some of the properties. So, I
9 don't really know how to quantify it right now.

10 Q Okay. Let me try it this way. If December 28th didn't
11 happen and instead December 28th being the termination date,
12 December 28th, which was his next payment date or
13 administrative leave date -- I keep mistaking that -- if
14 December 28 was his next payment date, would you have made a
15 payment?

16 A It depends. It depends.

17 Q What would it have depended on?

18 A It would depend if he was providing all the things that
19 he was supposed to in his agreement to us on one side. It
20 would depend on collaborating with the various other
21 constituents in the bankruptcy court to deem whether or not
22 they thought that was a contract that we should continue
23 moving forward with or whether that was something that we
24 should reject. It depends if anything else came to light as
25 it relates to investigations or other things bad that

1 happened. There are a number of things that it would depend
2 on.

3 Q Where in your declaration did you state that you would
4 be continually evaluating Mr. Shapiro's agreement to see
5 whether or not you would make payments under those
6 agreements?

7 A I don't believe it's in the declaration.

8 Q Thank you. Have you ever been involved, Mr. Perkins,
9 in a case with just a single independent manager or a single
10 independent number?

11 A I believe so, yeah. Typically, not companies of this
12 size, but yes.

13 Q Any -- well, let's try this. Anything even remotely a
14 company this size?

15 A Not in the context of the bankruptcy. I've dealt with
16 some very large companies outside of bankruptcy that have an
17 independent manager and independent member, you know, kind of
18 a single board member, single otherwise that's about this
19 size or maybe a little bit bigger.

20 MR. PACHULSKI: And, Your Honor, if I could read
21 from Page 111, Lines 12 through 18?

22 THE COURT: Are we in the deposition? Which one

23 --

24 BY MR. PACHULSKI:

25 Q Yes, I'm sorry.

1 Are you there?

2 A Yes.

3 Q "Question: Okay. Mr. Perkins, have you ever been
4 involved in a case that had an independent member or an
5 independent manager?

6 "Answer: Not an independent member or independent
7 manager, but with an independent board.

8 "Question: The entire board was brought in?

9 "Answer: Yes."

10 A That was a different question than what you just asked
11 a few minutes ago.

12 Q That's -- I said, Have you ever been involved in a case
13 with just a single independent manager or a single
14 independent board?

15 A And that's not what it says here. That's not what the
16 deposition says. I don't mean to argue, but it doesn't look
17 like what it says when I read it.

18 A "board" could be a plural word.

19 THE COURT: Mr. Pachulski, let's move on.

20 MR. PACHULSKI: Yeah, I agree. Thank you, Your
21 Honor.

22 BY MR. PACHULSKI:

23 Q Am I correct that Mr. Beilinson's agreement as of
24 December 1, 2017, Mr. Beilinson could be removed without
25 cause by Mr. Shapiro?

1 A Yes.

2 Q Did you think -- were you concerned about that
3 provision?

4 A No.

5 Q Why not?

6 A From experience, I thought, in light of the fact that
7 we were likely going to be filing bankruptcy as of that date,
8 I thought that, again, from experience, that the Court would
9 have something to say about that if he was sought to be
10 removed.

11 Q But it was changed anyway, down the road, even though
12 there was no real concern; is that correct?

13 A Yes.

14 Q Okay. When you filed the Chapter 11, was it your
15 intent to do a reorganization, instead a liquidation?

16 A I think we were evaluating a number of different
17 outcomes of the case -- reorganization, sale, liquidation,
18 other things.

19 Q So, you -- okay.

20 Page 118, beginning at Line 25, Page 119, ending at
21 Line 8. Are you there, Mr. Perkins?

22 A Yes.

23 Q "So, it is your intent to have this company -- you say
24 you intend to file a plan that implements the debtors'
25 proposed restructuring and the transactions the debtor real

1 estate investment business to institutional financial
2 sources.

3 So, you, according to your first day declaration, you
4 were going to have a reorganization and not a DIP -- a
5 liquidation?

6 "Answer: Yes."

7 A You said the word "transaction," instead "transition,"
8 but otherwise I agree with you.

9 Q Oh, I'm sorry. Thanks.

10 So, you were determined to do a reorganization, even
11 though you had not done a complete analysis by the time of
12 the filing of the Chapter 11 petition; is that correct?

13 A It says I intended to. We evaluated a number of
14 different things and came to the right conclusion.

15 Q But as of that time, you didn't even know what the
16 company's revenues for the prior year were; is that correct?

17 A When I look at a real estate developer, I focus more on
18 the asset value than I look at the revenue and the financial
19 performance. So, I -- I'm not sure that's the standard that
20 I would look at in evaluating a plan in a case like this.

21 Q But I'm correct, you also didn't know what, prior to
22 December 1, 2017, what properties had been developed or
23 constructed or sold by Woodbridge in coming to the conclusion
24 there should be a reorganization and not a liquidation?

25 A That -- that's what I said earlier and what -- again,

1 I'll say what I just said. I can look at asset value in a
2 case like this and, you know, potential for improvement and
3 developing the assets.

4 Q But you hadn't done the analysis, a complete analysis
5 when you did your first day declaration; is that correct?

6 A We had not completed the analysis. We had started an
7 analysis. So, we were going to evaluate or options once that
8 analysis was completed.

9 Q Am I correct that the 13-week budget assumes that you
10 will use 75 million of the debtor-in-possession financing in
11 place, meaning the 75 of the 100 million?

12 A I think it was 76, but close enough.

13 Q Okay. That's why I said about.

14 A Yeah, okay. Cool. Yeah.

15 Q And do you believe that you can go through the Chapter
16 11 with a hundred-million-dollar DIP knowing you used 76
17 million within the 13 weeks?

18 A I don't think that was within the 13 weeks. I can't
19 recall exactly when that was, the 76 million was used.

20 So, is your question, Can we make it through with a hundred-
21 million debtor-in-possession loan.

22 Q My question is can you survive with only a hundred-
23 million-dollar D-I-P loan through the Chapter -- the proposed
24 Chapter 11?

25 A It depends on a number of different things, but based

1 on the assumptions that were in that cash flow, yes.

2 Q So, you believe that you will not get debtor-in-
3 possession financing above 100 million through this Chapter
4 11 case?

5 A I didn't say that.

6 Q Okay. I apologize.

7 And what did you say?

8 A I said, Based on the assumptions in that model, we can
9 survive within a hundred-million-dollar debtor-in-possession
10 loan.

11 Q For how long?

12 A I don't have the model in front of me, but I recall it
13 being drawn on \$76 million, approximately March or April --
14 excuse me -- I think it was --

15 Q So, if you go past April, you're going to have to find
16 other sources of revenue or funds?

17 A Again, depending on how the case plays out, that could
18 happen, yes.

19 Q Okay. If we could go back to your declaration again.

20 A Which one was that again?

21 Q It's Exhibit 20.

22 A Sorry. Sorry, Your Honor.

23 I have it.

24 Q Okay. I do want to go back for just a moment because I
25 think we got sidetracked. In the third sentence on Paragraph

1 26, you said it was essential to maximizing the value that
2 you retain -- you continue to -- you want to retain Mr.
3 Shapiro. Did you anticipate, based on your knowledge at the
4 time, that you would continue using him for at least a year?

5 A I think there's a number of factors that would play
6 into it, but it could happen. It depends on what happens on
7 the case. I know that --

8 Q And am I correct in Paragraph 27 that you say that the
9 -- that it was you and Mr. Beilinson who requested that Mr.
10 Shapiro continued to provide consulting services or actually
11 provide consulting services?

12 A I'll -- I'll quibble with the word "consulting
13 services" but we agreed we wanted to have services. And that
14 -- that's what it says in there, but I want to make sure I
15 define "consulting." I wanted him to consult with us, yes.

16 Q So, it was -- he didn't come to you to do it; you went
17 to -- you and Mr. Beilinson went to Mr. Shapiro?

18 A I think it was kind of mutual that I believe -- I
19 believe we wanted him to stick around to transition
20 information.

21 Q Isn't it true, Mr. Perkins, that you basically were
22 moving forward and would do anything you had to, to get Mr.
23 Shapiro to turn over the assets to the control of you and Mr.
24 Beilinson?

25 A No.

1 MS. CONN: Objection.

2 THE WITNESS: Excuse me, no.

3 THE COURT: Overruled.

4 THE WITNESS: No.

5 BY MR. PACHULSKI:

6 Q So, you signed three agreements that would pay him
7 millions of dollars and you felt that was appropriate under
8 the circumstances?

9 A In totality, yes.

10 Q What do you mean by "in totality"?

11 A There was a number of things that we got and there was
12 a number of things that we had to give up. And I think on
13 balance, those things are more to the good than for the bad.

14 Q Basically, the good was that you and Mr. Beilinson were
15 getting control of these entities, instead of allowing the
16 SEC, for instance, to gain control of these entities; is that
17 correct?

18 A It's not just a function of control, but I think we
19 would have the opportunity to develop these properties and
20 maximize value otherwise. So, that's -- that's what control
21 you enables; it's not just a function of control.

22 Q Okay. If you would look at the end of Paragraph 27 of
23 your declaration.

24 A Yes.

25 Q You said you had discussions with compensation

1 consultants for senior executives in the real estate
2 industry. I believe this is -- this to be a fair-market
3 consulting fee. Who did you speak to?

4 A I can't recall right now. It's on my list to look at
5 the sheets. But it also says we conducted further, you know,
6 analysis and review of information and conversations.

7 Q Did you tell either of the two compensation consultants
8 whose names you don't recall, that Mr. Shapiro had received
9 \$2.1 million, but had no authority to make any decision
10 whatsoever?

11 A I recall I mentioned it was a consulting arrangement --
12 they were short conversations. I don't recall if we said no
13 decision-making authority at all. Like I said, I don't
14 recall that part.

15 Q But he had no decision-making authority, that being Mr.
16 Shapiro?

17 A Correct.

18 Q Did you tell the compensation consultant that under the
19 transition-services agreement, Mr. Shapiro had obtained a
20 liquidated-damage amount of -- in excess of a million dollars
21 if he was either indicted, if you fired him, because he was
22 indicted or exercised his Fifth Amendment rights under the
23 United States Constitution?

24 A I don't think that provision had been hammered out
25 through negotiations yet, so I don't believe -- the answer is

1 no, I did not bring that up.

2 Q So, you talked to the compensation consultants before
3 you had a final agreement?

4 A Yes.

5 Q And you didn't call them back to say, There are some
6 really --

7 A We didn't retain them.

8 Q Okay.

9 MR. PACHULSKI: Your Honor, we had -- I apologize,
10 because we had not included the assumption motion in our
11 exhibits and we'd like to add it as Exhibit 209. I don't
12 think there'll be -- I'd be surprised if there was any
13 objection to it.

14 THE COURT: What?

15 MR. PACHULSKI: 210. I'm sorry, Your Honor.

16 Your Honor, may I approach the witness?

17 THE COURT: Thank you.

18 BY MR. PACHULSKI:

19 Q Mr. Perkins, do you recognize the assumption motion?

20 A I do.

21 Q And were you, as the CRO, the one responsible for
22 having counsel file that motion?

23 A Yes, I mean I was involved in deciding to file it. I
24 think Mr. Beilinson and I and counsel consulted on it, yes.

25 Q Am I correct that you never ran the assumption motion

1 by the committee where millions of dollars of potential
2 damages could be incurred upon rejection?

3 A Yes.

4 Q You did not?

5 A I -- I don't believe we did. I think you asked me
6 before. I don't think we did.

7 Q Does the assumption motion go through any analysis as
8 to why you're assuming it, specifically, property by
9 property?

10 A I think it goes through some verbal analysis, but it
11 doesn't go through the other things on property by property
12 in there.

13 Q Does it go -- does the motion, to your recollection, go
14 through any analysis as to why you're assuming it, other than
15 saying you think it's beneficial in your business judgment?

16 A I don't believe so.

17 Q Okay. And am I correct that you believe that the
18 assumption agreement is a no-brainer?

19 MS. CONN: Objection.

20 THE WITNESS: I can't recall if I said the words
21 "no-brainer," but --

22 THE COURT: Mr. Perkins, you have to wait until I
23 resolve the --

24 THE WITNESS: I'm sorry, sir.

25 THE COURT: I appreciate your eagerness, I really

1 do.

2 (Laughter)

3 THE COURT: Is there any response, Mr. Pachulski?

4 MR. PACHULSKI: Your Honor, I asked him a simple
5 question, if he thinks it's a no-brainer. I -- he had --
6 rather than go through the deposition, it's what he testified
7 to, so ...

8 THE COURT: Rephrase.

9 MR. PACHULSKI: Okay.

10 BY MR. PACHULSKI:

11 Q Do you believe that there was -- that this was a motion
12 that should be absolutely filed and approved by the Court
13 without running it by the committee?

14 A I didn't think we should not run it by the committee.
15 As I think I mentioned to you before, I thought the committee
16 would be thrilled with this. I was wrong.

17 And when that happened, we obviously got into a big
18 conversation about it and a lot of shouting was had and we
19 moved on.

20 Q Are you aware that some of your employees advised FTI
21 that at least three of the projects on the assumption list
22 would actually not go forward?

23 A You mentioned that in my deposition last week, so I'll
24 take it at face value.

25 Q Well, do you have any reason to disbelieve that? I

1 mean Mr. Greenspan will be testifying. Do you -- so, you
2 said there was no reason not to file it, but apparently
3 somebody in your team -- I think one of your senior guys --
4 said, We don't believe we're going forward with the three of
5 them?

6 A He may --

7 MS. CONN: Objection; lack of foundation, calls
8 for speculation.

9 THE COURT: Sustained.

10 BY MR. PACHULSKI:

11 Q I just want to know, are you aware that three of your
12 -- that anyone of your team told FTI that three of the
13 projects were not going forward?

14 A I know that there are varying different opinions on the
15 team. Depending on who at FTI was asking me, I'm the
16 decision-maker on my team and we consistently debate good
17 ideas, bad ideas. Depending on where it was at that time,
18 they may have said that. They may not have known all the
19 facts.

20 What I can tell you is that nobody at FTI called me to
21 ask me if those things were going forward, but beyond that,
22 I'll -- I'll -- I would not doubt that members of my team
23 have differing opinions from time to time.

24 Q Is it true that G3 is your largest contractor?

25 A I believe that's right, yes.

1 Q And they have four projects that you've entered into
2 contracts with at approximately -- if they all went forward,
3 you would pay them approximately \$15 million?

4 A I believe that's the number, yes.

5 Q Okay. And they are one of the members of the
6 committee?

7 A Yes.

8 Q And they actually opposed -- is it correct that they
9 opposed the assumption motion because they thought there had
10 been inadequate analysis, even though it would have been to
11 their absolute benefit to have the assumption motion granted;
12 is that correct?

13 MS. CONN: Objection.

14 THE COURT: Sustained.

15 BY MR. PACHULSKI:

16 Q Okay. Do you know if G3 objected to the assumption
17 motion?

18 A No.

19 Q Okay. Did you ever speak to G3?

20 A Yes.

21 Q Did they tell you that they objected to the -- that
22 they were going to object to the assumption motion?

23 A I had multiple conversations with them. It was less of
24 an objection about the assumption motion; I think it was more
25 about getting paid. They offered an alternative, it sounds

1 like after they talked to counsel. I had two conversations
2 with them. They were different.

3 And the longer conversation -- very productive
4 conversation; they're a great partner of ours -- but through
5 the course of that conversation, it was more focused on
6 getting paid. There was less concern about assumption,
7 critical vendor, you know, bags of pennies -- it didn't
8 matter -- they just wanted to get paid.

9 Q Okay. Going back a second to December 1st, you were
10 well aware of which assets would be contributed by Mr.
11 Shapiro as of the December 1st date, meaning that there would
12 be some entities that you filed for and other entities that
13 would not be filed for; is that correct?

14 A I mean, well aware. It was a moving target until it
15 actually happened, but on December -- on December 1st, I was
16 aware.

17 Q And Mr. Beilinson was also aware, to your knowledge?

18 A I -- I believe so.

19 Q Okay. Now, Mr. Perkins, I understand there's an
20 analysis that you've done that includes spending anywhere
21 between 42 million and 600 million to develop various pieces
22 of Woodbridge properties; is that correct?

23 A Are you talking about the analysis that was November
24 7th or something like that?

25 Q No, I --

1 A It was cited at the bottom, "November 7MS file,"
2 something like that.

3 Q No, no. It's actually something I'm not putting into
4 the record.

5 A Oh, okay. Okay.

6 Q I think it's sensitive. I think it's a document that
7 was prepared by your team post-December 1st that reflected
8 three possible cases. One is you'd spend 42 million. I
9 don't remember the second. And the third is you'd spend
10 somewhere along the lines of 609 million?

11 A Yes. That's what I call the "November 7 document,"
12 yeah.

13 Q Was it prepared on November 7th?

14 A Yes.

15 Q Okay. So, who prepared the document?

16 A My team.

17 Q Okay. Is it -- have you updated it or is that still a
18 document that you rely on?

19 A It's something we're actively working on with Moelis
20 and other folks internally on that document. It didn't
21 include a lot of things.

22 Q So, sitting here today, are you -- do you have a plan
23 based on that analysis or are you waiting, for instance, to
24 sit down with Moelis and complete your file?

25 A We are -- that was a preliminary plan that was kind of

1 indicative, in some ways. Of what, I'm not sure yet until we
2 complete the analysis. But I think as we've said from the
3 outset, we want to complete the analysis to set the go-
4 forward plan and that's going to set the course of the
5 overall case.

6 Q So you don't have the going-forward plan in place yet
7 because you still have analysis and consulting with Moelis
8 and others; is that correct?

9 A Yeah, there's work to do on that plan. Ideally, we'd
10 like to collaborate with other people around the table to
11 come to that plan. It hasn't come to light yet, but that's
12 what we're trying to do.

13 Q Okay. And am I correct that under your analysis --
14 again, the analysis that we're talking about -- if at any
15 time you want it, I have a copy, but I'm very sensitive to
16 the debtors' concerns --

17 A I'd prefer you don't give it to me.

18 Q Okay. That, at least, under your analysis, unless the
19 \$600 million is spent, that only the noteholders would be
20 paid, and the unit holders would not receive anything?

21 A Again, based on the preliminary analysis that's missing
22 a bunch of stuff on it, that's what that piece of paper says.

23 Q Okay. And if you do go the six-hundred-million route,
24 how do you plan to get that 600 million?

25 A It depends on whether this turns into an asset-sale

1 case, if we can do a plan of reorganization. I think it's
2 too early and that's why we're consulting with experts to
3 determine that plan.

4 Q Do you think you could borrow the 600 million?

5 A Maybe.

6 Q Okay. Have you tried to borrow 600 million for this
7 debtor?

8 A For this debtor, no.

9 Q Is it fair to say that you would likely have to get a
10 joint venture partner or institutional money that would
11 actually pay an equity interest, based on your experience?

12 MS. CONN: Objection.

13 THE COURT: Sustained.

14 MR. PACHULSKI: Okay.

15 THE COURT: How much more do you have, Mr.
16 Pachulski?

17 MR. PACHULSKI: I would estimate about 15 to 20
18 minutes.

19 THE COURT: I would like for you to finish by 1:30
20 and we'll take a break then.

21 MR. PACHULSKI: Okay.

22 THE COURT: But before we leave the courtroom, I
23 want to try to talk a little bit about scheduling, but please
24 proceed.

25 MR. PACHULSKI: Okay.

1 BY MR. PACHULSKI:

2 Q Do you have any idea why Mr. Beilinson, who has
3 approval rights and control, would be paid 25 percent of what
4 Mr. Shapiro is supposed to get under the transition-services
5 agreement?

6 A You said, Do I have any reason why?

7 Q Yeah, why would Mr. Beilinson get 25 percent of what
8 Mr. Shapiro gets when he's the person making all the
9 decisions?

10 A I mean, that was ultimately a deal cut between Mr.
11 Beilinson and I suppose, the company. I could speculate, but
12 I don't know the specific reasons why.

13 Q Isn't it true that in your view, Mr. Shapiro had all
14 the leverage and you guys, frankly, caved in?

15 MS. CONN: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: I did not say "caved in." I
18 definitely did not say, "caved in."

19 BY MR. PACHULSKI:

20 Q I may have paraphrased it. Basically, he had all the
21 leverage and you gave him 2.1 million and Mr. Beilinson, who
22 didn't have that leverage got 480,000; is that incorrect?

23 MS. CONN: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: Again, I'll -- I'll quibble with how

1 you said that. I don't think that characterizes what
2 happened, but I think that Mr. Shapiro had a different level
3 of leverage on one side, but he also had a different rule.
4 Mr. Beilinson was also more of an independent manager, what I
5 would characterize in kind of the corporate structure more as
6 a board member, not a day-to-day member of the crown [sic].
7 That -- day-to-day member of the team, at least, throughout
8 the whole case, more of a strategic role.

9 And I think Mr. Shapiro was anticipated at the
10 outset that it would be a little bit more day-to-day.

11 BY MR. PACHULSKI:

12 Q Okay. So, they had different leverage, effectively; is
13 that right?

14 A And different rules, effectively.

15 Q Am I correct that Mr. Beilinson received \$480,000
16 whether or not he provided services under his agreement?

17 A I believe that's right. It's a yearlong contract, so,
18 yes.

19 Q Did Mr. Beilinson tell you on or about December 1,
20 2017, that all fundraising activities had to immediately be
21 stopped and that those Woodbridge employees that were
22 involved in the fundraising activities had to be immediately
23 be terminated?

24 A I don't recall the termination. I as it relates to the
25 termination, we were highly concerned of exposing the estate

1 to more liabilities, so he -- I think he asked me to look
2 into it and do it right away. But on subsequent
3 conversations, we wanted to make sure we didn't incur
4 liabilities that we wouldn't otherwise.

5 But as to the rest of your conversation, yeah, I think
6 it was actually before December 1st, where we insisted that
7 before taking over that all fundraising was stopped.

8 Q Have you terminated any employee that had anything to
9 do with fundraising?

10 A Yes.

11 Q So, all of them have been terminated?

12 A I think -- I don't -- I don't know if we have anybody
13 left, because I think we still wanted a couple of people to
14 be able to pick up the phone from the Sales Department that
15 we repurposed effectively, but I think largely, everyone else
16 was terminated.

17 Q On -- by December 4th?

18 A Oh, no, no, no. That was last Friday.

19 Q Okay. So, they were around for a month?

20 A Yes.

21 Q Okay.

22 A As we were conducting our analysis.

23 Q Mr. Perkins, could you now turn to Exhibit 4, which is
24 titled, I believe -- and, again, I'm looking at a different
25 exhibit.

1 MR. PACHULSKI: I apologize. There are three of
2 these exhibits, Your Honor, and just because the type is so
3 small, I'm using a different one. But we'll just use Exhibit
4 4, which is the SEC's; I think ours is like maybe 200, but
5 it's fine.

6 BY MR. PACHULSKI:

7 Q Do you know what this document is?

8 A I think this is the Epiq investor -- or Epiq website on
9 the case.

10 Q Who prepared it?

11 A I think we worked with a public relations firm and
12 counsel and us.

13 Q So, you were involved in the preparation?

14 A I mean, I'm involved in kind of everything, by virtue
15 of my position, but I can't say day-to-day -- I -- I can't
16 recall if I was intimately involved in this.

17 Q Did you review it when it was on the -- before it went
18 on the website on December 4th, 2017?

19 A Likely, yes.

20 Q Okay. And is it still on the website?

21 A I haven't been on it today. I -- I don't know. I'd --
22 I'd expect so, because I don't -- I don't think I've approved
23 any changes yet.

24 Q Okay. If you can read Questions 2 and 3, what about
25 payments going forward and when will you resume monthly

1 payments. Are you familiar with those questions?

2 A Yes.

3 Q You said you would intend to ask the Bankruptcy Court
4 to resume these payments as soon as possible.

5 Have you filed that motion?

6 A No.

7 Q When do you intend to file it?

8 A I don't know.

9 Q Okay.

10 A It's not possible yet, so I don't know.

11 Q Why isn't it possible?

12 A We've been busy.

13 Q But you said you were going to file it. It's a month
14 and these investors, I assume, read this, assuming that you
15 would file the motion.

16 MS. CONN: Objection. Is that a question?

17 THE COURT: Sustained.

18 BY MR. PACHULSKI:

19 Q Do you intend to -- so the motion has not been filed,
20 okay. Do you recall ever in your career that there were
21 distributions to either unsecured creditors or disputed
22 secured creditors before the confirmation or plan of
23 reorganization?

24 A I don't recall offhand.

25 Q You don't know of any offhand; is that correct?

1 A Yeah.

2 Q Okay. Can you please look at Question 8.

3 A I've read it.

4 Q Okay. In here, you say certain investors did not
5 perfect their liens; do you recall reading that?

6 A Yes.

7 Q Doesn't your declaration basically say that no --
8 forgetting what your -- I don't want a legal conclusion --
9 but Footnote 9 on Page 8 says, effectively at the time you
10 wrote it -- and you can certainly take a look at Exhibit 20
11 -- that you knew of no investors who had perfected security
12 interests; is that correct?

13 A Yes.

14 Q Okay. So, you wrote "certain" here, knowing there were
15 probably none; is that correct?

16 A I won't say probably, because we hadn't looked at all
17 of them.

18 Q Okay. But the ones you saw, were there any that had
19 perfected security interests, as far as you knew?

20 A I don't -- I don't think so. I don't know.

21 Q Okay. Why did it provide in the -- in Question 8, why
22 did it say "certain" when you didn't know of any at that time
23 that had actually perfected liens?

24 A I don't know. I don't know.

25 Q Okay. Why would you file -- knowing how much money

1 this estate needs and what has to be done and knowing that
2 there are claims that the liens are not perfected, why would
3 you file a motion or tell the investors -- why would you tell
4 the investors that you were going to file a motion to pay
5 them?

6 A It was our intention, certainly at the beginning of the
7 case and depending on where this goes, to pay our investors
8 along the way. That is what we wanted to do.

9 Now, as it relates to whether or not we can or can't
10 and the security interests, that's not my department. And I
11 know we have a team of people that is actively working on
12 that and there's a large number of investor communities,
13 noteholder communities, unit holder communities, everybody
14 that cares a lot about this, and I expect that they'll come
15 to the conclusion. What this says is it intends to and I'll
16 use that to mean that I want to.

17 Now, if I can -- I don't know if I can -- but I want
18 to.

19 Q Does it say you want to or you're going to?

20 A It says "intend," which is somewhere between those two.

21 Q Okay. You have better information today, correct?

22 A Kind of.

23 Q Is that a yes or a no?

24 A Yes and no.

25 Q Okay. Do you know that it's not likely that you were

1 going to file that motion anytime soon?

2 A I suppose that's right. It depends -- what do you --
3 define "soon."

4 Q Okay. Have you updated the website to state what your
5 present intent is, knowing the facts as of today?

6 A I know we had a conference call yesterday and I think
7 they're working on updating it, but that's a -- there's other
8 things that we're working on, too, but I think they're
9 working on it.

10 Q So, the answer is, No, it has not been updated?

11 A It has not been updated yet.

12 Q Do you believe that continued litigation with the SEC
13 would be -- over appointment of a receiver would be
14 disruptive to the debtors?

15 A Yes.

16 Q Can you state why that is.

17 A Well, continued litigation doesn't seem terribly
18 productive for anybody. I think as it relates to getting to
19 a conclusion -- I -- I'm not sure I understand your question.

20 Are you asking, do I think litigation is good with the
21 SEC?

22 Q So, I'm asking you -- you know, people are talking
23 about the disruption of the trustee, et cetera. I'm asking
24 you as to what your views are if there -- if the SEC decides
25 under any circumstances to continue with its litigation in

1 Florida, to push it aggressively, do you think that would be
2 disruptive to the debtors' business?

3 A Well, I'll separate the litigation from the receiver,
4 if that's okay?

5 Q Sure.

6 A Okay. I think having a receiver would be a disaster
7 for the business and the investors. Now, the litigation,
8 depending on what it yields, could either be a disaster or
9 not.

10 Q But the litigation -- the pendency and the depositions
11 and everything that takes place in litigation, do you think
12 that would be disruptive to the Woodbridge business,
13 independent of an SEC receiver, that may not happen
14 overnight, but just the litigation itself?

15 A It actually could be --

16 MS. CONN: Objection.

17 THE COURT: Basis.

18 MS. CONN: To the form of the question
19 (indiscernible).

20 THE COURT: You may answer if you're able.

21 THE WITNESS: I think I understand. I think the
22 litigation could actually be helpful in a way, because I see
23 it as we have potential claims against Shapiro and if we
24 could be supportive of that investigation and we could use
25 that information to go pursue those claims or assign them to

1 somebody to go assume those claims, that would be fantastic
2 if it helps us, you know, get money out of Shapiro for the
3 estate.

4 So, I'm not going to say litigation outright is a
5 disaster. I think the receivership is a disaster, but I
6 think if the SEC can be helpful on litigating and expose
7 stuff and share documents -- this is all other things that I
8 don't know -- that could be helpful.

9 BY MR. PACHULSKI:

10 Q Okay. Let's assume that you're given two choices; an
11 SEC receiver or a Chapter 11 trustee. Which would be less
12 disruptive to the business?

13 A It depends on the receiver. It depends on the trustee.

14 Q What would it depend on?

15 A The person.

16 Q Okay. So, other than the person, you think that a SEC
17 receivership would be equal to a trustee running it in a
18 Chapter 11; is that your position?

19 A Way too many things depending on that. They could both
20 be okay. They could both be disastrous.

21 Q Okay. If the trustee is appointed, is it fair to say
22 that you'll fully cooperate with the transition with the
23 trustee?

24 A Of course.

25 Q Okay. And isn't it true that under the DIP, that the

1 receivership action is a default; is that correct?

2 A I believe so. I think so. I don't have the DIP
3 document in front of me, but I remember a trustee and a
4 receivership action were in events of default.

5 Q Okay. Has the DIP lender declared a default under its
6 DIP?

7 A No.

8 Q Okay. Have you had any conversations with the DIP
9 lender that they will declare a default if a trustee is
10 appointed?

11 A I believe through their counsel, yes.

12 Q They have? So, you believe that they will declare a
13 default even though --

14 A Oh, no, you asked me if I knew of anything and I said,
15 Yes.

16 Q Okay. And have they said they would declare a default
17 if a trustee is appointed?

18 A I think they said the same thing I did. I think it
19 depends on the trustee. I mean, it's in their document that
20 it would be in event of a default. I think, based on
21 subsequent conversations they've said it may be, it may not
22 be; depends on the person. Their preference is to stick with
23 the team.

24 Q But they've said with the right trustee, they would
25 very likely not default?

1 A No.

2 Q What did they say?

3 A They said with the right trustee, they would consider
4 it.

5 Q Okay.

6 MR. PACHULSKI: If I could take just one moment,
7 Your Honor? I think I wanted to stay and I got early for
8 once.

9 THE COURT: You don't have to consume all of the
10 time, Mr. Pachulski.

11 (Laughter)

12 MR. PACHULSKI: I'm trying not to.

13 THE COURT: You may have a moment now if you'd
14 like.

15 MR. PACHULSKI: Thank you.

16 (Pause)

17 MR. PACHULSKI: Your Honor, at this point, we'll
18 reserve for, I guess, cross-examining when counsel puts on
19 Mr. Perkins, but as far as I'm concerned, I'm done with my, I
20 guess, technical direct with -- of Mr. Perkins.

21 THE COURT: Okay. Mr. Perkins, you may step down
22 for the moment and, again, I ask that you -- well, actually
23 it's not really a request -- I direct that you not discuss
24 your testimony with anyone including debtors' counsel during
25 the break.

1 THE WITNESS: Okay.

2 THE COURT: Okay.

3 THE WITNESS: I wouldn't think of it. I drank all
4 the water, so for the next witness, you might want some more
5 water.

6 THE COURT: Well, if you like it that much, we'll
7 make sure there's some more for you.

8 (Laughter)

9 THE COURT: Okay. So, Mr. Bradley, I assume
10 you're up next to examine this -- you may step down.

11 THE WITNESS: Step down?

12 THE COURT: Yeah, go ahead.

13 Do you have an estimate of time for direct?

14 MR. BRADLEY: It's probably 30 minutes, so as long
15 as there's no harsh penalty if I underestimate.

16 THE COURT: No, that's fine. My inclination now
17 is to break until 2:30 and then go until 5:30 with maybe a
18 short break in between. And I'd like some notions from the
19 parties about what they think we can accomplish between now
20 and then with respect to finishing this witness and getting
21 to the next one.

22 The debtor will be cross-examining here. That
23 leaves parties -- I would expect that the U.S. Trustee would
24 have the opportunity to examine the witness and then there
25 are the other parties who may -- who filed papers, who may

1 have questions.

2 Over the break, I guess I would ask them to
3 consider whether they'd prefer to ask their questions now or
4 when the witness gets back on in the debtors' direct case in
5 chief. The latter might be better, because that way, you
6 know you've heard everything at that point, but I leave it to
7 you. I prefer not to have you examining the same witness
8 twice.

9 I gather Mr. Pachulski was right that we will not
10 finish today, which means that we will resume the 18th. And
11 I'll, at this point, set aside the 19th, as well. We're
12 going to go until we finish when we next come back here. I
13 want to make sure I'm done, my work, before the District
14 Court's hearing coming up later the following week.

15 So, think about those things during the break and
16 if there's anything further to be discussed before we resume
17 with Mr. Perkins' testimony, we'll talk about it when we
18 return. Anything before we break?

19 (No verbal response)

20 THE COURT: All right. Stand in recess.

21 (Recess 1:25 p.m. to 2:30 p.m.)

22 (Call to order of the court)

23 THE COURT: All right. Mr. Perkins, will you
24 return to the stand please.

25 Please be seated. I remind you, sir, that you are

1 still under oath.

2 THE WITNESS: Yes, sir.

3 MR. BADDLEY: Good afternoon, Your Honor.

4 Your Honor, just in full disclosure, after looking
5 over my notes and talking with my team, it's possible, but my
6 examination of Mr. Perkins could go up to an hour. I just
7 wanted to give the court a heads up on that and apologize for
8 understating.

9 THE COURT: Well, I took it for what it was worth
10 anyway. Its lawyer time.

11 You may proceed.

12 MR. BADDLEY: Thank you.

13 CROSS-EXAMINATION

14 BY MR. BADDLEY:

15 Q Good afternoon, Mr. Perkins.

16 A Good afternoon.

17 Q So I'm going to do my best to avoid duplication of
18 questions, but I may be getting back into areas that were
19 touched upon earlier.

20 Let me start off by -- when you first met with Mr.
21 Shapiro in the August timeframe, that first go around, Mr.
22 Shapiro described the investigation to you as a large issue
23 that was potentially going to cause a liquidity crisis, is
24 that correct?

25 A Yes.

1 Q And after that meeting with Mr. Shapiro, in August, he
2 told you that he would be talking to other potential
3 advisors, is that correct?

4 A Yes.

5 Q And, in fact, at that point or sometime after that
6 point Mr. Shapiro told you that he was going to hire someone
7 else as a financial advisor, is that correct?

8 A Yes. I can't recall who exactly he was going to or he
9 intended to. I can't remember exactly the language, but
10 something like that.

11 Q And then you hadn't -- everything kind of went quiet
12 for about a month, is that right?

13 A Approximately, yes.

14 Q Okay. And then you were re-contacted about the matter
15 from Gibson Dunn?

16 A Correct.

17 Q And then that's what led to your retention in October?

18 A Correct.

19 Q Mr. Perkins, do you have Exhibit 141 available?

20 A I actually don't think so. I have a hole for that one.

21 UNIDENTIFIED SPEAKER: He only has the Pachulski
22 binder which is a partial binder.

23 UNIDENTIFIED SPEAKER: Your Honor, may I approach
24 the witness?

25 THE COURT: Yes, you may.

1 BY MR. BADDLEY:

2 Q Okay. So earlier this morning you had testified to Mr.
3 Pachulski that you had reviewed a press release put out by
4 the SEC regarding Woodbridge, is that correct?

5 A Yes.

6 Q And this Exhibit 141 is a press release dated September
7 21st, 2017; have you see this, sir?

8 A Yes.

9 Q And was this the press release that you were referring
10 to that you said you saw at or around the time that the press
11 release came out?

12 A I can't recall. I think there was a couple of press
13 releases or articles, but I saw this one about when this one
14 came out.

15 Q Sometime in late September or early October, is that
16 correct?

17 A Approximately. I don't know the date, but, yeah,
18 approximately.

19 Q Okay. Would you please look at the second paragraph
20 that is not bolded that begins, accordingly? And I'm going
21 to read it.

22 It says,

23 "According to the SEC's application and supporting
24 papers filed in Federal Court in Miami on July 17th,
25 2017 the agency is investigating whether Woodbridge and

1 others have violated or are violating the anti-fraud
2 broker/dealer and securities registration provision of
3 the Federal Securities Laws in connection with
4 Woodbridge's receipt of more than one billion dollars
5 of investor funds from thousands of investors
6 nationwide."

7 Did I read that correctly, sir?

8 A Yes.

9 Q And prior to December 1st you had, at least, five
10 discussions with Mr. Shapiro about the SEC investigation,
11 correct?

12 A I don't recall the number. I think it was more than
13 five.

14 Q And between October 23rd and December 1st you were in
15 the Woodbridge offices almost every day, correct?

16 A I believe so, yes.

17 Q And during that time I know you said it didn't go all
18 the way up till December 1st, but you knew that Woodbridge
19 was still fundraising?

20 A Yes.

21 Q And you knew that Woodbridge was still receiving money
22 from retail investors on various different products, correct?

23 A Yes.

24 Q And you knew that that fundraising was being
25 investigated by the SEC?

1 A Not necessarily that fundraising. I knew that
2 fundraising was going on. I knew they had a team of people
3 looking at the fundraising; their lawyers and otherwise. So,
4 I'm not sure if it was the fundraising in question or if it
5 was a different kind of fundraising, but I knew some form of
6 fundraising was going on.

7 Q Mr. Perkins, would you please turn to your deposition
8 transcript which is Exhibit 172?

9 A Yes.

10 Q And on Page 69, beginning on the 25th line. Please let
11 me know when you're there?

12 A Yes, I'm there.

13 Q So this is going to continue over to Page 70.

14 Question:

15 "Even though you were retained by Gibson Dunn &
16 Crutcher, you knew Woodbridge was in the middle of
17 fundraising efforts that was being investigated by,
18 among others, the SEC?"

19 Your answer:

20 "Yes."

21 Did I read that correctly, sir?

22 A Yes.

23 Q You didn't demand that Woodbridge cease its fundraising
24 until a plan was formed where you would become the CRO, is
25 that correct?

1 A That's correct.

2 Q But you were clear that if you came in as CRO that the
3 note selling had to stop, right?

4 A All fundraising, not necessarily note selling, unit
5 selling, anything, yes.

6 Q Thank you.

7 And that was because you took the SEC press releases
8 and the amount of time and money that the company was
9 spending on the investigation seriously, correct?

10 A Yes.

11 Q And you were finally appointed CRO on December 1st,
12 right?

13 A Correct.

14 Q But on December 5th, 2017 Woodbridge was still
15 advertising the sale of these notes on its website, wasn't
16 it?

17 A I believe so.

18 Q Prior to December 1st Mr. Shapiro agreed to the plan
19 that would allow the Woodbridge entity debtors to file
20 bankruptcy, correct?

21 A The plan that ultimately led to that, yes.

22 Q And Mr. Shapiro was the one who decided which entities
23 would go into Chapter 11?

24 A Yes.

25 Q And he decided not to put all of the Woodbridge

1 entities into Chapter 11, right?

2 A Yes.

3 Q You recommended to Mr. Shapiro that all of the
4 Woodbridge entities should file, right?

5 A Yes.

6 Q And he said no, right?

7 A Yes.

8 Q And he didn't give you a reason for keeping some of the
9 entities out, did he?

10 A Besides that he didn't want to, no.

11 Q So I'm not going to belabor a point, but is it fair to
12 say that we don't dispute that you agreed that entering into
13 the transition services agreement, the forbearance agreement
14 and the membership contribution agreement was the cost that
15 was worth paying in order to get Mr. Shapiro to transfer
16 control of the Woodbridge entities to file bankruptcy, is
17 that fair?

18 A That was certainly a large component of it. It was
19 that and then there was a couple other things that Mr.
20 Shapiro was to provide including his services, but in total
21 there were things that were cost and there were things that
22 were benefits to the estate. So, I think the answer was yes,
23 but it wasn't just that one thing.

24 Q Okay. And before the transfer of control to the
25 independent manager Mr. Shapiro had sole control and

1 authority over all the Woodbridge entities, right?

2 A As far as I know, yes.

3 Q Including those that filed bankruptcy?

4 A Yes.

5 Q And it was the authority that transferred --

6 A Hang on. Hang on.

7 I know there were other owners of Mercer Vine as I
8 understand it. So, I'm not sure what the control dynamics
9 were and operating agreement or anything like that, but there
10 were other owners of Mercer Vine as far as I know. It's the
11 only thing I'm aware of besides what you said.

12 Q And it was the authority that Mr. Shapiro transferred
13 to the independent manager that allowed the independent
14 manager to file bankruptcy, right?

15 A Yes.

16 Q So prior to December 1st Mr. Shapiro had the authority,
17 himself, to file Chapter 11 petitions for each of the
18 debtors, right?

19 A Yes, I think so. I believe so, yeah.

20 Q And Mr. Shapiro agreed to the plan for the debtors to
21 file through the independent manager, right?

22 A Yes.

23 Q So these agreements were not to induce --

24 A Hang on. He didn't agree to the plan to file. He
25 agreed to the plan to transfer it to the independent manager.

1 And the independent manager made the decision, collectively,
2 to file. Mr. Shapiro didn't have a vote on the bankruptcy.
3 He had a vote on giving it to the independent manager.

4 Q Do you still have your deposition transcript open in
5 front of you, sir?

6 A Yes.

7 Q Okay. Would you please look to Page 72?

8 A Yes.

9 Q Beginning on Line 2.

10 A Yes.

11 Q This is your answer to a question.

12 "Ultimately the decision to file the Chapter 11 was
13 made by the independent manager after reviewing the
14 analysis and the other work that we had done, cash
15 flow, liquidity, etc., but Bob, or Mr. Shapiro,
16 consented to executing the plan that would allow the
17 Chapter 11 case to commence prior to, yes, prior to
18 December 1st."

19 Did I read that correctly, sir?

20 A You did.

21 Q So the question I was going to ask is that these
22 agreements were not to induce Mr. Shapiro to file bankruptcy.
23 They were to induce him to transfer control to the
24 independent manager so the independent manager could file
25 bankruptcy, is that correct?

1 A I suppose the independent manager could have taken
2 another petition then filing bankruptcy, but they did file
3 bankruptcy. So that was the decision that the independent
4 managers made to file bankruptcy.

5 Q All right. Thank you.

6 Mr. Shapiro and his counsel were able to see your first
7 day declaration or a draft of it prior to its filing, is that
8 right?

9 A I believe so.

10 Q And they may have even provided comments on your
11 declaration, right?

12 A Again, I believe so.

13 Q In fact, I think you said a lot of paperwork was going
14 back and forth, is that correct?

15 A Yes.

16 Q I'm going to talk briefly about the transition services
17 agreement.

18 A Could you remind of the exhibit for that one?

19 Q Yes. It's Exhibit 164.

20 A Thank you.

21 Q I'm not sure if I'm going to have to have you look at
22 anything else right now, but you're free to have it open in
23 front of you if you'd like.

24 A Okay.

25 Q So you agreed for Mr. Shapiro to receive \$175,000

1 dollars per month from the debtors, is that right?

2 A Yes.

3 Q And you wanted for him to make less money, right?

4 A Yes.

5 Q In fact, I think a lot less money like \$20,000 dollars
6 per month, is that what you testified?

7 A Like zero at first.

8 Q Zero?

9 A Yes.

10 Q Okay. And he laughed at the 20,000 I think, right?

11 A He did.

12 Q Because he wanted a lot more than \$175,000 dollars?

13 A Yes.

14 Q So you settled on the \$175,000 dollars per month, is
15 that fair?

16 A Yes.

17 Q And that's \$2.1 million dollars per year, is that
18 right?

19 A I don't have a calculator, but I'm assuming your math
20 is pretty good.

21 Q On the forbearance agreement -- by the way, if you have
22 the transition services agreement out go ahead and leave it
23 because I will be getting to that on one other issue in just
24 a second.

25 On the forbearance agreement this is -- correct me if

1 I'm wrong, but this is the agreement that allows Mr. Shapiro
2 to be able to occupy a property in California and one in
3 Colorado, is that right?

4 A If you mean operate, you mean live there, yeah.

5 Q Oh, I'm sorry. Occupy?

6 A Yeah. Yes.

7 Q Thank you.

8 And I think you had testified earlier about there being
9 a \$6 million-dollar tax lien on the, you said the California
10 property?

11 A Yes.

12 Q Does the IRS -- in your knowledge or expertise, does
13 the IRS ever forgive tax liens on properties that are
14 purchased with proceeds of a fraud?

15 MS. CONN: Objection.

16 THE COURT: Response?

17 MR. BADDLEY: I'm just asking if Mr. Perkins is
18 familiar with whether or not the IRS allows that.

19 THE COURT: You may answer that question.

20 THE WITNESS: It's an easy one. I don't know.

21 BY MR. BADDLEY:

22 Q Have you done any investigation to determine whether or
23 not the IRS would waive the tax lien on that property?

24 A I've asked for someone to look into that, but I have
25 not seen the results of that analysis yet.

1 Q Okay. And Mr. Shapiro uses these properties as his
2 personal residence?

3 A He uses one now. He gave up the one in Colorado. But
4 he used them for, I believe, the first month.

5 Q And I believe in your first day declaration -- and
6 you're free to reference to it if you'd like, but I believe
7 you stated in that declaration that the purpose of the
8 agreement was to permit Mr. Shapiro to continue to occupy
9 these properties without fear of foreclosure during the
10 pendency of the bankruptcy so long as the leases remain in
11 effect; does that sound accurate?

12 A It sounds accurate.

13 Q Very quickly, I know there was some discussion earlier
14 about whether or not any of these agreements would be subject
15 to bankruptcy court approval.

16 Is it true that you were concerned that people would
17 complain about these contracts if they were made subject to
18 bankruptcy court approval?

19 A I'm not sure it would concern me. Was I aware that
20 people would complain about those contracts? I guess the
21 answer is yes.

22 Q Mr. Perkins, you are the founder of SierraConstellation
23 Partners, is that correct?

24 A Yes.

25 Q And I think you testified earlier that it employs about

1 18 professionals?

2 A I think that's right.

3 Q And five of those are working on the Woodbridge case?

4 A In varying degrees. Some more, some less; yes.

5 Q So roughly a third of your professionals, is that
6 right?

7 A I'm not sure what the math is. I'd say less than a
8 third, but --

9 Q You don't have to agree with my --

10 A I don't agree with your math. But, yes, five of
11 eighteen or so are working on this to some degree.

12 Q And Woodbridge paid SierraConstellation Partners
13 approximately \$420,000 dollars in fees for services performed
14 during the six-week period prior to the bankruptcy, is that
15 correct?

16 A Approximately, yes.

17 Q And so far in this case SierraConstellation is working
18 at about the same rate as it did pre-bankruptcy?

19 A I'd have to look at my reports, but approximately.

20 Q Okay. So, at that rate your firm would earn between \$3
21 and \$4 million dollars in the first year of this bankruptcy,
22 is that right?

23 A If you're asking me to multiply numbers then the math
24 holds that if we don't work at that rate it would be less.
25 If we work more it would be more.

1 Q Okay. And I think you said that you did a projection
2 for your firm's fees in this case and \$3 to \$4 million
3 dollars for the first year is within that range of
4 projections, is that right?

5 A We had some lower, we had some higher, but that is
6 within the range.

7 Q And you personally own 100 percent of the firm's
8 equity, is that correct?

9 A I do.

10 Q Up until December 28th you were having conversations
11 with Mr. Shapiro regarding real estate, is that right?

12 A Yes.

13 Q Multiple conversations, correct?

14 A Yes.

15 Q And you exchanged emails?

16 A Yes.

17 Q And, I'm sorry, your rate in this case is \$575,000
18 dollars per hour, is that right?

19 A Yes.

20 Q And you determined Mr. Shapiro's salary of the \$175,000
21 dollars per month, as you state in your declaration filed in
22 the first day, that it was fair market based on an analysis
23 that you conducted after discussions with compensation
24 consultants for senior executives in the real estate
25 industry, is that what you stated?

1 A I did.

2 Q And you said senior executives, is that right?

3 A I believe so, yes.

4 Q And you typically consider senior executives to be a
5 part of management, right?

6 A Not necessarily.

7 Q Typically?

8 A Define typically?

9 Q Would you please turn to Page 197 of your transcript,
10 Exhibit 172?

11 A Yes.

12 Q Beginning on the fifth line. My question to you is,
13 "And do you consider senior executives to be part of
14 management?"

15 You answered,

16 "Typically."

17 Did I read that correctly?

18 A It looks like it, yup.

19 Q Okay. Now if you could pull back out the transition
20 services agreement Exhibit 164.

21 A Yes.

22 Q And there should be an appendix at the end of that
23 agreement following the signature page.

24 A I see it.

25 Q Let me know when you're there.

1 A I got it.

2 Q And this says services. Are these the services that
3 you and Mr. Beilinson requested for Mr. Shapiro to perform
4 for Woodbridge, for the debtors?

5 A I think this is probably a little bit more specific
6 then the services that we requested, but this is what we
7 agreed to.

8 Q Okay. And I'm just going to read the services that are
9 listed by the numbers.

10 The first one is advising on the development of estate
11 properties as it relates to construction, design, marketing,
12 and purchase and selling strategy, is that correct?

13 A It says advice not advising, but. . .

14 Okay. Thank you.

15 Advice on the investments and capitalization of the
16 company and its funds. That's another service, right?

17 A Yes.

18 Q Support with the management of the company, employees
19 and outside consultants; is that another service?

20 A Yes.

21 Q Support and advice related to potential buyers of the
22 debtors' assets, was that another service?

23 A You skipped one.

24 Q Oh, I did. I apologize. Number five.

25 A Yes.

1 Q And then the last one, meeting regularly with Mr.
2 Beilinson and yourself?

3 A Yes.

4 Q Meeting regularly?

5 A Yes.

6 Q Okay. The next exhibits that I'm going to be referring
7 to are Exhibits 130 to 134.

8 A I need a little help here. I don't have those.

9 UNIDENTIFIED SPEAKER: May I approach, Your Honor?

10 THE COURT: Yes.

11 THE WITNESS: I got them.

12 BY MR. BADDLEY:

13 Q Okay. Hopefully you recall these documents, but if you
14 need to look through them please do. These were, sort of,
15 the five documents that I showed you all at once as a group
16 at your deposition. Do you recall them?

17 A Yeah, those are the confusing ones. I remember.

18 Q They were confusing in that we had trouble numbering
19 them, right?

20 A Correct.

21 Q So post-bankruptcy, on December 20th, Mr. Shapiro ceded
22 control of thirteen additional Woodbridge entities to the
23 independent manager, is that correct?

24 A I think -- I recall the number. There was a handful of
25 property. I can't remember if it was thirteen. I thought it

1 was more entities and less properties, for what it's worth.

2 Q Okay. If you could just turn to the last page of
3 Exhibit 130. There is a schedule that says the companies.

4 A It was thirteen, you're right.

5 Q Those are the entities in which Mr. Shapiro transferred
6 to the independent manager on December 20th?

7 A So let me explain how I understand it.

8 Q Sure.

9 A The transfer was underway. The asset freeze and
10 receivership order came before the transfer was complete is
11 my understanding. So, again, this isn't my area of expertise
12 on asset freeze and receiverships. So, my understanding is
13 they got frozen before the transfer could go underway.

14 Q Okay. So, you may have a question on whether or not
15 the asset freeze effects this, but the purpose of this was
16 for Mr. Shapiro to transfer those entities, is that right?

17 A Yes.

18 Q And the other exhibits, as part of this group, the
19 other three, I believe two of these are the corporate
20 documents effectuating the transfer, is that right? Exhibits
21 130 and 131.

22 A Yes.

23 Q And then the other three exhibits 132, 133 and 134
24 those are leases on those properties, is that correct?

25 A Yes.

1 Q And the tenant under those leases is Mr. Shapiro's
2 wife, is that correct?

3 A I didn't sign these so I'm looking to confirm. Yes.

4 Q And those leases are all dated December 1st, is that
5 right?

6 A Yes.

7 Q So in your deposition I was trying to ask you questions
8 about this and basically came out with you don't know whether
9 the debtors agreed that Mrs. Shapiro could enter into the
10 leases for these three properties in exchange for Mr. Shapiro
11 agreeing to transfer control of the entities to the
12 independent manager, right?

13 A I believe that's right.

14 Q And even though the leases all pre-date the change of
15 control you are also unable to tell me whether someone
16 representing the debtors held the signature pages to the
17 leases in escrow until Mr. Shapiro transferred control,
18 right?

19 A As far as who had possession of those; yeah, I don't
20 know who had those. I still don't.

21 Q Okay. And when I asked you whether you agreed to allow
22 these leases to be entered into as a condition to the
23 transfer of control you only said I don't believe so, is that
24 right?

25 A Yeah. Yes, I think that's right.

1 Q And these thirteen entities that Mr. Shapiro controlled
2 on December 1st and that did not file bankruptcy they
3 collectively has assets worth at least \$30 million dollars,
4 don't they?

5 A Based on the preliminary analysis that we worked on
6 that was the number we have. It could be higher or lower
7 depending on what they sell for.

8 Q All right. Would you please turn to Exhibit 124?

9 A Yes.

10 Q This is a chart that you prepared after consulting with
11 brokers and Woodbridge employees showing the values of the
12 assets held by these thirteen entities, correct?

13 A An estimated value, yes.

14 Q And the estimated value in the aggregate is roughly \$34
15 million dollars, is that right?

16 A Yeah.

17 Q And again these were not originally included in the
18 bankruptcy, right?

19 A Yes.

20 Q And they're still not part of the bankruptcy?

21 A Correct.

22 Q And they were still under Mr. Shapiro's control up
23 until December 19th, right?

24 A Is that the day of the asset freeze, December 19th?

25 Can you ask your question again? What was your

1 question?

2 Q These entities that own these assets were still under
3 Mr. Shapiro's control up until, the earliest or the latest,
4 December 19th?

5 A Well, I think the SEC's got control of them now with
6 the asset freeze. So, I don't know when the asset freeze
7 happened. Was it the 19th?

8 Q Well, the documents, the transfer of control was the
9 20th. So, I'm back-dating one day.

10 A All right. So, the asset freeze came out the 20th
11 then?

12 Q I believe so.

13 A Okay. Then on the 19th -- what I'm asking is before
14 the asset freeze he had control of these assets.

15 Q Thank you. That helps.

16 THE COURT: I wouldn't recommend it.

17 THE WITNESS: No kidding.

18 BY MR. BADDLEY:

19 Q And these asset values were determined sometime between
20 October 23rd and December 1st, is that right?

21 A I don't recall the date. I remember there was some
22 confusion when you were deposing me on this, but I don't
23 remember exactly when the analysis was done. We did it; I
24 just don't know when exactly it was done.

25 Q Okay. I'm going to go back to Exhibit 20. I'm sorry

1 I'm bouncing around, but I'm going to go back to your
2 declaration.

3 A I have it.

4 Q Would you please turn to Page 23 -- I'm sorry, Page 11,
5 Paragraph 23?

6 A Yes.

7 Q In the first sentence there you state,
8 "The non-filing entities holding material property
9 include at least thirteen mezco's and fourteen
10 propco's."

11 Is that right?

12 A That's what it says.

13 Q And nowhere else in here did you give any numerical
14 value or dollar value of those properties, right?

15 A I don't believe so.

16 Q Now, would you please turn back to Paragraph 20 on Page
17 9?

18 A I have it.

19 Q And I'm going to begin reading on the fifth line up.
20 There is a sentence that begins the remaining. Let me know
21 when your there?

22 A I have it.

23 Q Okay. You state,

24 "The remaining mezco's continue to be owned by RS
25 Protection Trust; although, they are now controlled

1 together with all the other mezcó's and propco's by the
2 independent manager through WGC Independent Manager."

3 Did I read that correctly?

4 A Yes.

5 Q Okay. Now -- and I'm sorry we have to piece this all
6 together, but let's go back and look at the definition of
7 propco's, which is in Paragraph 19.

8 A Yes.

9 Q On the second sentence it says,
10 "Specifically, the Woodbridge Group Enterprises
11 includes over two hundred separate active limited
12 liability company SPB's referred to herein as propco's;
13 one hundred forty of which are debtors."

14 Then the sentence continues. Did I read that
15 correctly?

16 A Yes.

17 Q So propco's includes the hundred and forty debtors as
18 well as the on-debtors, is that correct?

19 A We went through this at the deposition and I told you I
20 was confused then. I'm confused now on the questions you're
21 asking.

22 What this means and what we were trying to get across
23 is there are a hundred and forty debtors or a hundred and
24 thirty-eight properties and debtors. What we were trying to
25 get across was that there were thirteen that didn't file. It

1 looks like there's a definitional issue here on the mezco
2 propco thing and I see how that's confusing because you're
3 confusing me this week and last week on this subject.

4 What we were trying to say is there were thirteen
5 entities that -- fourteen and thirteen entities that did not
6 file. We were trying to get out on the record that those did
7 not file and those were disclosed.

8 I understand it's confusing. I can, you know, punish
9 myself for my bad grammar, but I don't know how to say it any
10 clearer than that.

11 Q Understood. But I did read this sentence correctly
12 that the remaining mezco's continued to be owned by RS
13 Protection Trust; although, they are now controlled together
14 with all the other mezco's and propco's by the independent
15 manager through WGC Independent Manager, did I read that
16 right?

17 A You can read, yup.

18 Q So of the entities that Mr. Shapiro transferred to the
19 independent manager as part of the bankruptcy filing, Mr.
20 Shapiro had the right, under the agreement, to remove the
21 independent manager without cause, is that right?

22 A Again, I'm going to say the same words I said earlier.
23 In a vacuum, yes, they could do that -- he could do that.

24 Q And then the discussion in your first day affidavit
25 about Mr. Shapiro transferring control to the independent

1 manager you did not disclose that Mr. Shapiro could terminate
2 him without cause, is that right?

3 A We did not disclose it.

4 Q And you recall at the first day hearing here, on
5 December 5th, that I disclosed that, is that correct?

6 A Yes.

7 Q And I believe that Judge Carey stated that if Mr.
8 Shapiro were to do that that would be counterproductive, is
9 that correct?

10 A It is correct, yes.

11 Q Just try to answer out loud.

12 A Yes.

13 Q And you interpreted the judge's remarks to mean that if
14 Mr. Shapiro exercised the right to remove the independent
15 manager it would likely cause a disaster in the case, is that
16 correct?

17 A Yes.

18 Q It would likely cause a disaster and you didn't
19 disclose it, right?

20 A The reason I -- first of all, it wasn't --

21 Q I'll withdrawal the question.

22 A No, no, I kind of feel like I want to say this.

23 What was your question?

24 Q I was just reiterating that if Mr. Shapiro were to
25 exercise this right the belief is that it would likely cause

1 a disaster in this case, but you didn't disclose it. You
2 didn't disclose that he had the right to do that.

3 A I still don't get the question.

4 Q Okay. I'll withdrawal the question.

5 A Okay.

6 Q Woodbridge's primary and perhaps only source of money
7 prior to the bankruptcy was investor dollars, is that
8 correct?

9 A I would say -- the short answer is I don't know. We
10 haven't seen all the properties that they had before. We're
11 working on a forensic -- not a forensic, just looking to see
12 what they had and sold before. So, I don't believe it, but a
13 significant part was certainly investor dollars.

14 Sorry, rephrase the question. Did you say revenue or
15 source of money?

16 Q Source of money.

17 A Okay. Source of money, yes.

18 Q And you did not have any personal knowledge of
19 Woodbridge earning any revenues from asset sales prior to the
20 bankruptcy, correct?

21 A No, just anecdotal.

22 Q And you described Woodbridge's principle business as
23 buying, improving and selling high-end luxury real estate in
24 your first day affidavit, is that correct?

25 A Yes.

1 Q Would you please look at Exhibit 84?

2 A I have it.

3 Q Okay. So, this is a declaration of an investor that's
4 been put into evidence and you'll see that there are some
5 exhibits attached to the declaration. Could you please turn
6 back to Exhibit E?

7 And you're going to have to be careful because the
8 exhibit tabs are kind of on the left side of the page. So,
9 if you're just looking on the outside you won't be able to
10 see it.

11 A Thank you.

12 I have it.

13 Q Okay. Now if you could turn to, sort of, the second
14 page where you see the three circles diagram that I showed
15 you in the deposition. Do you have that?

16 A I do.

17 Q And this is a diagram that describes a money lending
18 operation, not a real estate development company, is that
19 correct?

20 A I think that's what I said last week. It looks like
21 it, yes.

22 Q So this diagram does not describe the principle
23 business of Woodbridge that you described in your first day
24 affidavit, is that right?

25 A Well, it was kind of a different regime at that point.

1 Q I understand.

2 A So it was a different business on the day I took over
3 from where it was before, but it did not describe the
4 business. Like I said it was a different business, so it
5 does not describe the same business.

6 Q And based on your knowledge so far Woodbridge used the
7 investor money to make loans to propco's and mezco's that
8 were largely owned by Robert Shapiro's trust, is that
9 correct?

10 A That's the vast majority of them. I think there are
11 some that aren't, as we talked about before, but yeah.

12 Q And when you -- I'm sorry.

13 A Yes.

14 Q Okay. Thank you.

15 And when you came in I think you said that you found
16 that Woodbridge's books and records were unreliable, is that
17 right?

18 A Yes, at least some of them; the ones that I looked at.
19 I didn't look at all of them, but the ones I saw appeared to
20 be unreliable.

21 Q You read the SEC's complaint in the District Court
22 case, right, after it was unsealed?

23 A After it was unsealed, yes.

24 Q And despite having read the complaint and having been
25 with the company for almost three months you still have not

1 been able to make a conclusion as to whether Woodbridge
2 relied upon new investor funds to pay returns to other
3 investors, have you?

4 A No.

5 Q And despite having read the complaint and been with the
6 company for almost three months you still haven't been able
7 to make a conclusion as to whether Woodbridge investors were
8 given false information about Woodbridge's business, correct?

9 A Correct.

10 Q And despite having read the complaint and having been
11 with the company for almost three months you still haven't
12 been able to make a conclusion as to whether or not Mr.
13 Shapiro misappropriated more than \$10 million dollars in
14 investor money, have you?

15 A Correct.

16 Q Do you have Exhibit 206 available?

17 A I have it.

18 Q So this is a similar document then what you saw
19 earlier, but I wanted to use Exhibit 206. I think Mr.
20 Pachulski showed you another version, but this is the
21 frequently asked questions page that the company has put out
22 for investors, is that right?

23 A It looks like it, yup.

24 Q Okay. And this is a communication from the company to
25 investors that is maintained on a Woodbridge related site,

1 website?

2 A I believe so, yes.

3 Q And it was set up after the bankruptcy?

4 A Yes.

5 Q And the content is controlled by the post-bankruptcy
6 management team, right?

7 A Yes.

8 Q And this document is meant to be a source for investors
9 to get information about the bankruptcy, right?

10 A A source, among others, but yes.

11 Q And I believe you said in your testimony earlier that
12 you didn't think that it had been updated. I don't want to
13 pin you down or anything, but I want you to turn to number
14 20, question 20. Let me know when you're there?

15 A I see it.

16 Q And do you see that the last sentence there, and it's
17 actually highlighted, it says,

18 "Robert Shapiro has been removed from all company
19 oversight and involvement and is not receiving any
20 compensation from the company."

21 Was that added since the December 28th termination or
22 administrative leave notice?

23 A It looks like it.

24 Q So does that help you clarify whether or not this has
25 been updated since the --

1 A Yeah, it looks like it was updated. We did our job.

2 Q As recent as a week or two ago?

3 A Yeah, we have a weekly coms call so probably brought it
4 up after some questions that came up around it.

5 Q Mr. Pachulski asked you some questions about the
6 statements in here about the company's intention to ask the
7 Bankruptcy Court for authority to resume payments to
8 noteholders, do you recall those?

9 I don't mean the questions. I'm sorry. Do you recall
10 the FAQ's on that?

11 A Do I recall the frequently asked questions on Mr.
12 Pachulski's questions?

13 Q No. I'll make it easier.

14 A Okay.

15 Q Let's go to question, FAQ, number two.

16 A Got it.

17 Q Question:

18 "What about payments going forward?"

19 Answer:

20 "Monthly payment funds are being held in a secure
21 account and we intend to ask the Bankruptcy Court for
22 permission to resume these payments during the pendency
23 of the case."

24 Did I read that correctly?

25 A You did.

1 Q Question three:

2 "When will you resume monthly payments?"

3 Answer:

4 "We intend to ask the Bankruptcy Court for permission
5 to resume these payments as soon as possible. We don't
6 have a timeline at this point, but we will update you
7 as soon as possible."

8 Did I read that correctly?

9 A No. You said as soon as possible, it says as soon as
10 we do.

11 Q Thank you.

12 A I read to.

13 Q The debtors currently have a noteholder reserve for
14 interest payments, is that right?

15 A Yeah, I think its -- yes.

16 Q And I called it an escrow before and you corrected me.

17 A It was not an escrow. It's a reserve of interest
18 payments. I don't think its only noteholder interest. It's
19 a reserve of interest payments.

20 Q But the debtors may discontinue that next month, right?

21 A We may not. I don't know.

22 Q But you may have to, right?

23 A We may have to. We may not have to.

24 So, if your question was right, I'm going to say I
25 don't know.

1 Q Well, I want to get what you said. I'm going to go
2 back to your deposition transcript, Exhibit 72. If you could
3 turn to Page 46.

4 A I have it.

5 Q Okay. I don't think it's materially different, but
6 I'll read it.

7 Question:

8 "The question is you said at the outset, I'm talking
9 about right now the proposal is the debtor who is
10 strapped for cash is going to continue to fund an
11 interest reserve for all noteholders."

12 And then you answered,

13 "We have a noteholder reserve in there right now. I
14 don't know what we're going to do next month depending
15 on further prosecution of the case, but as I understand
16 it right now we're holding it aside."

17 Did I read that correctly?

18 A Yeah.

19 Q In order for the \$100 million dollars in debtor-in-
20 possession financing to get the debtors through this case the
21 debtors will need to be able to set aside the noteholder
22 security interest so that the debtor can use the proceeds
23 from the asset sales, is that right?

24 A I'm not sure that's -- what's your question? Where are
25 you again, you're at 146?

1 Q Oh, no. I'm not reading from the transcript.

2 A All right. Sorry.

3 Q That was a question. Let me restate it so that there's
4 no confusion.

5 In order for the \$100 million dollars in debtor-in-
6 possession financing to get the debtors through the case the
7 debtors will need to make, to be able to set aside the
8 noteholders security interest so that the debtors can use the
9 proceeds from the asset sales, is that true?

10 A I'd want to confer with counsel. I believe that's
11 right, but I would ask counsel, obviously, before acting on
12 that.

13 Q Well, is having the noteholders' liens set aside before
14 you get to \$100,000 dollars in borrowing a key issue in this
15 case?

16 A You mean 100 million?

17 Q Yes. Thank you.

18 A Yes, that's a key issue.

19 Q And right now you don't even know whether the debtors
20 will be able to ask for permission to make these payments,
21 correct?

22 A What was your question? I don't know when or if we'll
23 be able to make those payments.

24 Q You don't know whether the debtors will be able to ask
25 for permission to make these payments, is that right?

1 A Yeah.

2 Q Let's go back to the FAQ's which is Exhibit 206.

3 Please turn to number 19?

4 A Okay.

5 Q And the question here is,

6 "Why does Woodbridge need to use bankruptcy

7 proceedings?"

8 The answer, you talked about how Woodbridge continues

9 to be a leading developer. The business has grown.

10 "Increased operating and development costs have been

11 exacerbated by the unforeseen cost associated with

12 ongoing litigation and regulatory compliance. These

13 and other factors that are under investigation by the

14 new independent management team lead to a loss of

15 liquidity resulting in an inability to make our

16 regularly scheduled one-year notes payment due December

17 1st, 2017."

18 Did I read that correctly?

19 A Yes.

20 Q In reality wasn't it Woodbridge's inability to raise

21 new money from investors that was a major cause of the

22 debtors' liquidity situation?

23 A Among other things, but yes.

24 Q Well, you say among other things. I'm asking whether

25 the inability to raise new money from investors was a major

1 cause of the debtors' liquidity situation.

2 A It was a major cause, but there were other things to.
3 But yeah, it was a major cause.

4 Q Please turn to question 21 on the FAQ?

5 "Does Bob Shapiro stepping down mean he did something
6 Wrong?"

7 Answer:

8 "Bob initiated the management changes so that the
9 company could focus on restructuring. The management
10 changes were implemented as part of the plan to secure
11 the company's future."

12 Did I read that correctly?

13 A You did.

14 Q In light of your testimony earlier that the SEC
15 complaint alleges conduct that is real bad and real serious
16 that is an extremely rosy explanation of Mr. Shapiro's
17 decision to transfer control, isn't it?

18 A What do you mean by rosy?

19 Q Can you not answer the question?

20 A Is the question, is it a positive outlook on what we
21 hope to happen in the case? Is that what you mean by rosy?

22 Q No, is it accurate in the reason why Mr. Shapiro
23 stepped down on whether or not it meant he did something
24 wrong?

25 A Well, the FAQ, so the Q that is F'ing and A'ing says

1 does Bob Shapiro stepping down mean he did something wrong.
2 I'm not a judge. It looks bad. It looks real bad. I'm not
3 a judge. So, I'm not even sure I'm allowed to say what it
4 is.

5 What I'm saying, what my job is, is to do the second
6 sentence; management changes were implemented as part of the
7 plan to secure the company's future. So, I don't know how to
8 answer your question, Mr. Baddley.

9 Q Well, the SEC action, which was filed and unsealed
10 before you updated this and which you said contains alleged
11 conduct that is real serious and real bad, none of that's
12 mentioned in here, is it?

13 A No, it's not mentioned in here.

14 Q Question 24:

15 "Which entities are excluded from the filing?"

16 Answer:

17 "Mercer Vine, Inc., Riverdale Funding, LLC and
18 Woodbridge Realty of Colorado, LLC are all excluded
19 from the filing. Brokers employed by these companies
20 own minority interest in their respective brokerages.
21 Woodbridge anticipates entering into a shared services
22 and discounted commission arrangement with the
23 brokerage companies."

24 Did I read that answer correctly?

25 A Yes.

1 Q Anywhere in here does it say that among the entities
2 excluded from the bankruptcy or entities holding assets worth
3 more than \$30 million dollars that Mr. Shapiro was allowed to
4 keep?

5 A No.

6 Q FAQ number 27,

7 "Does the company have enough cash to stay in business
8 and operate normally?"

9 Answer:

10 "Yes. In support of this restructuring we have
11 obtained a commitment for up to \$100 million dollars in
12 debtor-in-possession financing from Hankey Capital
13 providing sufficient liquidity to maintain operations
14 and continue property development in the ordinary
15 course during the bankruptcy process."

16 Did I read that correctly?

17 A Yes.

18 Q But you just testified that in order for the \$100
19 million dollars in DIP financing to get you through the case
20 the debtors will need to be able to set aside the
21 noteholders' liens so that the debtors can use the cash from
22 the asset sales, right?

23 A Sorry.

24 Q I'm asking --

25 A You're asking what I said before?

1 Q I'm asking about your prior testimony.

2 A Is that what I said? I don't understand, sir. Are you
3 asking what I said before?

4 Q Yes. I'm asking whether or not you testified that in
5 order for the \$100 million dollars in financing to get the
6 debtors through the case the debtors will need to be able to
7 set aside the noteholder security interest so that you can
8 use the proceeds from the asset sales.

9 MS. CONN: Objection. I would request that if
10 counsel wants to ask the witness about his testimony you show
11 him his testimony.

12 BY MR. BADDLEY:

13 Q Okay. Turn to Page 121 of your deposition transcript.
14 I think we can start -- you're on Page 121?

15 A Yes.

16 Q I think we can start at Line 18. I think Mr. Pachulski
17 was asking this question.

18 "What happens if you can't use proceeds from sale
19 because you have not set aside security interest?"

20 Your answer,

21 "Then we will not make it past -- then we will need
22 additional money beyond the \$100 million dollars."

23 Did I read that correctly?

24 A You did.

25 Q And, again, in contrast to what's on the FAQ you also

1 testified that having the noteholders' liens set aside before
2 you get to the \$100 million dollars in borrowing is a key
3 issue in this case, is that correct?

4 A You're asking what the FAQ says?

5 Q No. I'm asking you about your prior testimony.

6 A All right. Go back on it again.

7 Q Well, let's just keep it going then.

8 A Yeah.

9 Q Okay. We left off at Line 22. Let's go to Line 23.

10 "Do you have any reason --

11 A What's the FAQ again? Sorry, what page is that?

12 Q No, I'm sorry. We're on your deposition.

13 A Okay. Thanks.

14 Q Page 121, Line 23, are you there?

15 A Yes.

16 Q "Do you have any reason to believe that those liens
17 will be set aside before you get to the \$100 million
18 dollars?"

19 Then go to Page 122.

20 "I, as a non-lawyer I'm letting our legal team work on
21 that because that's a key issue in this case."

22 Did I read that correctly?

23 A Yes.

24 Q Real quick before I forget this. The suspension or
25 whatever state he's in right now, Mr. Shapiro, has not

1 affected any of the debtors' relationships with any of its
2 critical vendors or suppliers, has it?

3 A Not critical, but contractors. You know, there's a
4 couple people that have asked questions about it, but it's
5 not critical.

6 Q Okay. And you don't anticipate any problems with
7 critical vendors or service providers even if Mr. Shapiro
8 were full-out terminated, is that correct?

9 A Not at this point. I think we've transitioned most of
10 the relationships to us at this point.

11 Q Do the debtors have an investor hotline?

12 A I believe so, yes.

13 Q And it's a number where investors can call to get
14 information?

15 A I haven't called it, but I think that's the idea.

16 Q Is Dayne Roseman involved in that area of the company?

17 A Don't know. I just don't know. I think we set it up
18 with a third party on the investor hotline. So, I think it's
19 done through the outside company that does that. So, don't
20 know.

21 Q But people internally at Woodbridge who used to be in
22 sales are involved in dealing with the investor hotline, is
23 that correct?

24 A No. I think both. So, you know, prior to terminating
25 pretty much all the sales people last Friday they could call

1 their old representative and ask questions and we would point
2 them to either the FAQ or what we set up, which was an
3 investor hotline. As far as what I call the investor hotline
4 it was not manned by Woodbridge people.

5 Q So it's your testimony that none of the sales people
6 are answering those calls?

7 A No. Are you asking are they answering the phone at the
8 investor hotline?

9 Q Yes.

10 A No. As far as I know, no. I think that's an outside
11 service that does it, like a call center.

12 Q Are they responding to any questions?

13 A I think we gave them talking points questions.

14 Q Gave who?

15 A The investor hotline contractor.

16 MR. BADDLEY: Your Honor, may I have a second?

17 THE COURT: Yes.

18 BY MR. BADDLEY:

19 Q Is Mr. Roseman going to remain with the debtors after
20 the reduction enforce?

21 A He's still there now.

22 Q Has the reduction enforce happened?

23 A A reduction enforce has happened.

24 Q And he's still there?

25 A Yes.

1 Q Was Mr. Roseman the head of sales for Woodbridge prior
2 to the bankruptcy?

3 A His title was managing director of sales. I think
4 that's, effectively, the head of sales.

5 Q Did you know that during SEC investigation Mr. Roseman
6 refused to testify invoking his Fifth Amendment right against
7 self-incrimination?

8 A Yeah, I had heard that.

9 Q Did you also know that Mr. Roseman refused to produce
10 any documents?

11 A No.

12 Q Again, invoking his Fifth Amendment, right?

13 A I thought everybody gave up their emails except for Mr.
14 Shapiro. So, I don't know what he gave up and what he
15 didn't.

16 Q Did you know that Mr. Roseman's emails were the subject
17 of the subpoena enforcement action that the SEC filed?

18 A I did.

19 Q And did you know that Mr. Roseman is specifically
20 identified in our complaint?

21 A Yes.

22 Q And in our 135 exhibits that are now in evidence in
23 this proceeding do you know that dozens of them are emails
24 between Mr. Roseman and Mr. Shapiro which prove the fraud?

25 MS. CONN: Objection.

1 THE COURT: Sustained.

2 BY MR. BADDLEY:

3 Q Did you know that in our 135 exhibits that are now in
4 evidence dozens of them are emails between Mr. Roseman and
5 Mr. Shapiro?

6 MS. CONN: Objection.

7 THE COURT: Overruled. If you know you may
8 answer.

9 THE WITNESS: Yeah, I haven't seen the exhibits.
10 No, I don't know.

11 MR. BADDLEY: May I have one minute, Your Honor?

12 THE COURT: Yes, certainly.

13 BY MR. BADDLEY:

14 Q Mr. Perkins, just one last thing on Mr. Shapiro's
15 compensation.

16 Your affidavit declared that the \$175,000 dollars was
17 fair market value for senior executives, right?

18 A I think so, yes.

19 Q You testified earlier that you thought that the
20 compensation that he should get should be zero dollars, is
21 that correct?

22 A If I can get something for free or if I have to pay
23 money I'd rather get it for free.

24 MR. BADDLEY: That's all my questions. Thank you.

25 THE COURT: Mr. Perkins, I'd like to follow-up

1 about Mr. Roseman's role of the company.

2 This is a person who is head of the sales efforts
3 that the SEC is saying was violative of securities laws?

4 THE WITNESS: My understanding, yes.

5 THE COURT: Why is he still with the company?

6 THE WITNESS: Honestly, to -- well, not honestly;
7 everything has been honest. We have to put together an
8 absolute mountain of schedules and statements and helping
9 gather all the information on the investors and unit holders
10 is something that he is helpful in doing because he knows
11 where all the files went and where everything else goes. So,
12 we have 279 debtors at this point and we need that
13 information to go to that. Also, he has a broader knowledge,
14 at this point, on the real estate because he, you know, quasi
15 was, as far as I understand it, describing the real estate
16 that's out there. So, he knows a lot more about it.

17 So, in talking to him, and I haven't spent a huge
18 amount of time with him, there's a lot that he's been able to
19 offer on the operations of the business. So, we're keeping
20 him around till such a time that we don't.

21 THE COURT: Thank you.

22 Does the U.S. Trustee wish to examine this
23 witness?

24 MR. FOX: No thank you, Your Honor.

25 THE COURT: All right. Before we broke I asked

1 the noteholder groups, the other now supporters, I guess, of
2 the debtors' position whether they wish to cross-examine or
3 examine this witness now or when the debtors called a witness
4 in their case in chief. Has there been any group decision on
5 that or do I just need to pull individually the entities?

6 MR. KORTANEK: Your Honor, Steve Kortanek from
7 Drinker on behalf of the ad hoc committee.

8 Our preference would be for later, to do it all at
9 once as Your Honor has suggested and just conferring just now
10 with two other counsel for the unit holders and one or the
11 other ad hoc groups confer with our -- concur with that. So,
12 it's a one-time shot later.

13 THE COURT: Okay.

14 MR. KORTANEK: We did not have a chance to talk to
15 Mr. Hehn's group.

16 THE COURT: Mr. Hehn?

17 MR. HEHN: Agreed, Your Honor. I think that would
18 be best.

19 THE COURT: All right. So later.

20 I guess we're finished for now, Mr. Perkins.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You may step down.

23 (Witness excused)

24 THE COURT: What's next?

25 MS. NESTOR: Good afternoon. Christine Nestor on

1 behalf of the SEC.

2 Our next witness is going to be Melissa Davis.
3 We're taking her slightly out of turn in hopes of getting her
4 home to South Florida tonight. She has trial tomorrow on an
5 unrelated matter.

6 Ms. Davis, we're not --

7 THE COURT: It's going to start to warm up here, I
8 hear, soon.

9 MS. NESTOR: It got pretty chilly down there as
10 well.

11 THE COURT: You're breaking my heart.

12 MS. NESTOR: Ms. Davis is a partner at a forensic
13 accounting firm Kapila Mukamal. Mr. Kapila had signed a
14 declaration which is in evidence as Exhibit 1.
15 Unfortunately, he is traveling and could not be here for the
16 proceedings.

17 So, the parties have agreed to admit the
18 declaration and allow Ms. Davis, who provided services and is
19 a partner at the firm, to be cross-examined on that
20 declaration. And we reserve the right to redirect if
21 necessary. She's adopted the declaration and the statements
22 her own as well.

23 THE COURT: Okay. Thank you.

24 Ms. Davis, please come forward and be sworn in.

25 AMANDA MELISSA DAVIS, WITNESS, SWORN

1 THE CLERK: Please state your full name for the
2 record and spell your last name.

3 THE WITNESS: Amanda Melissa Davis, D-A-V-I-S.

4 THE CLERK: Thank you.

5 THE COURT: All right. So direct is by the
6 declaration. I guess cross is next by the debtor.

7 MR. NEWMAN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. NEWMAN:

10 Q Good afternoon, Ms. Davis. My name is Sam Newman. I'm
11 the attorney for the Woodbridge debtors with Gibson Dunn.

12 A Good afternoon.

13 Q Thank you for being here today. I appreciate it.

14 A You're welcome.

15 Q The first question I have is, what was your role -- do
16 you have a copy of your report handy?

17 A No.

18 MR. NEWMAN: Does anyone have the exhibit binder
19 with the report (indiscernible). Exhibit 1.

20 UNIDENTIFIED: (Indiscernible.)

21 MR. NEWMAN: Do you mind?

22 THE COURT: Just another service provided by your
23 friendly neighborhood creditors' committee.

24 (Laughter)

25 UNIDENTIFIED: We're here for you, Your Honor.

1 BY MR. NEWMAN:

2 Q Have you looked at -- would you look at the Exhibit 1,
3 please, and confirm this is a true and correct copy of the
4 declaration of Mr. Soneet Kapila?

5 A Yes, it is.

6 Q Okay. And what was your role in preparing this report
7 it?

8 A I was integrally involved in the preparation of the
9 declaration from the very beginning stages until we issued
10 the declaration in December. I oversaw our staff in
11 preparing the bank reconstructions and the credit card
12 reconstructions, which are the basis of the declaration, and
13 I also assisted in the drafting of the declaration and the
14 exhibit and the workpapers.

15 Q Thank you. If you'll turn to the first decreal [sic]
16 page. It's -- in my exhibit, it's marked 3 of 65; it's the
17 third page of the declaration.

18 A Okay.

19 Q Okay. I noticed that, of course, it's made out and
20 discussed for Mr. Kapila. I take it, you adopt the entirety
21 of this declaration, as if it were your own?

22 A Yes.

23 Q There's a couple of things we probably have to clear up
24 just to make sure they're accurate. For example, Paragraph 2
25 describes Mr. Kapila's background. Could you please state

1 for the record your own background to supplement the
2 declaration.

3 A Okay. Professionally, I obtained a bachelor's of
4 business administration and accounting from Florida Atlantic
5 University in 2002. I joined Kapila & Company, which is now
6 known as "Kapila Mukamal" in 1998. I began my career
7 providing traditional accounting services, including tax
8 preparation and write-up at Kapila & Company for about four
9 years. And after that, I transitioned into providing
10 forensic accounting and litigation consulting services, which
11 is what I do now.

12 I am a certified public accountant in the state of
13 Florida. I'm also a certified fraud examiner and a certified
14 insolvency restructuring advisor.

15 Q Thank you. Do you have any real estate experience?

16 A We have projects over the years involving liquidation
17 of real estate of various kinds. One of the biggest matters
18 that we worked on at the firm was called Levitt and Sons.
19 Levitt was a residential real estate developer and they filed
20 for bankruptcy in the Southern District of Florida.

21 Our firm was appointed as the chief administrator and
22 helped to complete homes and amenity centers for the Levitt
23 and Sons bankruptcy case.

24 Q I'm sorry, when you say "complete homes" what was your
25 role in the process?

1 A So, we obtained a DIP loan from Wells Fargo Bank and
2 our team actually hired construction experts to complete
3 homes and amenity centers and we sold them to the people that
4 had put deposits on the homes.

5 Q What was your personal involvement in that project?

6 A I helped in preparing the budgets that were used to
7 obtain the DIP financing facility.

8 Q And were those budgets -- when you say "prepare the
9 budgets," did you actually gather the data yourself or did
10 you --

11 A We worked -- we worked with people that were employed
12 by Levitt to gather the data that was needed to prepare the
13 budgets.

14 Q And do you have other homebuilding experience?

15 A I'm sure there's been other cases over the years
16 involving liquidation of real estate and other things of that
17 nature. I can't think of any large matters coming to mind.

18 Q And when you say "liquidation," have you been involved
19 in the valuation or development of real property projects?

20 A Other than the Levitt and Sons project, I can't think
21 of any off the top of my head. I mean, it's been 20 years,
22 so, there probably are.

23 Q That's fine. And in connection with the Levitt and
24 Sons or otherwise, do you have any experience reviewing and
25 analyzing the cash flow streams associated with the

1 homebuilding operation?

2 A Other than Levitt and Sons homebuilding operation, cash
3 flow streams, no. I do -- I'm actually now recalling another
4 bankruptcy case that involved the selling of real estate
5 located in Florida that was undeveloped homesites, but that
6 was really just overseeing the -- overseeing the sale through
7 the bankruptcy process. There wasn't a homebuilding going
8 on.

9 I don't want to leave out any cases, but that's pretty
10 much what I recall.

11 Q Okay. And just going back to Levitt and Sons, just so
12 I understand the nature of your work there, did you analyze
13 and evaluate the cash flows from the homebuilding operation?

14 A What we did is we -- we determined what -- what -- what
15 funds were necessary and needed to complete the homes and the
16 amenity centers. And then we analyzed how much we could sell
17 the homes for and what value the amenity centers would bring
18 to those home sale prices and that's how we developed the
19 budgets in order to figure out how much money we needed to
20 borrow from Wells Fargo to complete -- to complete the homes.

21 And the project was very successful. We ended up being
22 able to pay a return to Wells Fargo that was higher than what
23 some of the other banks had received in the Levitt and Sons
24 bankruptcy case for other -- other developments and
25 communities.

1 Q And just so I'm clear, when you say "we," were you
2 personally involved with that aspect or just with the
3 gathering of information for preparing the DIP budget?

4 A I was involved intimately with the entire project.

5 Q And did that case have anything to do with high-end
6 luxury homes?

7 A I wouldn't call them "luxury homes." They were new
8 homes in age communities for retirement communities. I think
9 they were 65 and older communities, so I -- I don't -- they
10 were nice homes, but I don't know that they would be
11 considered luxury homes.

12 Q Any of them that would sell for \$20 million or more?

13 A No.

14 Q And any of them in California?

15 A No.

16 Q Any of them in Colorado?

17 A No.

18 Q Okay. I take it your earlier testimony -- just looking
19 at your declaration -- would replace the content of Paragraph
20 2 and 4 with your personal background?

21 A Yes.

22 Q What about Paragraph 5?

23 A No, I'm not a fellow of the American College of
24 Bankruptcy.

25 Q And Number 7?

1 THE COURT: Don't feel bad; neither am I.

2 (Laughter)

3 THE WITNESS: Maybe one day. So, I have served as
4 an assignee in the assignment for the benefit of creditors
5 case and as Chapter 11 trustee. Those are the roles where
6 I've served as a -- as an appointed fiduciary.

7 BY MR. NEWMAN:

8 Q And was that an ABC under Florida law?

9 A Yes.

10 Q Was that a court-supervised process?

11 A Yes.

12 Q Otherwise, the other examples are not applicable?

13 A Correct.

14 Q And 8, I take it is not --

15 A Yeah, I'm not a bankruptcy trustee.

16 Q And 9, not having served as an examiner?

17 A No, I have not served personally as an examiner.

18 Q How about 10?

19 A No, not as a corporate monitor.

20 Q And 11, can you describe your own personal experience
21 of being qualified as an expert.

22 A I've testified -- I've testified in a number of cases
23 and trials, depositions, and evidentiary hearings. I've
24 qualified as an expert in federal court, in two criminal
25 trial proceedings involving opining on Ponzi.

1 Q Have any of your opinions ever been excluded?

2 A No.

3 Q I think you said, were you personally involved in every
4 aspect of drafting this report?

5 A Yes.

6 Q What was Mr. Kapila's role in preparing that report?

7 A He was intimately involved in preparing the report, as
8 well. We work as a team.

9 Q And there's no likelihood that there's any information
10 that was provided to him that you weren't also provided with?

11 A No.

12 Q And why is it the report can be signed by Mr. Kapila
13 instead yourself?

14 A Well, Mr. Kapila issued the declaration and he would be
15 here today, other than he had a commitment that he couldn't
16 avoid.

17 Q Thank you. I'd just like to get a little background
18 about your work on the report. What was your firm retained
19 to prepare the report?

20 A I don't know the exact date, but I know it was in the
21 spring of 2017 -- sometime in the spring.

22 Q And about -- was that about when your firm began its
23 investigation?

24 A Yes.

25 Q And how long was the investigation that your firm

1 conducted?

2 A Well, we issued the declaration in December of 2017 and
3 so spring, summer, fall, I guess six -- six to nine months.

4 Q I'm sorry, did you say you were retained in September?

5 A No, we were -- in the spring of 2017. I don't recall
6 the exact month. It could be March or April.

7 Q I think I just misheard you. I apologize.

8 A Okay.

9 Q What were the fee arrangements for this report?

10 A We bill our -- our hourly rates that are slightly
11 discounted.

12 Q No success or premium for the report?

13 A No.

14 Q Does your firm do other work for the SEC?

15 A Yes.

16 Q How much?

17 A As a percentage of our business?

18 Q Sure.

19 A A very small percentage.

20 Q And how about you, personally?

21 A The same.

22 Q And what about Mr. Kapila?

23 A Directly for the SEC, yeah, it's a small percentage of
24 our overall practice.

25 Q And how did you come to be retained by the SEC?

1 A I believe they contacted Mr. Kapila.

2 Q Do you know who contacted him?

3 A I think he first spoke with Fernando Torres.

4 Q And do you know whether he has any prior relationship
5 with Mr. Torres?

6 A I do not.

7 Q Has -- did the SEC tell you at any time during the
8 process what their intent -- what their expectations were
9 with respect to the investigation of Woodbridge?

10 MS. NESTOR: Objection, Your Honor, to the extent
11 that he's going to get into anything that might be
12 privileged.

13 THE COURT: Well, I'll just instruct the witness
14 not to answer. If you understand the objection, that would
15 be violative of information that would otherwise be
16 privileged --

17 THE WITNESS: Okay.

18 THE COURT: -- communication.

19 THE WITNESS: Will I please repeat the question?

20 THE COURT: If you don't understand, please make
21 sure you do ask.

22 MR. NEWMAN: Let me clarify and I'll ask just a
23 couple foundational questions --

24 THE COURT: Okay.

25 MR. NEWMAN: -- just to be careful, Your Honor.

1 BY MR. NEWMAN:

2 Q So, the first question is, when you were retained, were
3 you retained as an expert witness in this case?

4 A Yes.

5 Q And at any time was it your expectation that you would
6 be not expected to testify with respect to the information
7 that you provided?

8 A I don't -- I don't -- that's a very general question.
9 I mean, I think generally we were retained with the
10 expectation that we'd be issuing a report, an expert report
11 of some nature or declaration.

12 MR. NEWMAN: So, I would think, Your Honor, that
13 would make it fair game to ask her about the -- an original
14 retention.

15 THE COURT: Is there any objection?

16 MS. NESTOR: Your Honor, to the extent that
17 they're getting into communications that are outside of
18 what's permitted to ask an expert that's retained to testify,
19 then yes, I would object, but I don't know what the questions
20 are at this point.

21 THE COURT: Why don't you start.

22 MR. NEWMAN: Thank you, Your Honor.

23 BY MR. NEWMAN:

24 Q Did anyone at the SEC ever express any expectation with
25 respect to your findings?

1 A No.

2 Q Did anyone at the SEC ever inform you that they were
3 investigating Woodbridge with respect to alleged misconduct?

4 A I know -- I mean, I -- I think they -- they told us
5 they were investigating Woodbridge, but I don't know if they
6 used the word "misconduct."

7 Q Did they describe the nature of their investigation?

8 A What happened is they gave us records and asked us to
9 prepare a reconstruction and report back what we found when
10 we prepared the reconstruction.

11 Q And did they -- did they otherwise inform you of what
12 their concerns were, with respect to Woodbridge?

13 A I don't remember all the conversations that we had
14 initially. I -- I know that they described the Woodbridge
15 business and provided us with the offering memorandums.

16 Q Do you recall how they described the Woodbridge
17 business -- let me back up. Do you recall a specific
18 conversation or several conversations?

19 A Well, there was -- No, I don't recall a specific
20 conversation.

21 Q So, when you said they described the Woodbridge
22 business, how was that communicated to you?

23 A I just feel like I recall initially that someone would
24 have given us the background -- and it might have been Mr.
25 Torres -- the general background of the Woodbridge entities

1 and what they -- what they did and he provided us with the
2 offering memorandums to review to give us more background.

3 Q And how did they describe what Woodbridge did?

4 A That they were raising money from investors in
5 accordance with the confidential offering memorandums and
6 that they would -- I don't remember if Mr. Torres told us
7 this or if we learned this by reading the offering
8 memorandums at this point, but my understanding was that they
9 were raising money and using that money to lend to borrowers
10 for real estate-related loans.

11 Q Did they mention any homebuilding operation, to your
12 recollection?

13 A I don't remember if that was mentioned.

14 Q Did they ever suggest that they believed that
15 Woodbridge was a Ponzi scheme?

16 A I don't know that they suggested that. Like I said,
17 what they -- what they did is they provided us with the
18 records, asked us to reconstruct everything and report back
19 what we thought was going on.

20 Q And did they give you any indication of the timeline
21 that they expected your work to proceed on?

22 A I know they wanted us to, you know, work as quickly as
23 we could. I never -- I -- I -- I felt, you know, that as
24 they provided us records, we were expected to, you know, work
25 on them and, you know, turn the information around as quickly

1 as we could.

2 Q And, again, I think your report was dated December
3 18th; is that correct?

4 A I think so. Yes.

5 Q Was it completed substantially before that date?

6 A The -- the declaration had been -- yes, I mean, we --
7 we were working on the declaration in conjunction with
8 preparing the reconstructions. I remember starting to draft
9 the declaration probably in the summertime, but it's a
10 process; it's a long process. And so in terms of when it
11 became substantially complete, I probably couldn't pinpoint
12 that date, other than the date that we issued it is the last
13 date we worked on it, but it was a process over a period -- a
14 long period of time.

15 Q Did you deliver preliminary drafts to the SEC?

16 A Yes.

17 Q Do you remember at what time or times that was done?

18 A I -- I don't recall the first time I delivered a draft.

19 Q Would it have been before the end of the summer?

20 A No.

21 Q Been sometime in the fall?

22 A Yes. It would have been -- it's -- definitely wasn't
23 in the summer. It was, I would say, the fall.

24 Q Before Thanksgiving?

25 A I don't know.

1 MS. NESTOR: Objection, Your Honor; speculation.

2 THE COURT: I'm sorry, I didn't hear?

3 MS. NESTOR: At this point, she's speculating.

4 She says she doesn't remember.

5 THE COURT: The question was asked and answered.

6 Next question?

7 MR. NEWMAN: Thank you, Your Honor. Thank you.

8 BY MR. NEWMAN:

9 Q And do you recall when you delivered a preliminary
10 draft to indicate whether or not you had concerns with
11 respect to Woodbridge's fundraising practices?

12 MS. NESTOR: Your Honor, objection. I believe
13 under the new rules, that drafts are not permitted to be
14 asked upon. We're not -- as far as Rule 26 is concerned.

15 THE COURT: Any response?

16 MR. NEWMAN: Your Honor, I'm certainly not
17 intending to invade. Privileged communication wasn't clear
18 to me earlier that there was a privilege objection, so ...

19 If I may confer a moment with my colleague?

20 THE COURT: You may.

21 (Pause)

22 MR. NEWMAN: Thank you, Your Honor. I withdraw
23 the question.

24 THE COURT: All right.

25 BY MR. NEWMAN:

1 Q With respect to the final report, was that delivered on
2 or about the date of the final report?

3 A Yes.

4 MR. NEWMAN: Thank you, Your Honor.

5 BY MR. NEWMAN:

6 Q Did you have any direct interaction with the SEC as the
7 report progressed?

8 A Yes.

9 MR. NEWMAN: Hold on one second. I'm going to
10 check a privilege question.

11 (Pause)

12 BY MR. NEWMAN:

13 Q So, I just wanted to ask -- I think this is
14 appropriate, but we'll obviously hear if they think otherwise
15 -- that -- whether or not, you, prior to the delivery of this
16 report, communicated to the SEC that you had concerns with
17 respect to Woodbridge's fundraising activities?

18 MS. NESTOR: Your Honor, I'd just like to -- I'm
19 going to object on the base -- basis of privilege. According
20 to Rule 26, there are three very distinct categories that
21 they're permitted to ask about and that's, one, relate to
22 compensation for the expert's study or testimony; two,
23 identify facts or data that the party's attorney provided and
24 that the expert considered in forming the opinions to be
25 expressed; or three, identify assumptions that the party's

1 attorney provided and that the expert relied on in forming
2 the opinions to be expressed.

3 Anything outside of those three areas, I believe
4 is privilege and we'll object to.

5 THE COURT: Any response?

6 MR. NEWMAN: No, Your Honor.

7 THE COURT: Sustained.

8 MR. NEWMAN: Thank you.

9 BY MR. NEWMAN:

10 Q Okay. Did the SEC attorneys provide you with any other
11 information prior to the delivery of the final report, with
12 respect to assumptions they wanted you to make with respect
13 to Woodbridge's activities?

14 A I don't think they provided us with assumptions. I
15 can't recall any specific assumptions that they asked us to
16 make. They provided us with documents and data, but not
17 assumptions that I can -- that I'm -- that I can think of
18 today.

19 Q Okay. Thank you.

20 Your firm conducted the investigation using the data
21 provided by the SEC as you described. Is there any other
22 data that you relied on in preparing your report?

23 A We -- we were provided with the bank records --

24 Q Uh-huh.

25 A -- the credit card statements, the Quickbooks files,

1 the offering memorandums, some of the borrower notes, some
2 investor contracts, and that's -- I think that's it.

3 Q And that's all described in your report. There's
4 nothing that you relied on that wasn't described in the
5 report?

6 A No, not that I can recall sitting here.

7 Q You described in the -- would you turn to Page 10 of
8 the report.

9 A Okay.

10 Q In the summary of your findings --

11 A Yes?

12 Q -- and you indicated that in Paragraph H, that the
13 Woodbridge entities' business activities were dependent on a
14 continued infusion of outside investor money.

15 A Yes.

16 Q Did you consider the basis of the infusion of that
17 investor money?

18 A I don't understand the question.

19 Q So, did you evaluate whether there was any increased
20 value in the assets the company had against which it was
21 borrowing?

22 A Okay. The Woodbridge Fund entities -- this report
23 addresses the Woodbridge Fund entities and the two Woodbridge
24 operating entities, Structured and Group, and then Woodbridge
25 Fund 1, 2, 3, 3(a), and 4. The assets of the Woodbridge Fund

1 entities primarily comprised of notes receivable and there
2 were some real estate owned, I think it totaled about \$11
3 million. So, the assets of these entities are notes
4 receivables, not real estate that can appreciate, other than
5 the \$11 million of real estate that was recorded as assets of
6 the Fund entities.

7 Q And would you consider whether or not there were any
8 intercompany claims between the Funds and the Woodbridge
9 Property entities?

10 A There should be intercompany claims between the
11 Woodbridge Fund entities and the Woodbridge operating
12 entities, yes.

13 Q And would the value of those claims modify, based on
14 the nature of the underlying assets of the payees under the
15 claims?

16 A The Woodbridge Operating Entity Structured, I believe,
17 is no longer operating, so that entity does not have any
18 assets. The group, Woodbridge Group of companies did record
19 assets on its balance sheet in an account called "other
20 investments." It did not delineate what those assets were.

21 There was no way for us to tell what the entity did
22 with the funds that it transferred to various attorney trust
23 accounts.

24 The way that the accounting records were maintained, it
25 appeared that the funds were transferred to make loans to

1 borrowers.

2 Q And did you consider whether the funds had any
3 intercompany claims against the property earning entities
4 that were the borrowers?

5 A The property earning entities? In my view, the
6 Woodbridge entities have a claim against the property
7 entities for the amount of the note, plus any interest that
8 is due.

9 Q Anything beyond that, that you considered?

10 A If there was an appreciation in the property, I believe
11 that that appreciation, the value of that proceedings belongs
12 to the borrowing entity. The borrower owns the property.

13 Q And so you didn't consider the value of that
14 appreciation in evaluating the fundraising activity at the
15 fund level?

16 A We considered it, but it's not something that the
17 Woodbridge Fund entities are entitled to, unless someone
18 wants to contribute it. The Woodbridge Fund entities loaned
19 money to the borrowers and were entitled to receive the
20 principal and the interest back.

21 Q So the only way for those Fund entities to receive the
22 value of any appreciation of real estate would be for someone
23 to contribute it; is that accurate?

24 A Well, here's how I understand how the business model
25 was supposed to work. The Woodbridge Fund entities raised

1 money from investors and they were going to pay the investors
2 a return, 5 percent to 8 percent. The source of funds that
3 were supposed to be used to pay the return from the -- to the
4 investors was the interest that the Woodbridge Fund entities
5 would earn on the money it lent to the borrowers.

6 So, when we analyzed this, we looked to see what
7 interest income was being collected by the Woodbridge Fund
8 entities. What interest income was available and used to pay
9 the investors the interest payments that were made.

10 Q So, just going back to what you said a minute ago, from
11 your perspective, the only way for those fund investors to
12 get access to the value of the properties in which their
13 proceeds were invested, would be for someone to transfer that
14 value to the Fund; is that correct?

15 A That's my understanding. Shapiro or -- loosely, as my
16 understanding is, is the ultimate owner of the affiliated
17 entities, as we described in our report, which were the
18 borrowers. The borrowers would be entitled to whatever
19 appreciation value and if needed or if he chose, it could be
20 contributed to cover shortfalls in the Woodbridge Fund
21 entities. But there should not have been shortfalls in the
22 Woodbridge Fund entities if the borrowers were making the
23 interest payments that were due.

24 Q And then the only other question is, and I think you
25 already asked it, but just so the record is clear, you didn't

1 consider whether there were any noncontractual claims between
2 the Funds and the property-owning entities?

3 A Noncontractual claims. You mean like the
4 intercompanies?

5 Q Well, I think you already spoke to intercompanies, and
6 I think you said -- and correct me if I misunderstood -- but
7 there aren't intercompany claims, formal intercompany claims
8 in the books between the Funds and the PropCos; is that your
9 view?

10 A Well, there should be. They're not recorded correctly
11 in the books, but if the accounting was done correctly, there
12 would be intercompany receivables and payables between all of
13 the Woodbridge entities, yes.

14 Q So, that goes back to, I think, the question that I was
15 trying to get at, which is if you consider the value of those
16 intercompany claims, if they had existed, what I hear you
17 saying is they don't exist in the books, so you didn't
18 consider them; is that correct?

19 A No, no, no. We did consider them. Yes, we did
20 absolutely consider them. But I -- I'm not sure what the
21 point is, what point your trying to make.

22 We considered them, but as I stated, the investor money
23 was transferred from the Woodbridge Fund entity into the
24 operating entities and then those operating entities
25 transferred money to attorney trust accounts.

1 Based on the way that the accounting records were
2 prepared, it appeared to me that that money was transferred
3 to make loans to borrowers. So the only money that would be
4 due back to the Woodbridge Fund entities is essentially the
5 same borrower money that they were entitled to, to begin
6 with.

7 Q Right. And --

8 A But there wasn't -- I don't think there was an
9 additional claim from the operating entities. There was no
10 additional value that was due. The only thing that was due
11 back was the money that they took, which was the investor
12 money that was, I believe, used to make loans to the
13 borrowers.

14 Q Okay. And I'm just -- I'm trying to really get to the
15 -- what's underlying your conclusion in H-1, that the
16 business activities were dependent on -- for the funds --
17 were dependent on a continued infusion of outside investor
18 money.

19 And I guess the question I'm trying to get at is, in
20 considering that, did you consider whether or not there was
21 access to the value of the appreciating properties in order
22 to fund the invest -- the Woodbridge entities businesses?

23 A Well, I think that the reason that -- that we make that
24 statement is because based on the records that we analyzed
25 and the bank reconstruction that we prepared and the actual

1 activity that was happening -- not hypotheticals -- the
2 actual activity that was happening indicated that they --
3 that Woodbridge needed new investor money in order to keep
4 making the interest payments to the prior investors because
5 there was no other source of funds available that we saw
6 coming in.

7 Now, hypothetically, if there was appreciation, value,
8 and properties that is available and wasn't being used, I
9 guess my question would be: Why wasn't it?

10 Q It's a fair question; unfortunately, I'm the only one
11 asking the questions.

12 A Yeah.

13 (Laughter)

14 THE COURT: At the moment, anyway.

15 (Laughter)

16 MR. NEWMAN: At the moment, anyway.

17 BY MR. NEWMAN:

18 Q Let me ask you a slightly -- a question on that point

19 --

20 A Okay.

21 Q -- which is, did the Woodbridge -- did the SEC provide
22 you with any sales projections, with respect to Woodbridge
23 properties, so that you could evaluate whether or not there
24 were funds to come in, in the near term?

25 A No.

1 Q And so, did you evaluate in connection with that H-1
2 conclusion, the source of revenue available if the houses
3 were sold?

4 A Based on the analysis that we prepared, which was the
5 bank reconstructions, there was no other available source.
6 There was no inflow of other money.

7 Q Just to be clear, the bank records were backward-
8 looking, right?

9 A Yes.

10 Q So there had been none?

11 A That's correct. That's correct.

12 Q You weren't provided any forward-looking projections?

13 A We were not provided with sales data for the -- I
14 guess, the alleged real estate that's owned by the borrowing
15 entities. We -- we did not -- we do not have that data.

16 Q And also, with respect to H-4, whether or not the
17 business enterprise would generate sufficient profits, were
18 you provided with any profit projections that would allow you
19 to evaluate whether there would be sufficient profit to pay
20 back the investor returns going forward?

21 A Well, I'm not sure I understand what you mean by
22 "profit projections" because the business model was such that
23 the interest income from the borrowers was supposed to be
24 available to pay the investor returns and that wasn't what
25 was happening. The investor money was being used to pay the

1 investor returns.

2 So, I guess the projections that you're referring to
3 would be a projection of the interest income that the
4 borrowers -- the borrowers were supposed to be paying.

5 Q Repayment of prince -- and just so we're clear --

6 A Right.

7 Q -- the projection, if you've seen them, were they
8 projections for repayment of notes or projections for ability
9 to make payments on interest due, projections for repayment
10 of intercompany claims -- and just one more -- projections
11 for any rights of recovery against the PropCos that have
12 equity value?

13 A The only projections that I recall seeing were attached
14 to Mr. Perkins' declaration and as I recall, there was no
15 estimates included in those projections for principal
16 repayments or interest payments from the borrowers from the
17 affiliated entities.

18 Q Okay. But when you issued the report, did you review
19 the sales projections provided by Mr. Perkins or other sales
20 projections?

21 A We had reviewed Perkins' declaration before we issued
22 this report, yes.

23 Q So your assumption was that the proceeds of the sales
24 reflected in Mr. Perkins' report would not be paid over to
25 the funds?

1 A No, I wouldn't say that was our assumption. The
2 reality was it had not been as of the date that we issued
3 this report. And as of the date -- as the date of our
4 reconstruction, as of September 30th, 2017, there had not
5 been a significant source of cash infusion from any
6 meaningful source that -- that could have been used to fund
7 the investor payments.

8 Q Understood, retrospectively. But prospectively, you
9 weren't considering any expectations of future payments based
10 on the sales of homebuilding projects?

11 A We -- you know, we -- we understand that there is real
12 estate that exists, that that is owned by the borrowing
13 entities, by the affiliated entities, and that there could be
14 an appreciation, but as I've stated, that wasn't something
15 that the funds were entitled to. The funds were entitled to
16 receive the -- the interest income and the principal
17 repayment and anything else, as I've stated, would have had
18 to have been a contribution from Mr. Shapiro.

19 Q Okay. And the hour is late, so just to not put too
20 fine a point on it, I think that's a no, right, that you
21 didn't consider that there would be proceeds of sales that
22 would be available to the funds in order to make investor
23 payments in coming to the conclusions in H-1 and 4; is that
24 correct?

25 MS. NESTOR: Objection; asked and answered.

1 THE WITNESS: We --

2 THE COURT: Sustained.

3 BY MR. NEWMAN:

4 Q So --

5 MR. NEWMAN: Thank you, Your Honor.

6 BY MR. NEWMAN:

7 Q The last question: Did you ever conduct any analysis
8 of the value of the real estate portfolio held by the
9 property companies?

10 A No.

11 MR. NEWMAN: Could I have just one second?

12 THE COURT: Searching for another last question?

13 (Laughter)

14 MR. NEWMAN: I don't think I -- in my defense, I
15 never said that was my last question.

16 (Pause)

17 MR. NEWMAN: One second, Your Honor. Sorry.

18 (Pause)

19 MR. NEWMAN: So, I do have only (indiscernible).

20 BY MR. NEWMAN:

21 Q I wanted to find out if you had done any analysis
22 regarding the time period after December 1st, 2017, with
23 respect to the Woodbridge operations?

24 A Actually, our -- our analysis is as of September 30th,
25 2017, so we don't have any records after that period.

1 Q So, do you have any view or information with respect to
2 the operation of business under the control of the
3 independent management team?

4 A No.

5 Q Do you have any view as to Woodbridge's current
6 operations, with respect to whether or not it's behaving in
7 the way you described, with respect to your December 18
8 report?

9 A I haven't -- I haven't been provided any records for
10 Woodbridge after September 30th, 2017.

11 MR. NEWMAN: One more second and then I
12 (indiscernible).

13 Yeah, that's all, Your Honor. Thank you.

14 THE COURT: All right. Thank you.

15 Let me ask, before I go back to the SEC for
16 redirect, whether any of the noteholder groups wish to
17 examine this witness?

18 (No verbal response)

19 THE COURT: I hear no response.

20 Is there any redirect?

21 MS. NESTOR: Very minimal, Your Honor.

22 THE COURT: Very well.

23 REDIRECT EXAMINATION

24 BY MS. NESTOR:

25 Q I promise to get you on your flight. Ms. Davis, the

1 records that you were provided to analyze were bank records
2 from Comerica Bank, correct?

3 A Yes, that's correct.

4 Q And credit card statements from accounts in the name of
5 Jerry Shapiro, that were paid by Woodbridge, correct?

6 A That's correct.

7 Q And the SEC had to subpoena those records, correct?

8 A That's correct.

9 Q And had you been given open, unfettered access to
10 Woodbridge's records from Woodbridge, would that have sped
11 along your analysis?

12 A Yes, I think so, because we wouldn't have had to wait
13 for the continuing subpoenas and responses from the banks and
14 the credit card companies.

15 Q And the -- you also analyzed Quickbooks records from
16 Woodbridge, correct?

17 A That's correct.

18 Q And those records were obtained, as a result of the
19 subpoena, as well, correct?

20 A That -- I believe so, yes.

21 Q And you obtained those records -- well, those records
22 go through the end of April, right?

23 A That's correct, April 28th, 2017.

24 Q So, presumably, you received them sometime after the
25 end of April, right?

1 A Yes. Yes.

2 Q And did you have the benefit of any insight from any
3 Woodbridge employees as to explaining the Woodbridge
4 QuickBooks records?

5 A No.

6 Q Did you have access to Mr. Shapiro answering questions
7 regarding the Quickbooks records?

8 A No.

9 Q Did you have access to any of the bookkeepers or
10 administrators of the Quickbooks records?

11 A No.

12 Q So, if you were placed in Woodbridge, though, you would
13 have had that access and been able to complete your analysis
14 on an expedited basis, correct?

15 A Yes, if we would have had access -- full access to the
16 Quickbooks and immediate access to all the bank records and
17 access to the accounting personnel, that probably would have
18 sped up the process, yes.

19 Q And -- excuse me -- you asked for an updated version of
20 the Quickbooks that went from the end of April through, at
21 least, the end of September, correct?

22 A Yes.

23 Q And you weren't able to obtain those records, correct?

24 A That's correct.

25 Q And Mr. Newman went through some of the summary of your

1 declaration, particularly, Paragraph 18(h). And he was
2 asking a lot about projections. Your declaration was as a
3 result of analyzing the actual financial records and bank
4 statements of the actual transactions of Woodbridge, correct?

5 A That's correct.

6 Q Not projections, correct?

7 A That's correct.

8 Q Not hypotheticals, if assets are sold at some amount,
9 correct?

10 A That's correct.

11 Q And appreciation of assets doesn't provide Woodbridge
12 with liquidity, correct?

13 A That's correct.

14 Q And what you found during your reconstruction is that
15 borrowers only paid about \$13 million in interest payments,
16 correct?

17 A That's correct.

18 Q But meanwhile, more than 103 million was paid to
19 investors, correct?

20 A For interest, that's correct.

21 Q Okay. And you also found that Woodbridge did not
22 generate sufficient profits to pay the promised returns to
23 investors, correct?

24 A That's correct.

25 Q And that without the constant infusion of new investor

1 money, the enterprise would fail, correct?

2 A That's correct.

3 Q Getting back to the Quickbooks, one other area that I
4 wanted to reference as far as the timing is concerned, there
5 is a password protection on the Quickbooks records that
6 Woodbridge turned over to you, correct?

7 A There is a password, yes. We have to access the file
8 using a password.

9 Q And there was an administrative password that you were
10 never provided by Woodbridge, correct?

11 A That's correct. I think the actual best way to
12 describe the technical issue that we had is that the username
13 and the password that we were provided to access the
14 Quickbooks did not have administrative right, so we weren't
15 able to generate income statements and balance sheets easily
16 --

17 Q Okay.

18 A -- as we normally would using Quickbooks.

19 Q Had you been provided that password by Woodbridge that
20 you had requested, that would have helped to expedite your
21 analysis, correct?

22 A Yes.

23 Q Okay.

24 MS. NESTOR: That's all I have, Your Honor.

25 THE COURT: Is there any recross?

1 RE CROSS-EXAMINATION

2 BY MR. NEWMAN:

3 Q Two topics. One is the -- on the redirect, there was
4 some questions about material information that you had
5 requested and not received from Woodbridge. Is any of those
6 requests been made to the current management team?

7 A No, all of the requests that we made were through the
8 SEC.

9 Q Okay. And the other question I had was with respect to
10 -- and this may be a general estimate -- but had you been
11 given the information as described in the redirect with the
12 cooperation of Woodbridge, how long would you have expected
13 the analysis to take to prepare that you prepared?

14 A If we would have been -- you know, at the beginning of
15 this engagement, and Woodbridge, if you will, had unfettered
16 access to everything, it probably would have been really
17 quickly. I mean we would have had to have worked on the bank
18 reconstruction, but we would have been able to figure
19 everything out pretty quickly, I think and we wouldn't have
20 had to continue subpoenaing bank records because it was
21 taking long to get them. So, it's hard for me to know
22 because it's a hypothetical and going back in time and, you
23 know, that's assuming that everyone was cooperating and
24 giving us all the information.

25 But always if you have unfettered access and you have

1 access to the people that are, you know, running the business
2 and making the entries in Quickbooks, you can learn things
3 very quickly.

4 Q Thank you.

5 THE COURT: Thank you, you may step down. Have a
6 safe flight home.

7 (Witness excused)

8 THE COURT: All right. Let's talk about next
9 Thursday. What should I anticipate?

10 MR. PACHULSKI: Your Honor, so there are -- I'm
11 not -- let's go forward. We would put on Mr. Beilinson. I
12 suspect the SEC will have questions of Mr. Beilinson. We
13 then have Mr. Greenspan. We suspect that -- I don't know if
14 the SEC will have questions of Mr. Greenspan -- no question,
15 the debtors will have questions of Mr. Greenspan, and
16 potentially some of the other parties.

17 We would intend to rest, except for an issue which
18 either gets taken up today, which we would hope is, we had
19 taken one other deposition. It is the deposition of Mr.
20 Kornfeld who is one of the -- he is one of the members of the
21 ad hoc group represented by Mr. Shinderman. We had asked for
22 the taking of his deposition before the trustee -- this
23 hearing today and it was taken yesterday.

24 We have designated some portions of the -- of his
25 deposition. Mr. Shinderman says he wasn't aware that we want

1 to designate it. I'm not sure why else we would take it
2 before the trustee motion, but there may be a battle over
3 admitting that, but that is a key issue because of some of
4 his testimony, including who referred him to Mr. Shinderman.

5 THE COURT: So, you'll have discussions between
6 now and next Thursday about whether you can come to some
7 accommodation about what should be submitted. If not, I'll
8 resolve them then.

9 MR. PACHULSKI: Okay. That's fine. I don't --
10 Mr. (Indiscernible) do we have any exhibit issues and then
11 when we close our case, we understand that the debtors are
12 going to put back Mr. Perkins and Mr. Beilinson. We would
13 then have the right to cross them.

14 And then we would -- I don't know if they have
15 rebuttal witnesses -- we would then see what they to see if
16 we have rebuttal witnesses and then we'd move to closing.
17 The hope would be -- and, again, it's a hope -- is that we
18 would complete the testimony on Thursday and then go to
19 closing on Friday. If there's any cleanup on Friday, we
20 would do, that but our anticipation is that Mr. Beilinson
21 will be next and Mr. Greenspan will be after that.

22 THE COURT: All right. SEC has no further
23 witnesses to present?

24 MR. PACHULSKI: I think this -- I think that the
25 most recent witness was the only witness that I know of, but

1 they would have to comment on that.

2 UNIDENTIFIED: Other than calling Mr. Beilinson,
3 (indiscernible) will be called.

4 THE COURT: All right. Does anyone else intend to
5 present any witnesses, other than what Mr. Pachulski has
6 already described?

7 MR. NEWMAN: Your Honor, we intend to present two
8 witnesses who have already been called for our own direct.
9 We'd also -- there's an issue about which we're going to need
10 to meet-and-confer with Mr. Pachulski. They had, last night,
11 announced an intention to designate Mr. Greenspan as an
12 expert in some matters. We are not yet fully understanding
13 what that reflects and depending on their approach, we may
14 seek to counter or designate a rebuttal expert if we think
15 it's relevant for the final hearing.

16 THE COURT: All right.

17 MR. PACHULSKI: And, Your Honor, it's clear. We
18 -- I don't know that we were required to, but so that we
19 would avoid this fight, we provided counsel a list of nine
20 categories which we'd be happy to share with Your Honor as to
21 what Mr. Greenspan would be testifying to. And as you would
22 see from the deposition, Mr. Newman took questions relating
23 to all nine of those and we're not seeking to do anything
24 beyond what Mr. Greenspan testified to this past Monday, but
25 Your Honor will ultimately make the decision if we can't come

1 to an agreement.

2 MR. NEWMAN: Certainly, we were -- we asked
3 whether or not he was going to appear in what capacity. He
4 said as the CFO. We didn't inquire in order to be efficient
5 on the topics that Mr. Pachulski provided. We were told that
6 he facts to render on those and we need to meet-and-confer
7 with them with respect to the need to counter-designate.

8 THE COURT: You know, it's that fuzzy line between
9 when there's an involvement of a restructuring professional,
10 while they have great expertise and experience, whether and
11 under what circumstances they should be considered an expert
12 under the rules or not.

13 UNIDENTIFIED: Your Honor --

14 THE COURT: At this point in my career, I would
15 say I wouldn't waste too much time battling over that, but
16 I'll leave the parties to their respective positions, and if
17 there's a dispute, I will resolve it.

18 MR. NEWMAN: Thank you, Your Honor.

19 MR. PACHULSKI: That's fine, Your Honor. Debtors
20 believe -- we believe it's one of the nine topics is the only
21 one that he would be testifying even remotely as an expert.
22 We received a topic. I think it was one that was asked
23 about. It would not be a big surprise.

24 THE COURT: Okay. So, as you gathered, it doesn't
25 make sense for me to start another witness today that we

1 weren't going to finish. Is there anything else, though, we
2 should discuss before we adjourned for the day?

3 MR. NEWMAN: Yes, Your Honor. Two things, with
4 respect to the hearing on the 18th or one now, and one for
5 the interim, which is there are a number of matters on
6 calendar that we believe -- some of which are important for
7 the debtors prospective operations, so we will meet-and-
8 confer with the committee and the other parties, but we would
9 like an opportunity to reserve some time on your calendar in
10 case there's a disagreement about what needs to go forward on
11 the 18th notwithstanding the --

12 THE COURT: I'll tell you what. Please have that
13 discussion and to the extent you have disagreement, reach out
14 to me and I will schedule a telephone conference sometime on
15 the 16th or the 17th of next week.

16 MR. NEWMAN: Thank you, Your Honor.

17 THE COURT: So, we'll try to hash through those
18 issues before the 18th.

19 MR. NEWMAN: Mr. Beach just reminded me that Your
20 Honor had it graciously offered potentially to save some time
21 on your calendar on the 19th, which we believe we'll probably
22 need.

23 THE COURT: It's already on my calendar, Mr.
24 Newman.

25 MR. NEWMAN: Thank you, Your Honor.

1 The interim item is just with Mr. Perkins having
2 been excused, we just want to make clear that there's no
3 objection by any party that we will be fully and freely
4 communicating with Mr. Perkins between now and the next
5 hearing, as he is vital to the ongoing --

6 THE COURT: You're free to do that.

7 MR. NEWMAN: Thank you, Your Honor.

8 MR. PACHULSKI: Your Honor, the only other thing I
9 was going to ask just procedurally so I would know how to
10 prepare, should we assume that we should be prepared to make
11 closing argument on the 18th or based on the fact of the
12 witness list that realistically we're going to make it on the
13 19th? I want -- I'll be prepared for the 18th if Your Honor
14 says so or I'll just be cleaning up on the evening of the
15 18th. I'm just trying to determine just some planning in
16 that respect.

17 THE COURT: Well, let's put it this way. The
18 short answer is I don't know.

19 MR. PACHULSKI: Okay.

20 THE COURT: If we get done on the 18th, we're
21 going to close on the 18th. I just have a suspicion that
22 that's not going to happen.

23 (Laughter)

24 MR. PACHULSKI: In that regard, Your Honor, if
25 terms of preparing for closing, does Your Honor have some

1 limitation or should we plan on some amount of time, because
2 I know if we were just to go to closing and we don't have a
3 specific issue, we'll be talking for a long time, which is
4 fine, but I would just rather know that in advance.

5 THE COURT: Speaking for yourself, what you say is
6 you need a limitation, right?

7 (Laughter)

8 THE COURT: I will cheerfully impose one.

9 MR. PACHULSKI: No, I'm fine without one, I just
10 don't want to find out 10 minutes before I start. I had
11 Judge McCullough once do that in Pittsburgh some years ago
12 and I'm kind of sensitive about it at this point.

13 MR. NEWMAN: I'm less sensitive; 10 minutes is
14 always enough for me.

15 THE COURT: He was a decisive man, Judge
16 McCullough.

17 MR. PACHULSKI: Yes, he was. He gave me 20
18 minutes, but he said 10 minutes before --

19 THE COURT: That was a lot for him, actually.

20 MR. PACHULSKI: Yeah, it was.

21 THE COURT: Well, how much would you like; let's
22 start by asking that question.

23 MR. PACHULSKI: What would I like? I mean, I
24 think realistically, it's going to take 45 minutes to an hour
25 for each of us, or at least for the three main ones. I don't

1 know what the ad hocs are going to do, but that's what I
2 would expect.

3 THE COURT: Well, that doesn't sound unreasonable
4 to me.

5 MR. PACHULSKI: Okay.

6 MR. NEWMAN: Thank you, Your Honor. We just want
7 to reiterate our earlier statement that we appreciate Your
8 Honor's indication and the question Your Honor asked about
9 the examiner alternative and we are more than willing to
10 discuss that or to comply.

11 THE COURT: Again, it wasn't a suggestion, but I
12 used it simply as an illustration to say -- to demonstrate
13 the importance of an independent fiduciary to the Court.

14 MR. NEWMAN: We recognize that. And I guess the
15 point I was making, Your Honor, is it's obvious now this
16 process is going to take longer than the parties had
17 originally anticipated if something of that nature were to
18 comfort the Court with respect to the fiduciary operations,
19 that might be a more efficient --

20 THE COURT: Well, between now and next week, the
21 parties will inevitably have discussions and if some
22 reasonable solution is presented by agreement, I would
23 consider it.

24 MR. NEWMAN: Thank you, Your Honor.

25 MR. PACHULSKI: Thank you so much, Your Honor, and

1 thank you so much for Your Honor's time today and the Court's
2 time.

3 MR. BADDLEY: Thank you. Just one other -- I just
4 wanted to make sure of the matters that were set for hearing,
5 I think, you know, clearly that included the bankruptcy
6 matters, but I just wanted to remind everyone that there was
7 the TRO matter in the adversary case.

8 THE COURT: I'm not going to get to that next
9 Thursday. I just don't see how.

10 MR. BADDLEY: Okay.

11 THE COURT: We'll decide what to do with that. If
12 I need to decide it, it would be my preference to decide it
13 before the hearing that is set before the District Court.

14 MR. BADDLEY: Okay. Thank you.

15 THE COURT: Okay. Although, I think I may have
16 said to you, I think both Courts probably have a jurisdiction
17 to determine whether the filing of the receivership complaint
18 is a stay violation.

19 MR. SABIN: Your Honor, just as a housekeeping
20 matter, as a result of the schedule, there was a stipulation
21 with respect to when the parties should either respond or
22 object or be in support of various motions that were
23 hopefully to be heard on the 18th, assuming that you were
24 going to decide today, the motions themselves. I hope that
25 we can work out, amongst ourselves, a date other than what's

1 in the stip, which is tomorrow, so that you can have better
2 written and better thought out responses, given the
3 uncertainty of today's proceedings.

4 THE COURT: Well, if you can't reach agreement on
5 that, reach out to me by conference telephone.

6 MR. SABIN: Thank you, Your Honor.

7 MR. BADDLEY: Your Honor, one final thing. I may
8 be the only one that missed it, but I didn't get a time for
9 the 19th.

10 THE COURT: Ten o'clock.

11 MR. BADDLEY: I'm sorry?

12 THE COURT: Ten o'clock.

13 MR. BADDLEY: Thank you, Your Honor.

14 UNIDENTIFIED: On the 18th, Your Honor?

15 THE COURT: On the 18th.

16 MR. BADDLEY: I'm sorry, you said that you put
17 some time on your calendar as well and --

18 THE COURT: Ten o'clock, both days.

19 MR. BADDLEY: Thank you, Your Honor.

20 THE COURT: I'm hoping that will be sufficient
21 time.

22 Anything further he asks hesitantly?

23 (No verbal response)

24 THE COURT: Thank you all very much. That
25 concludes this hearing. Court will stand adjourned.

1 (Proceedings concluded at 4:36 p.m.)

2

3

4

5

6

7

8

CERTIFICATE

9

10 I certify that the foregoing is a correct transcript from the
11 electronic sound recording of the proceedings in the above-
12 entitled matter.

13

/s/Mary Zajaczkowski January 11, 2018
14 Mary Zajaczkowski, CET**D-531

15

/s/William J. Garling January 11, 2018
16 William J. Garling, CE/T 543

17

/s/ Coleen Rand January 11, 2018
18 Coleen Rand

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 15, 2020**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC., ET AL.,**
Defendants.

STATUS VIDEOCONFERENCE
BEFORE THE HONORABLE RODOLFO A. RUIZ, II,
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND United States Securities and Exchange
EXCHANGE COMMISSION Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANTS: **(see receiver info)**
Complete Business
Solutions Group, INC.,
ET AL.; Full Spectrum
Processing, INC.

FOR THE DEFENDANTS: **DANIEL I. SMALL, ESQ.**
RETIREMENT EVOLUTION Holland and Knight LLP
GROUP, LLC; RETIREMENT 701 Brickell Avenue, Suite 3000
EVOLUTION INCOME FUND, Miami, FL 33131
LLC; RE INCOME FUND 2, (305) 789-7788
LLC; JOHN GISSAS Dan.small@hk1aw.com

1 FOR THE DEFENDANT: **ALAN S. FUTERFAS, ESQ**
LISA McELHONE **RICHARD F. BRUECKNER, ESQ**
2 **ELLEN B. RESNICK, ESQ**
3 565 Fifth Avenue, 7th Floor
New York, NY 10017
4 (212) 684-8400
Asfuterfas@futerfaslaw.com

5 FOR THE DEFENDANTS: **JOEL HIRSCHHORN, ESQ**
6 LISA McELHONE, L.M.E. Gray Robinson
2017 FAMILY TRUST 333 SE 2nd Avenue, Suite 3200
7 Miami, FL 33131
(305) 416-6880
8 Joel.hirschhorn@gray-robinson.com

9 **DANIEL S. FRIDMAN, ESQ**
Fridman Fels & Soto, PLLC
10 2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134
11 305-569-7720
Dfridman@ffslawfirm.com

12 FOR THE DEFENDANT: **BETTINA SCHEIN, ESQ**
13 JOSEPH C. BARLETA 565 5th Ave, 7th floor
New York, NY 10017
14 (212) 880-9417
Bschein@bettinascheinlaw.com

15 **ANDRE G. RAIKHELSON, ESQ**
16 Law Offices of Andre G. Raikhelson, LLC
301 Yamato Road, Suite 1240
17 Boca Raton, FL 33431
(954)895-5566
18 Arlaw@raikhelsonlaw.com

19 FOR THE DEFENDANT: **JAMES R. FROCCARO, ESQ**
20 JOSEPH W. LaForte 20 Vanderventer Avenue, Suite 103W
Port Washington, NY 11050
21 (516) 944-5062
22 Jrfesq61@aol.com

23 **DANIEL S. FRIDMAN, ESQ**
Fridman Fels & Soto, PLLC
24 2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134
25 305-569-7720
Dfridman@ffslawfirm.com

1 FOR THE DEFENDANT:
2 PERRY S. ABBONIZIO

JEFFREY D. MARCUS, ESQ.
Marcus Neiman & Rashbaum LLP
One Biscayne Tower, Suite 1750
2 South Biscayne Blvd
Miami, FL 33131
(305) 400-4260
Jmarcus@mnrlawfirm.com

5 **JASON MAYS, ESQ**
6 Marcus Neiman Rashbaum & Pineiro
7 One Biscayne Tower, Suite 1750
8 2 S. Biscayne Blvd.
9 Miami, FL 33131
10 305-434-4941
11 Email: Jmays@mnrlawfirm.com

12 FOR THE DEFENDANT:
13 DEAN J. VAGNOZZI

BRIAN P. MILLER, ESQ
ALEJANDRO PAZ, ESQ
Akerman, LLP
Brickell City Centre
98 Southeast Seventh St
Miami, FL 33131
(305) 982-5586
Brian.miller@akerman.com
Alejandro.paz@akerman.com

14 FOR THE DEFENDANT:
15 MICHAEL C. FURMAN

JEFFREY L. COX, ESQ
JAMES D. SALLAH, ESQ
Sallah Astarita & Cox, LLC
3010 N Military Trail, Suite 210
Boca Raton, FL 33431
561 989-9080
Jlc@sallahlaw.com
Jds@sallahlaw.com

16 FOR THE RECEIVER:
17 RYAN STUMPHAUZER

GAETAN ALFANO, ESQ
DOUGLAS ROSENBLUM, ESQ
Pietragallo Gordon Alfano, et al.
1818 Market Street, Suite 3402
Philadelphia, PA 19103
(215) 988-1441
GJA@Pietragallo.com

21 **TIMOTHY A. KOLAYA, ESQ**
22 **ADAM FOSLID, ESQ**
23 Stumphauzer Foslid Sloman Ross Kolaya
24 One Biscayne Tower, Suite 1600
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2 S. Biscayne Blvd
Miami, FL 33131
(305) 614-1405
Tkolaya@sfsflaw.com
Afoslid@sfsflaw.com

FOX ROTHSCHILD , LLP

MIRANDA SOTO, ESQ
PETER LEVIN, ESQ
Shutts & Bowen
200 S Biscayne Blvd Ste 4100
Miami, FL 33131-2362
(305) 358-6300
Mlundeensoto@shutts.com
Pslevine2@gmail.com

REPORTED BY:

GIZELLA BAAN-PROULX, RPR, FCRR
United States Court Reporter
400 North Miami Avenue, 8th Floor
Miami FL 33128
(305) 523-5634
gizella_baan-proulx@flsd.uscourts.gov

Also present: Allison & Steven Weinkranz
Alejandro Miyar, Esq.
Scott Simon, Esq.

1
2
3
4
03:01 5
6
7
8
03:02 10
11
12
13
14
03:02 15
16
17
18
03:02 20
21
22
23
24
03:03 25

P R O C E E D I N G S

(The following proceedings were held in open court via Zoom teleconference.)

THE COURT: Good afternoon, everybody. If everyone would start making their way into the virtual jury room, go ahead and turn off your video. Please keep everything on mute now and we'll get started in just a few minutes.

If I call up Case No. 20-CV-81205, the matter of Securities and Exchange Commission versus Complete Business Solutions Group doing business as Par Funding, et al.

Let's go ahead and get everyone's appearances for the record, please, if we could.

On behalf of the Securities and Exchange Commission, who do I have on our hearing today?

MS. WEINKRANZ: Allison and Steven Weinkranz.

THE COURT: Do I have Ms. Berlin on today on behalf of the SEC?

MR. SCHIFF: Your Honor, this is Andrew Schiff from the SEC. Ms. Berlin had something in another courtroom at 1:30, she must still be involved in that matter. I'll be out until she's available.

THE COURT: Thank you for covering for us, and if you want, let me know when she joins so she can state her appearance. Okay, Mr. Schiff. Thank you for that.

On behalf of a number of defendants, I'll see if I can

1 try to go through them in an orderly fashion.

2 On behalf of Lisa McElhone, who do I have joining us
3 today?

4 **THE DEFENSE:** Good afternoon, Your Honor, Alan
03:03 5 Futerfas for Lisa McElhone.

6 **THE COURT:** On behalf of defendant Joseph Cole
7 Barletta, who do I have on today.

8 **MS. SCHEIN:** Good morning, Judge Ruiz. Bettina Schein
9 for Joseph Cole Barleta.

03:03 10 **THE COURT:** On behalf of Mr. Joseph LaForte.

11 **MR. FROCARRO:** Good afternoon, Judge, James Frocarro
12 for Joe LaForte.

13 **MR. FERGUSON:** Your Honor, David Ferguson for Joseph
14 LaForte as well. How are you, sir?

03:03 15 **THE COURT:** Good, thank you.

16 And on behalf of Mr. Perry Abbonizio?

17 **MR. MARCUS:** Good afternoon, Your Honor, Jeff Marcus.

18 **THE COURT:** On behalf of defendant Dean Vagnozzi.

19 **MR. MILLER:** Good afternoon, Your Honor, Brian Miller
03:04 20 from Akerman on behalf of Mr. Vagnozzi.

21 **THE COURT:** On behalf of the LME 2017 Family Trust?

22 **MR. SOTO:** Good afternoon, Your Honor, Alex Soto on
23 behalf of the trust.

24 **THE COURT:** On behalf of Michael C. Furman?

03:04 25 **MR. COX:** Good afternoon, Your Honor Jeffrey Cox on

1 behalf of Mr. Furman.

2 **THE COURT:** Before I move on to appearances by the
3 receiver and receiver's counsel, any other defendants that have
4 I may have missed?

03:04 5 **MS. KERNISKY:** Yes, good morning, Your Honor. This is
6 Allison Kernisky from Holland and Knight on behalf of
7 defendant, John Gissas.

8 **THE COURT:** Oh, thank you, on behalf of Mr. Gissas. I
9 left him out.

03:04 10 Anyone else that I may have missed from the defense
11 side?

12 I don't think I have anybody else that I have missed,
13 so turning to the receiver, counsel on behalf of the receiver
14 joining us today?

03:04 15 **THE DEFENSE:** Yes, good afternoon, Your Honor, Gaetan
16 Alfano, along with Timothy Kolaya on behalf of the receiver as
17 well as the receiver Ryan Stumphauzer.

18 **THE COURT:** All right. And anyone else? Obviously, I
19 know we have a number of investors that joined us on the calls.
03:05 20 And I recognize all of them and thank you to the investors that
21 have been following along with litigation for joining us.
22 Please make sure you keep your audio on mute here while we
23 discuss a couple of things and do some case management, but,
24 obviously, we have had a lot of third parties come in and come
03:05 25 out of this action, so I don't know if anyone else needs to

1 state their appearance at this time.

2 So anyone else that I may have missed that is
3 representing any other interests in this case?

4 **MR. SIMON:** Your Honor, this is Scott Simon. I would
03:05 5 like to make my appearance for Lead Funding II, LLC, which I
6 filed a motion to intervene but then subsequently withdrew it.

7 **THE COURT:** Thank you, thanks for being here.

8 Anyone else similar to Lead Funding, someone like that
9 that may have either had an interest in intervenor or is
03:06 10 another third party caught up in anything in this litigation,
11 please state your appearance. Anyone else?

12 **MR. MIYAR:** Yes, Your Honor, Alejandro Miyar of Berger
13 Singerman on behalf of nonparty Capital Source 2000, Inc.

14 **THE COURT:** Anyone else?

03:06 15 Okay. I think that should about do it. So as I'm
16 sure everyone saw yesterday in the Court's somewhat lengthy
17 paperless order, my goal today is to do a little bit of
18 housekeeping and to try to take stock, if you will, in pending
19 motions what needs to be done, what needs to be addressed, get
03:06 20 as much needed update from my receiver who, as I stated in my
21 paperless order, is an officer of the Court and, therefore, it
22 was incumbent upon me to routinely check -- okay, whoever that
23 is. Okay, let's go ahead and wait if we can mute. I don't
24 know if we have any investors that don't have it on mute,
03:06 25 you're more than welcome to join us, but I need to make sure

1 you're muted, please.

2 So as I was saying, Mr. Stumphauzer is joining us
3 today in order to -- through, not only himself, but through his
4 counsel, Mr. Kolaya and Mr. Alfano, to give us a little bit of
03:07 5 an update on how things are going in the litigation. We get a
6 lot of updates by way of status reports but think it's always
7 good to have a frank discussion, and there are some questions
8 that I wanted to inquire and check in with my receiver on.

9 And so I think it's in everyone's best interest to be
03:07 10 flies on the wall, if you will. I believe, as I think is
11 essential in a case like this, that we have a lot of sunshine
12 as the best disinfectant when it comes to making sure we know
13 what is going on in the case, not only for the benefit of the
14 investing public, but also for all the defendants and their
03:07 15 counsels to see what the Court is worried about, what the Court
16 is checking in with the receiver on.

17 So I want to be very clear, I do not want this to
18 devolve into a lengthy hearing. Everyone has a lot of work do,
19 and I may have one or two poignant issues that I want to touch
03:08 20 base on with defense counsels in particular. But this is not,
21 again, as I stated in the paperless order, to entertain
22 argument on the most recent DSI filing or anything of that
23 nature. The time will come for oral argument when necessary
24 and when the Court deems it to be fruitful and important for
03:08 25 the Court to render a decision. But today really is all about

1 getting a better sense of our recovery efforts on behalf of
2 investors and what the receiver's ongoing efforts have
3 generated in terms of merchant cash advances, and then,
4 briefly, the Court does have not only a question or two about
03:08 5 DSI and the status of pending discovery being handled by
6 Magistrate Judge Reinhart, but I also am interested in asking
7 the receiver a question or two about the expansion that has
8 been requested. He is, again, an officer of the Court and the
9 Court wants to get a sense, a little bit more detail, if you
03:08 10 will, about his request. I do know that that is a ripe pending
11 motion before the Court to expand the receivership. I'm
12 willing to talk a little bit about that later.

13 But if we can begin, I think, and I tend to turn it to
14 Mr. Alfano on these points as kind of the point person for the
03:09 15 receiver, but I think the important thing is before we talk
16 about DSI and their affidavit from their director, if you could
17 provide us, Mr. Alfano or perhaps turn to Mr. Kolaya and have
18 Mr. Stumphauzer give us a sense of collection efforts.

19 One of the things we have talked about from the
03:09 20 beginning in this case has been the difficulty of collecting
21 funds from multiple investors. A lot of the, or, excuse me, a
22 lot of the loans, rather, from folks, whether it's small
23 businesses or one of the top ten of the portfolio that we have
24 talked about extensively, some of which are encountering
03:09 25 financial trouble, bankruptcy, and other disconcerting problems

1 that are going on in their businesses.

2 So do we have any updates, Mr. Alfano, on how
3 collection efforts are going, whether that be in the
4 Philadelphia Court of Common Pleas or elsewhere, any new
03:10 5 information on that and I'll turn it over to you to kind of
6 tell us a little bit about the latest in that front, please.

7 MR. ALFANO: Thank you, Your Honor, if I may. Cash on
8 hand is presently 53 million dollars through yesterday. We are
9 -- DSI is fully engaged in collection efforts with merchants in
03:10 10 order to recover receivables. We have opened up discussions
11 with certain other merchants within the top ten. Most are
12 represented by counsel. And we're continuing, you know, our
13 efforts to try to resolve those matters, those that aren't
14 paying to get them back on a payment plan. And if that's not
03:10 15 productive, then we would anticipate coming back to Your Honor
16 for relief with respect to the litigation injunction as
17 presently in place on a selected basis.

18 MR. FROCCARO: Judge, Judge, Judge, this is James
19 Froccaro, I just have --

03:11 20 THE COURT: Sorry, I was on mute. Go ahead, Counsel.

21 MR. FROCCARO: I don't ask much but is that 53 million
22 including the 25 million or over 25 million?

23 MR. ALFANO: It is. We started with 25 million and
24 we're up to 53 million.

03:11 25 Your Honor, first of all, I thought I reported that

1 the starting point in our very first status conference and I
2 provided routine updates to that effect.

3 **THE COURT:** Sorry, Mr. Froccaro, it was still chopping
4 up a little bit on the connection, but I guess the answer to
03:11 5 your the question is yes. We are now -- that is above and
6 beyond the 25 from the last report.

7 **MR. FROCCARO:** Thank you, Judge.

8 **THE COURT:** No, no, that's fine. These are important
9 and to the extent I have clarification questions, not argument
03:11 10 but clarification questions, I welcome them from defense
11 counsels. We want to get a good picture of where we're at.

12 So we're about 53 million. We are continuing to make
13 collection efforts with the merchants. And we are engaging, I
14 think, as you stated, Mr. Alfano directly with counsel on
03:12 15 behalf of some of the merchants, right?

16 **MR. ALFANO:** That's correct.

17 **THE COURT:** And in terms of relief, I think the Court
18 most recently did lift litigation injunctions on a number of
19 the different cases that were pending. Have we been able to
03:12 20 kind of explore those with those injunctions now being lifted
21 in terms of having to appear in court in Philadelphia in order
22 to try to either collect them, or I don't know if this is
23 coming by way of consent judgment or -- can you maybe give me a
24 sense of how that litigation is playing out?

03:12 25 **MR. ALFANO:** Your Honor, essentially we asked for

1 relief in two circumstances. The first is where a merchant had
2 previously reached an agreement with CBSG prior to the
3 receivership, but, for whatever reason, their assets were
4 garnished. So we're seeking relief in those circumstances and,
03:12 5 of course, honoring the terms of any settlement that was
6 entered into as well as pursuing resolutions with merchants, a
7 condition of which is to either release garnishments and/or
8 dissolve confessions of judgments.

9 **THE COURT:** So let me move on from the collection
03:13 10 effort and speak a little bit, if I could, without getting too
11 much into the substance because I am very, as I stated in my
12 paperless order, acutely aware of the concerns raised by the
13 joint motion filed by a number of defense counsels regarding
14 the calculations in the most recent DSI report. Really, it was
03:13 15 an affidavit that was submitted that gave us perhaps, at least
16 as far as I could tell, the clearest picture in the receiver's
17 view of the financial state of this company. And, you know, I
18 know that there is arguing being made about the factoring being
19 used in that report, the underlying data being used in that
03:14 20 report, the purported lack of access to that data the
21 defendants feel is major issue that prevents them from
22 essentially conducting their own report or own audit of those
23 numbers.

24 But I think it would be important, especially for
03:14 25 those that may not have had an opportunity to really read it,

1 and I don't know if I would turn to Mr. Alfano for this or
2 directly to Mr. Stumphauzer or Mr. Kolaya to just give us a
3 little bit of summary or a breakdown of that particular
4 statement and financial picture of this business because, as
03:14 5 far as I can tell, and I'm carefully choosing my words here,
6 and I know everyone understands that, you know, there was a
7 conversation had probably three or four months ago where I
8 asked Ms. Berlin, in no uncertain terms, what kind of case this
9 was. Was this the kind of case that dealt with a regulatory
03:14 10 issue and a registration issue and a disclosure issue? Or was
11 this more akin to what we know as a Ponzi scheme. That was a
12 question I asked early on in this litigation.

13 I was told by the SEC that it was not a Ponzi scheme
14 at the time, that they were uncertain, they were not ready to
03:15 15 make that representation, and I will confess that the report
16 from DSI goes to great lengths not to use that term. But
17 looking at the way the snapshot that DSI has prepared, and,
18 again, I know this is all, if you will, under protest by
19 defense counsels who feel that it is a flawed methodology, but
03:15 20 we have to remember that this is a conversation between me and
21 my receiver, an officer of the Court, and his due diligence and
22 what it has generated in terms of reports for me to digest what
23 is going on on the ground in this business and in all the
24 related Par Funding businesses.

03:15 25 It seems to me, based upon the report and the fact

1 that some of the payouts or the funds that investors were
2 receiving were essentially generated or the product of new
3 money coming into these investments that we maybe have had a
4 sea change in the true nature of this business and that it is
03:16 5 less about factoring and due diligence on loans, and more about
6 taking from new investors to pay old investors. And that is
7 without, of course, calculating in operational expenses, et
8 cetera.

9 I don't want to make that assumption. I don't want to
03:16 10 state that. The affidavit does not go that far, but it makes
11 it clear that this was not a self-funding operation, meaning
12 this operation could not, regardless of COVID-19, regardless of
13 the SEC's involvement, that this was truly not a self-
14 engineered or self-funding enterprise, it thrived off new money
03:16 15 being put in from investors.

16 Now, again, I'd like, with that statement being made
17 in context, if could I turn it back to the receiver and perhaps
18 have the receiver give me the receiver's take-aways, DSI being
19 an agent, receiver, as employee, what are the receiver's
03:16 20 take-aways from this particular affidavit, which I think
21 paints, at least so far, one of the clearer pictures of what
22 the receiver's diligence has found, and I'll turn it to you,
23 Mr. Alfano, and whoever wants to take the lead on the
24 receiver's side to give me a breakdown of what you think you
03:17 25 have found by way of this DSI report.

1 Go ahead, guys.

2 **MR. ALFANO:** And, Your Honor, I think Mr. Stumphauzer
3 is going to address this directly.

4 **THE COURT:** Very good. So I'll turn it over
03:17 5 Mr. Stumphauzer as receiver for the Court.

6 And I don't know if I have the audio connected. I did
7 see Mr. Kolaya and Mr. Stumphauzer on there, so not sure if
8 they're still there.

9 **MR. STUMPHAUZER:** I apologize, I don't think we had
03:17 10 audio for a minute. Are you able to hear us now?

11 **THE COURT:** Yeah, I can hear you now. So I will turn
12 it over to you guys to give me your impression and walk through
13 the findings and the declaration, please.

14 Go ahead, guys.

03:17 15 **MR. STUMPHAUZER:** Yes, Your Honor. So you're correct.
16 We did not use the word "Ponzi scheme" in that entire
17 declaration and there's a reason why. We have been very, very
18 conservative with the information that we have presented to the
19 Court. And when we present Your Honor with a number, that's
03:18 20 because it's been tied to bank records. It's been tied to the
21 company's internal accounting records. We have looked at
22 Quickbooks descriptions. There is no ambiguity. When we give
23 you a number, it is correct.

24 We had a number of discussions with Mr. Sharp from DSI
03:18 25 and I think the easiest way to explain this is there is not a

1 single definition for a Ponzi scheme. So, for example, there
2 are multiple courts that have talked about the factors that are
3 consistent with a Ponzi scheme so there are many court opinions
4 that talk about the proper definition. The Ninth Circuit, for
03:18 5 example, also has a definition. The AICPA, which is obviously
6 the organization for certified public accountants, also has a
7 definition for what a Ponzi scheme is, but I think it's fair to
8 say that there are more factors to it than simply whether old
9 investors are being repaid with new investor money. That is
03:19 10 not the only factor to be considered. You have to consider
11 other factors.

12 So, for example, what was the profitability of the
13 underlying business? How does the profitability of the
14 underlying business tie to representations that are being made
03:19 15 to investors about the returns that are going to be delivered
16 to him. Then there's also questions about whether there's
17 excessively large fees that are sustainable.

18 What I can tell you is, Mr. Sharp and his team, who
19 are, of course, highly trained professionals who, by the way,
03:19 20 do have very specific experience in the MCA business. What
21 they are comfortable saying is that as to the top ten merchants
22 which, as you know now, make up approximately 50 percent of the
23 entire portfolio. As to those merchants, they undoubtedly were
24 using CBSG money to pay CBSG back.

03:20 25 One of the most interesting portions of the DSI

1 report, Your Honor, is if you are to look at the graphs I guess
2 that start on paragraph 18 of that report, and if you notice in
3 each instance we have a graph that covers the entire portfolio.
4 Then we have a graph that covers breakdown for some of the
03:20 5 largest merchants to show the performance of that particular
6 MCA or, as is often the case, a passage of MCA's. In each
7 instance, the first chart is just showing what's happening in
8 each individual month so, you know, those months CBSG pays out
9 more than it receives or vice-versa, but, to me, the most
03:20 10 helpful chart is the second chart in each instance which shows
11 cumulatively the money that's going from CBSG to a merchant
12 versus the money that's going from the merchant back to CBSG.

13 Now, Your Honor has been told repeatedly throughout
14 this litigation, and this is the point I want to address in
03:21 15 more detail if the Court will allow, but you've been told
16 repeatedly, number one) that this is a highly profitable
17 business, and, number two) what you have been told is that,
18 you know, the portfolios were performing and that there were
19 adequate profits, sometimes referred to as house money for the
03:21 20 defendants to pay themselves.

21 What this chart shows, and, by the way, you were also
22 told that the primary source of profit was the MCA's
23 businesses, it goes to some of those business lines.

24 Now I should be careful in saying that this is an
03:21 25 analysis of cash in and cash out, which is not the same as

1 profit, but it's a good proxy and a measuring stick, and what
2 you can see is throughout the life of this company, CBSG has
3 routinely and uniformly given out more money to merchants than
4 they have received back. So you've been greeted with countless
03:21 5 hypos about here is a hypothetical loan, here is the
6 hypothetical very high factoring fee that's going to be earned
7 by the company, but this shows just the opposite. It shows
8 that more money has gone out to merchants than has come back
9 and, by the way, that not over a month, it's not over a year,
03:22 10 it's over the entire operations of the company, coincidentally,
11 up until the end of 2019 or, stated differently, before COVID
12 hit our nation.

13 You can also see, Your Honor, if you are to go to
14 paragraph 26 take a look at my paragraph number on the page.
03:22 15 Paragraph 26 is related to Colorado Homes. And if you see that
16 there are two charts below Colorado Homes that I believe,
17 again, are highly instructive and I would ask the Court to
18 focus on the second graph. And, again, the blue line shows
19 funding that's going out from Par Funding and the orange line,
03:23 20 of course, reflects payments coming back from the merchant.
21 And, again, you see a very clear pattern, which is the line of
22 funding consistently is above the line for payments, meaning
23 that we have sent more money out than we have gotten back in.

24 There's another interesting trend about that
03:23 25 particular chart and you can see starting in November, December

1 of 2019, the lines become completely flat. So what's the
2 reason for that? What it essentially shows is that the
3 merchant stopped paying because we stopped funding, i.e.,
4 there's a strong inference that they were paying us with our
03:23 5 own money.

6 I can also tell you that we have been in touch with
7 the attorney for B&T and I'm not stating what our litigation
8 position is with respect to him, but I'm representing to you
9 what has been said to us over the phone, which is that they
03:24 10 can't and they won't pay us because they were paying us with
11 our own money and now that we are not paying them any money,
12 they can't pay us any money back.

13 Now, I want to go through a couple of other points,
14 Your Honor, if I can. Another issue of confusion I feel in
03:24 15 this litigation is there's many times that we're referring to
16 revenue. In other words, top line, not profit, but revenue, or
17 where we're citing really impressive gross figures. So, for
18 example, it's been brought up to you before that merchants
19 repaid Par Funding one point -- if you round it, 1.1 billion.
03:24 20 1.097 billion which is, undoubtedly, an impressive gross number
21 until you it to the amount of money that's gone out the door.
22 So, again, we're now cumulatively five, six years into this
23 business, 1.097 billion has come out -- come back from
24 merchants, but Par Funding has paid out 1.103 billion. So net
03:25 25 net, cash out the door, cash in the door, over the entire

1 history of this company up to 2019, that's the caveat I want to
2 give, we haven't finished 2020, we're 6.6 million in the hole.
3 We're 6.6 million dollars in the hole. Again, I want to be
4 careful, net cash which is different from profit. So, and
03:25 5 during that same time, we had seen from very early from the
6 SEC's initial complaint, of course, that included declarations
7 from Melissa Davis. From that declaration, it was early --
8 evident at an early date that a significant amount of money had
9 gone out to corporate insiders. What we didn't know is just
03:25 10 how high that number was.

11 So we now know that 144 million dollars was paid out
12 to Par Funding to insiders. And so let me break that down,
13 Your Honor, because there is a lot of these companies that we
14 haven't necessarily spent a whole lot of time discussing.

03:26 15 So, for example, there's a company called Heritage
16 Business Consulting which is a company that allegedly earned
17 consulting fees from Par Funding, that is a company, of course,
18 controlled by Lisa McElhone. That company was paid 41.5
19 million dollars of consulting fees. And I can show you how
03:26 20 it's broken down into different categories in Mr. Sharp's
21 affidavits.

22 There was another company owned by Lisa McElhone,
23 Eagle 6. That company received 24.4 million dollars. There's
24 another company Eagle Union Quest that was used to buy a jet
03:26 25 that was used by Mr. LaForte and Ms. McElhone. That company

1 received 6.2 million dollars. There's a marketing company RMR
2 that's owned by Mr. LaForte that received 6.9 million dollars.

3 So looking at Mr. McElhone and Mr. LaForte alone, if
4 you wanted to consider them together, they were able to extract
03:27 5 119.6 million dollars from this company. It's a massive amount
6 of money. A massive amount of money. And this all happened
7 during the same time frame that this company had negative cash
8 flow, and you can see this in Mr. Sharp's declaration of
9 exactly how we get there and what the math is. They had a
03:27 10 negative cash flow of 203.5 million dollars.

11 And I want to emphasize something, Your Honor. This
12 is based on their analysis of actual bank records. This is not
13 speculation. This is not conjecture. This is numbers that
14 appear on a bank statement, and then what we did, you know, I
03:28 15 know the defendants have emphasized that there were 12
16 accountants that were working at Par Funding, not all of them
17 were accountants in the CPA sense, but they were functioning as
18 accountants nonetheless.

19 What we did is looked at all of the banking
03:28 20 transactions and then, of course, corresponded that with an
21 entry of Quickbooks. So insofar as there was a receipt of
22 cash, DSI was looking for the corresponding debit -- credit and
23 vice-versa. So we went based on bank statements, actual
24 transactions in the accounting records, and these are the
03:28 25 numbers that we came to.

1 I can tell you, Your Honor, that one ongoing concern
2 that we have is there are a lot of facts that are being thrown
3 at the Court, but equally important, things that are being
4 conveyed to the investors. And, Your Honor, I think for so
03:28 5 many different reasons the truth is always important in court,
6 facts are always important in court, we are all officers of the
7 Court, and so we have an obligation to present things
8 truthfully to you in the best of our ability. I'm doing that,
9 I'll stake my credibility on what I've said today. I'll stake
03:29 10 the credibility of DSI's consultants on what they put in their
11 report. It's our best calculation of what has happened based
12 on the records that are available to us.

13 I'm concerned, however, that there are other things
14 that are being represented to the Court that are, quite
03:29 15 frankly, problematic. And I say that they're problematic
16 because people are relying on them. Investors are reading
17 things and they are relying on those things when they sent
18 e-mails to me, when they sent e-mails to my staff, and when
19 they're burying the Court in some of that correspondence.

03:29 20 So, you know, Your Honor, you've indulged us all and
21 given us adequate opportunity to put our position on the
22 record, including the defendants, and we think that's a good
23 process because it forces us to do the work and to make sure
24 that we're correct. It's part of the adversarial process, but
03:30 25 I think we all ought to be held accountable for what we say.

1 I'm held accountable because I signed the pleadings.

2 Mr. Sharp's accountable because he signed a declaration.

3 So now I want talk about what the defense filed with
4 us. So, last night the defense filed a motion for continuance
03:30 5 and I understand, they haven't had a fulsome chance to respond,
6 I understand that there's some additional data that they want.
7 But they have a section in there called, "Facts." What I'm
8 asking is that they be held accountable for those facts. There
9 are a couple facts that I want to talk about in particular.

03:30 10 On Page 3 of 8, they make the statement that CBSG, Par
11 Funding, has been audited three times. It was audited by
12 Freedman in 2017, it was CliftonLarsonAllen for 2018 and 2019.
13 It was also audited by CBSG's long-time accountant, Robert Mehl
14 & Associates. The good news is an allegation like that can
03:31 15 easily be proven or dis-proven. I would ask that the
16 defendants be held accountable for that statement.

17 So I can tell you that right now, aside from just
18 sentences typed in the pleadings, there's only one source of
19 proof on that point. That source of proof is James Klenk's
03:31 20 declaration, which Your Honor can find at docket entry 177-52.
21 Mr. Klenk, as far as I know, by the way, Your Honor, is the
22 only CPA that was working at the company. He's also a CPA that
23 continues to work at company now.

24 What Mr. Klenk says directly contradicts that. What
03:31 25 he says is the last time the company was audited was 2017.

1 What happened during that audit? Freedman issued an opinion, a
2 clean audit opinion, but the opinion was attached to financial
3 statements that showed a loss. It also showed some information
4 that Mr. LaForte didn't like. So he promptly instructed
03:32 5 Freedman to change the report and to follow a different
6 accounting method. That, of course, led to a different result,
7 but it led -- it also led to an adverse opinion. We have seen
8 no evidence that CliftonLarsonAllen conducted an audit in 2018
9 or 2019, or that Robert Mehl did so.

03:32 10 So we probably have not seen each and every piece of
11 paper, but we have talked to Mr. Klenk and we do have a
12 declaration on record for Mr. Klenk, and he says that's simply
13 not true. I can tell you we have also looked at information
14 from Robert Mehl, and as Your Honor may know, there are
03:32 15 different levels of services from different auditors. One is a
16 full-blown audit. There are also reviews. There's also
17 extremely limited scope. It's called an agreed upon procedure.

18 You can have an accountant audit, you know, a tiny
19 little portion of your business, certain internal controls. We
03:32 20 did see that Robert Mehl did an agreed-upon procedures since
21 working at points in time, but, again, there's no audits. So I
22 would say -- I would ask that the defendants submit a
23 declaration that's willing to state their credibility on that
24 statement.

03:33 25 Likewise, in the section titled, "Facts," there is an

1 allegation that really jumped off the page to everyone on our
2 team. And it reads as follows. This is on the bottom of Page
3 3 of 8. It says, "According to the SEC's expert, Melissa
4 Davis, who has now filed multiple declaration, CBSG had
03:33 5 influence of 1.257 billion with a net positive cash flow of 711
6 million."

7 And I thought, wow, that is woefully inconsistent with
8 what DSI found, of course, and certainly does not, you know,
9 doesn't strike me as something that I saw in Ms. Davis's
03:33 10 affidavit, and, so, of course, we dug into it. And I can read
11 you, Your Honor, the docket numbers for all of Ms. Davis's
12 declarations, but, needless to say, they don't say that, which
13 then led to another question which is: These numbers are so
14 specific, the 1.275 billion, the 711 million, the fact that
03:34 15 CBSG wired precisely \$1,000,231,298 (sic) and so on and so
16 forth. I said these numbers had to come from somewhere.

17 So we did some digging to see where those numbers came
18 from because they sounded familiar. If Your Honor is willing
19 to accommodate us so that we can show a document, I'd like to
03:34 20 show where I believe those numbers came from and --

21 **THE COURT:** Absolutely. Absolutely.

22 **MR. STUMPHAUZER:** I'm going ask Mr. Kolaya, who is
23 definitely our most tech-savvy person, if he can pull up the
24 document.

03:35 25 So, Your Honor may recall that Aida Lau, and if you

1 can scan up at the top, Mr. Kolaya. As you know, Aida Lau
2 submitted multiple declarations in this case. What's
3 interesting, of course, is that we now know that this
4 declaration was created using data that Ms. Lau stole from the
03:35 5 company in violation of the Court's order. And, interestingly,
6 this declaration is also built upon the accounting data the
7 defendants are saying that they don't have. But many of them,
8 in Ms. Lau's declaration -- Mr. Kolaya, if you can scan back --
9 she summarizes what she believes to be the financial condition
03:35 10 of the company. By the way, we have no reason to believe that
11 she has a CPA or anything of that nature. But if you scan down
12 to the exhibit that's attached, we took the liberty of
13 highlighted some numbers -- and maybe Mr. Kolaya can blow them
14 up.

03:36 15 But here in the defendant's paperwork filed last night
16 in the section titled, "Facts," they said over its lifetime
17 CBSG wired exactly \$1,231,298,329. So it appears that this did
18 not come from Ms. Davis's declaration. Instead, it came from
19 Ms. Lau who, by the way, we requested an opportunity to
03:36 20 interview. She now, I think, based on allegations we made
21 regarding the data intrusion, is now represented by a prominent
22 criminal defense lawyer in Philadelphia and won't speak to us.

23 And Mr. Kolaya, if you want to scan over.

24 Yeah, you can also see they basically represented to
03:36 25 the Court that according to the SEC's expert Melissa Davis that

1 CBSG had inflows of 1.257 billion dollars. Again, it matches
2 precisely to what Ms. Lau said.

3 So Your Honor, you know, look, I understand, and I'm
4 going to include myself in this. You know. I happen to be an
03:37 5 accountant by background and a CPA by background. I don't
6 practice as one anymore and I haven't in a long time. I know
7 many of the lawyers in this case are not CPAs and are doing
8 their best with complicated numbers and, to some extent, are
9 relying on their client's. But these allegations mean
03:37 10 something. They're being made in a court. They're being made
11 in a pleading. They're being made to investors.

12 And now, if an investors were to read this, they would
13 actually think that this came from the SEC's own expert and,
14 more importantly, that maybe there was 700 million dollars to
03:37 15 be passed out to investors. Your Honor, the records just
16 simply don't show that. And I look forward to receiving a
17 declaration where some expert for the defense says that there
18 was 700 million of cash flow.

19 There's another topic that I'd like to address. It
03:38 20 really is to the issue of the outstanding balances for some of
21 these merchants. If you look at the portfolio, there are --
22 undoubtedly, there are a lot of outstanding MCA's receivable.
23 But what Mr. Sharp's declaration makes emphatically clear at
24 this point is that if you look at those balances, they're
03:38 25 disproportionately based on fees. So if you remember, there

1 was a prior pleading, and I'm going ask Mr. Kolaya to back me
2 up here to make sure I don't misstate, but we were giving the
3 Court information about the outstanding balances for the
4 highest ten merchants. The defense responds and, of course,
03:38 5 says, "Well, the receiver forgot to mention that virtually the
6 entire outstanding balance is fees, and we have actually
7 collected our money back."

8 Well, I didn't understand that counterclaim. The
9 reason is if we want to get these investors paid, fees are
03:39 10 important, too. And the defendants write them off though
11 they're meaningless. Well, the problem is, at this point they
12 represent a disproportionate amount of the outstanding balance.
13 Now, do we hope and will we endeavor to collect that, yes, but
14 it's being challenged and I can tell you that what we have
03:39 15 seen, and we purposely walked through, rather than a
16 hypothetical, we walked you through an actual example of an
17 actual MCA to a real merchant, and what you can see is there
18 was a very, very, very routine practice where a merchant would
19 come to CBSG, they would need additional funds, they would
03:39 20 negotiate, and there was a process called a reload where a
21 merchant would essentially get another MCA from Par Funding,
22 the MCA would be used, in part, to pay off the old balance, and
23 then result in a new balance with fees that are doubled and
24 tripled on top of each other. So we gave you an actual example
03:40 25 so you can see how quickly those fees add up.

1 Now, if you look at the fees that are recorded on the
2 financial statement and that are recorded on the balance sheet,
3 they do look like high numbers. And then the question becomes
4 what portion of that is paper profits. In other words, what
03:40 5 portion of that can be collected.

6 Well, we can't give that you answer across the board,
7 but we can give you that answer as to the top ten merchants
8 which, as you've seen, we have now grouped related companies
9 together so it's actually more than ten. But this notion that
03:40 10 they're collecting in a multiple of 1.32 is, again, false.
11 It's just false based on the numbers. They're not even
12 actually collecting the entire net cash advance. And you can
13 see that in several of the examples that are in Mr. Sharp's
14 declaration, including, for example, you can see that for B&T,
03:41 15 you know, this is a company that was loaned -- excuse me, not
16 loaned, that received merchant cash advances of 91 million
17 dollars, but if you look at the actual net cash outstanding,
18 the amount of money that CBSG advanced versus what came back,
19 CBSG is 20 million in the red. But what it also goes to show
03:41 20 is just how high a portion of that balance is attributable to
21 fees. And that's going to be a portion that, of course, is
22 going to be disputed, we know it's going to be disputed because
23 we have an attorney that's already told us so and, you know,
24 the other thing that's been represented, not only to this Court
03:41 25 but to investors repeatedly, even after we have shown ample

1 proof otherwise, is they are dotting upon their own underwriting
2 process.

3 Well, once we actually dug into the underwriting
4 process to see what they actually collected, in many instances
03:42 5 they advanced far more, many, many multiples than what they
6 themselves determined would be appropriate to advance. And so,
7 for example, CBSG, not a very great underwriting process for a
8 merchant with 91 million dollars of exposure, not exposure to
9 Par Funding's principals, but to its investors. What they
03:42 10 collected there is they collected 20 bank statements from three
11 different accounts from 2015 to 2017, and combined, that's a
12 company with an average cash balance of a million dollars.
13 They owe Par Funding 91 million dollars. There's no amount of
14 spin that can fix that, Your Honor.

03:42 15 So, again, what I'm asking the Court, and I think to
16 some extent the investors as well, because I feel that I have
17 -- I certainly have a responsibility to the Court, but I also
18 feel like I have a responsibility to the investors, and it's
19 rare that I have an opportunity to communicate with them as a
03:43 20 group, as I do know, but I really do think that everyone, and
21 I'm including myself, including myself more than anyone, we
22 should be held accountable for what we say to you. I'm holding
23 myself accountable for what came out of my mouth today, I'm am
24 holding my accountants and consultants at DSI accountable for
03:43 25 what they put in that declaration. I would I ask that everyone

1 else be held to the same standard.

2 **THE COURT:** Now just to pick up on that point briefly,
3 thank you for that update, you know, I share in the frustration
4 that you have made clear in today's report that we are dealing
03:43 5 with alternative realities. It's probably been the most
6 frustrating part for the Court from the beginning that I am
7 presented with facts which we know are stubborn things, and
8 math. I'm being presented with straight numbers and now I have
9 a declaration from Mr. Sharp, under oath. I have, at least at
03:44 10 this point in the litigation, been able to get my hands around
11 what I think are verifiable numbers and enough of a sample size
12 in the nature of the loans and the profitability or lack
13 thereof year-to-year to get a true financial picture as far as
14 I can tell.

03:44 15 So I am similarly perturbed by what seems to be a
16 constant spin and I will share that I get not as many e-mails
17 from investors, as I'm sure the receiver does, but I get my
18 fair share every day, and wherever they're getting their
19 information from is problematic, to say the least. It does not
03:44 20 square up with the investments that they thought they had made
21 or the profitability they thought they had seen.

22 And I think one of the challenges we have had is to
23 paint an accurate picture of this business to all concerned
24 parties, and I don't want any of the defense lawyers to think
03:45 25 that the Court is rushing to any conclusion. I think that I

1 have attempted to allow this process to play out. By the same
2 token, you have to understand that defense lawyers are not
3 litigating against my receiver. My receiver is an extension of
4 me. It's an extension of the Court. I take my obligations as
03:45 5 overseer and supervisor of the receiver operation very
6 seriously. I know that it is, by nature of this business model
7 and some of the difficulties of getting a true picture, it can
8 sometimes be a costly endeavor, and I knew that going in, okay,
9 but a lot of what is being thrown against the wall here to me
03:45 10 is not verifiable, it's not backed by numbers. I have at least
11 one clear picture emerging of this business and I think at some
12 point the story that I hear that the receiver doesn't know what
13 factoring is or that this is somehow a complicated business
14 that makes it difficult to operate, I think that argument is
03:46 15 starting to fall apart quite a bit because I will confess that
16 it doesn't take an economics major or CPA to look at
17 Mr. Sharp's findings and figure out that at the very bottom,
18 the model that we had here was not self-funding, it just
19 wasn't, and the loans were not over-performing. I don't even
03:46 20 know if they can even say they were performing, period.

21 The amount loaned versus the amount recovered is
22 pretty clear, it's pretty clear to the Court that this was not
23 sustainable. You know, at some point, you know, we have to
24 look at these numbers and try to get our hands around them to
03:46 25 get a true picture, but I think that, to the receiver's point,

1 we need to stop feeding the Court narratives that are not
2 backed either by the credibility of lawyers and under oath, or
3 verified statements or financials that have some strength in
4 backing in real numbers or real analysis, because throwing
03:46 5 around these statements every time the receiver makes any sort
6 of finding, and it's not to say you can't contest it, but if
7 we're going to contest it, let's actually contest it on merit, not
8 on narrative, not on spin, because all that does is harm us in
9 getting to the ultimate result in this case, whether that is by
10 way of trial, substantive motion practice, evidentiary
11 hearings, the day we get to a disgorgement argument, all of
12 those things are being clouded and the reality is all this does
13 is hurt us all, as the litigators know, in the long run because
14 it makes it more and more difficult for us to get to the merits
03:47 15 when we're spinning our gears on numbers.

16 So, you know, one of the things I thought about
17 reading the declaration and coming into court today, and I
18 don't know if this is even a possibility for the receiver to
19 entertain, but something that I thought is how can I get the
03:47 20 team of defense lawyers to perhaps give me their actual
21 verifiable sworn statement of what it is they think this
22 company is valued. Let them pick their CPA, because one of the
23 things I thought about was, what would stop, and I don't know
24 if the receiver's amenable to this, but to put an end to this.
03:48 25 You know, DSI has had a set of data that they have utilized.

1 They have now provided a very clear affidavit with a breakdown.
2 I am curious in hopes to maybe putting an end to a constant
3 spin, I'm curious if the receiver would suggest or entertain
4 the possibility of, at the cost being borne by the defendants
03:48 5 if they were to, as a group, the same defense counsels that
6 filed this motion yesterday evening, let them pick who they
7 want, give me their CPA expert, and let that CPA expert sit
8 down and look at what Mr. Sharp looked at and come up with
9 their own verified affidavit of their financial picture because
03:49 10 I'd like to see the names of defense counsels or their expert
11 give me a sworn statement that -- not allegations in a pleading
12 disputing the methodology, but actually taking a look at these
13 numbers because I know you guys saw that the second half of the
14 objections coming into today were we continue to argue that we
03:49 15 don't have access. And I know this has been an issue of
16 protective orders, we don't have access to the same numbers, we
17 can't look and verify the same data. I know that's been the
18 subject of disputes in front of my magistrate judge.

19 And I also know we have, which we'll talk about in a
03:49 20 little bit, we have a separate problem about return of data
21 that was purportedly taken out of the G Suite that I've already
22 issued a show cause on for civil contempt sanctions against two
23 individuals involved in this lawsuit.

24 So I don't know if this is even a possibility but I
03:49 25 wanted to ask receiver in an effort to kind of put teeth behind

1 your comments, how can I shut this down because I'm not going
2 to sit here and allow a continued misinformation campaign from
3 other parties to confuse investors when I have an officer of
4 the Court appointed by me going through the numbers and now
03:50 5 giving me an affidavit on this from DSI, and they're telling me
6 this is a gross, quote, gross mischaracterization of the
7 financials. I mean, that is a bold statement to make on a
8 pleading. That is extremely aggressive to take that line and
9 say that the entire method of DSI, a sworn statement by this
03:50 10 consultant, is not rooted in reality, and what you just said is
11 we have the numbers to back up every single representation and
12 chart in that affidavit.

13 So is there a way that the receiver could contemplate
14 it -- and I'm open to suggestions, I'm just trying to come up
03:50 15 with a way to put an end to this, and if it means letting the
16 defense lawyers have access to that data under supervision of
17 the Court for a limited purpose of having them get one expert
18 to look at whatever Sharp looked at, I'd like to see someone --
19 look, at the end of the day, as you point out, Mr. Stumphauzer,
03:51 20 and Mr. Futerfas, don't cut in, I see you wanted to jump, give
21 me one second, I'm talking to the receiver. I don't want to
22 have to meet you.

23 **MR. FUTERFAS:** I do want to weigh in at this part of
24 the conversation.

03:51 25 **THE COURT:** Yeah, give me one second because I want to

1 see what the receiver's view is on this.

2 One of the issues I am having is I -- if this is a
3 methodology problem, if this is -- you know, this isn't a
4 dispute over GAAP principles, this is -- I mean, to me as far
03:51 5 as I can tell from Mr. Sharp, this is all well-rooted in
6 verifiable numbers, and so one of the things I'm trying to get
7 my head around is, if that's true, then if we can trod in one
8 agreed upon expert from all the defendants to come in and sit
9 down in a room with Sharp and the receiver and look at the same
03:51 10 data and give me a competing affidavit or report, something
11 under oath, something verified, so that I can actually see if
12 any of the theories that have been repeatedly floated out by
13 defense counsels every time I get a receiver report are rooted
14 in actual math.

03:52 15 So I wanted to ask the receiver that question. Mr.
16 Stumphauzer, if that is even a suggestion that you would
17 entertain that you could talk to me about so that I can see if
18 there is another reality here to look at these numbers, how can
19 I put that issue to bed?

03:52 20 So can I hear your take on that, or maybe you have a
21 proposal eventually whereby you will have a moment to have this
22 data methodology shared with defense lawyers and Mr. Sharp can
23 be in a room with an expert on their side. I mean, I don't
24 want to circumvent the discovery process, and that's been part
03:52 25 of the problem here. This should be litigated like any other

1 case now. We have a bunch of preliminary injunctions, nothing
2 here should be out of the ordinary. We are doing this as we
3 have always done any other piece of civil litigation. There's
4 no need to take shortcuts, but by the same token, there's been
03:52 5 so much of this back and forth that's confusing to investors, I
6 think I have a pretty good picture of what's going on, but you
7 wouldn't -- you wouldn't look at from docket entry 430, and the
8 way that the defense counsels have banded together and are
9 still taking issue with some of the methodology.

03:53 10 So what does the receiver think about any solution to
11 this problem? Can I hear from the receiver on this.

12 **MR. STUMPHAUZER:** So, Your Honor, I think if I
13 understood you correctly, I'm advocating for exactly what you
14 just said. We have offered the defense we will give you not
03:53 15 just reports from Quickbooks, not just the various iterations
16 of slice and dice (inaud.), we'll give you an actual static
17 copy of single transaction for Par Funding, every single one.
18 But what we want is three things. One) we want you to agree to
19 a very airtight protective order. Why? This is not us being
03:53 20 petty so let me give you practical examples of problems that
21 have happened and I am going to, again, welcome, because
22 there's different members of the team doing different things.
23 Mr. Kolaya and Mr. Alfano can correct me. Here are the kind of
24 the things that we have actually had happening.

03:54 25 We had a person actually show up at a merchant's store

1 saying, "We're here on behalf of Par Funding. You owe us X
2 amount of money, we're not leaving until you pay us in cash."
3 The person did take out cash and paid the person purporting to
4 represent me. I can assure Your Honor it wasn't anyone from my
03:54 5 firm and it wasn't anyone from DSI.

6 Just this week we had someone make up an e-mail
7 address, I can't remember the name off the top of my head, but
8 it was Gmail address but it had something Parfunding@gmail.com,
9 reached out to a merchant, again, saying "You owe us a balance,
03:54 10 you need to pay this. Please give me your bank account
11 information," and, lo and behold, the person actually paid.

12 So what we're concerned about, and the defense will
13 say, "Well, you're already putting the accounting data out
14 there." Judge, I'm putting out top level data that no one can
03:54 15 abuse. Nobody can go collect from our merchants by me saying
16 we have loaned out or, you know, given out MCA's 1.1 billion.
17 What we're concerned about is accounting data where line by
18 line merchant by merchant addresses, phone numbers is going to
19 be given to defense.

03:55 20 So all we ask them for is three things. We want a
21 protective order. We want the data back that you stole
22 because, by the way, we can show you and will show you at the
23 evidentiary hearing that they have a copy already. And the
24 third thing we have asked them for is it's really important
03:55 25 that we have an access log for who has accessed your wrongfully

1 obtained copies of the Quickbooks. Why? We would like to
2 figure out who has been collecting our money for us and not
3 giving it back. We'd also like to explore whether there are
4 any data corruption or integrity issues, and we have it in
03:55 5 writing. Mr. Futerfas rejected the protective order that we
6 asked for. He flatly refused to provide us an access log and,
7 by the way, in direct violation of this Court's order, he just
8 said flat out in writing, we're not giving the data back,
9 period, and I'm going ask Mr. Kolaya to weigh in because he was
03:56 10 more directly involved in those discussions.

11 **MR. FUTERFAS:** Judge, that's not true at all.

12 **THE COURT:** I'm going -- I'll go ahead and mute you,
13 Mr. Futerfas, so that I have any more interruptions.

14 Go ahead and I will turn to the defense lawyers in a
03:56 15 minute, but I have to hear from my receiver first so I can get
16 a good picture, and before I pivot to Mr. Kolaya on the phone,
17 there's one thing that you just said, Mr. Stumphauzer, that I
18 got to make sure understand. You mentioned something about
19 someone else collecting the money for you guys.

03:56 20 Did I understand you right that you have attempted
21 merchant collection and upon interacting with merchants, they
22 said someone else has made contact with them to collect on
23 outstanding loans that is not my receiver?

24 **MR. STUMPHAUZER:** That's correct, Your Honor. Usually
03:56 25 how it comes to our attention is not necessarily because we

1 reach out to someone and collectively they say it's already
2 been collected, but on occasion people will reach out to us and
3 say, "Well, we just want to make sure that this is someone
4 actually acting on your behalf, or we will learn about it after
03:57 5 the fact. And, yes, we have had now at least two, and I'm
6 going to ask Mr. Alfano and Mr. Kolaya to fact-check me here,
7 but at least two circumstances where people that are purporting
8 to act on behalf of Par Funding have collected money that did
9 not come to us and it was no one acting on our behalf.

03:57 10 Now, let me be careful because I like to be precise in
11 how I speak. As to the merchants (audio distortion), that
12 claim that someone showed up to collect cash, I wasn't born
13 yesterday so I DO understand that there are many merchants that
14 might be viewing this as an opportunity to get out of their MCA
03:57 15 obligations, and so I'm not accepting as fact that someone
16 showed up to collect cash, we're investigating it but that's
17 what's been told to us.

18 In the other instance, we actually have forwarded
19 copies of the e-mails where someone reached out to a vendor
03:57 20 from, yet, another e-mail address with Par Funding in the title
21 and did, in fact, successfully collect money that should have
22 gone to these investors, it should be in this receivership,
23 that went elsewhere instead.

24 And, again, I want to double-down and be careful
03:58 25 again. I'm not saying it was the defendants. I don't know who

1 it was. But what I'm saying is in reaching the sort of
2 conclusion like that, it would be awfully helpful to know who
3 has got access to the accounting data, and we know some of the
4 people that have access because we caught them taking it, but I
03:58 5 really do want it to turn it over to Mr. Kolaya because I want
6 to make sure that I accurately described the negotiations over
7 the Quickbooks data file and I have been monitoring it but not
8 as closely as him. So --

9 **THE COURT:** Sure, absolutely, go ahead, Mr. Kolaya.

03:58 10 **MR. KOLAYA:** Your Honor, Timothy Kolaya, counsel for
11 the receiver.

12 **MS. BERLIN:** Your Honor, if I may, I'm sorry. This is
13 Amie Riggle Berlin, thank you very much for allowing me to join
14 the Zoom. I apologize, I was in another hearing, and assure
03:58 15 you, I actually begged to be released so that I could join our
16 status conference.

17 I apologize, Your Honor.

18 **THE COURT:** Sure. Thank you for being here.

19 Okay, so Mr. Kolaya, you were saying -- let's go
03:58 20 ahead, you were picking up on the status of some of these
21 issues. Go ahead.

22 **MR. KOLAYA:** Yes, Your Honor, we have had extensive
23 meet and confers with Mr. Futerfas and Ms. Bettina Schein about
24 the Quickbooks data, and as Mr. Stumphauzer said, we are
03:59 25 absolutely willing to provide them that data. I can provide it

1 to them today. I can provide it to them tomorrow. We are
2 ready to go. There are three conditions. Number one) a
3 protective order and it has to be a very fulsome protective
4 order that gives us absolute assurances that this information
03:59 5 is not going to be used for any improper purposes. We made
6 some good progress on that front but the defendants have
7 rejected our protective order and want to use a different one.

8 On that issue, Your Honor, I'm happy to submit
9 competing orders to either Your Honor or to Judge Reinhart to
03:59 10 enter the appropriate protective order.

11 On the second issue, we did ask for an access log and
12 Mr. Futerfas or Ms. Schein, I'm not sure who forwarded the
13 e-mail, did send an e-mail from the vendor who is hosting the
14 data and it provided the last access date. That's not enough.
03:59 15 We want to know every time it was accessed, who accessed it,
16 from which IP address, we want to know where exactly this data
17 was used and where it was accessed.

18 And number three) return a copy. We have never gotten
19 a commitment from Ms. Futerfas and/or Ms. Schein, we have made
04:00 20 some progress in that respect, but they have never committed
21 that they will provide a copy back to us, and their argument
22 has been, well, it's a lot more efficient for us to simply use
23 the copy we have already taken from the company.

24 Now, frankly, Your Honor, it's a static copy. We can
04:00 25 transfer it, it's a set of data, it gets uploaded to a

1 database. There's minimal costs to return a copy they took
2 from the company improperly, to receive the copy we have agreed
3 to provide to them, and to upload it to whatever database their
4 accounting expert needs to do whatever analysis they need, and
04:00 5 we're happy to provide that, as I said, as soon as the
6 protective order is entered and as soon as we have a full
7 access log, and as soon as we receive a copy back from the
8 defendants.

9 MR. STUMPHAUZER: One last point, Your Honor --

04:01 10 THE COURT: Yeah, go ahead.

11 MR. STUMPHAUZER: -- is that Mr. Sharp, you know, I'm
12 corresponding with him sometimes as these hearings are ongoing,
13 has offered to meet with and assist the defense's expert.

14 THE COURT: So let me --

15 MR. FUTERFAS: So, Your Honor, can --

16 THE COURT: No, no, no. You are not going to be
17 chiming in until I let you okay, so let's hold you on mute so I
18 don't have to keep clicking that button, all right?

19 So here is the question I have so I totally understand
04:01 20 exactly what I'm dealing with here.

21 On the protective order, all right, I'm going to
22 streamline this. By the end of today, I want competing
23 protective orders from both sides and I'm going to enter which
24 one I think is appropriate. I'm not going to waste any more
04:01 25 time, it's preposterous to me that we are six months into this

1 litigation and we don't have an effective order that defense
2 counsel can work with so we can streamline the production. A
3 lot of what is happening here, as we saw in last night's docket
4 entry, is we don't have the data. We can't verify data. It is
04:02 5 a problem I think of counsel's own creation because it sounds
6 to me like we are trying to make data available to everybody so
7 that we all work off the same numbers. That eliminates
8 misinformation and misunderstandings. And to me, all that is
9 happening is every time we get another round of meet and
04:02 10 confer, my receiver, as he should, because it's unnecessary
11 delay, is going to have to bill for it. And I am trying to
12 keep costs manageable. So it makes no sense why we should
13 continue on with this. I would prefer that each side submit a
14 protective order by the end of today so that I can review them
04:02 15 side by side whether I decide to do some amalgamation of both
16 or I adopt one or the other, I need to look at them because I
17 cannot understand why we are still litigating that and I think
18 it's a waste of everybody's time and money to do so. So I'm
19 going to take care of that issue myself.

04:02 20 The second issue, which is, you're talking about the
21 logs. What response, Mr. Kolaya, are you getting on that,
22 meaning you've been asking for a clear set of logs so that we
23 know who is in and who is out so that we can track some of this
24 access. Are you just getting piecemeal logs or are they saying
04:03 25 they don't want to give anything to you? What's your view on

1 that specifically?

2 **MR. KOLAYA:** Your Honor, I'm not sure exactly what
3 their position is. What they provided in return was simply an
4 e-mail from Summit Hosting, which is the company that Mr. Cole
04:03 5 used to host the data that he took from the company and simply
6 provides a few user names. We don't know if it's everybody,
7 and it provides their last access date. What the defendants
8 have said is we haven't accessed this data for a long time, so,
9 therefore, you have nothing to worry about.

04:03 10 Now that may or may not be the case, we want to see a
11 full log, and this is something that these software companies
12 almost always have, it has a log of every time somebody logs
13 on, every time somebody logs off, and every time somebody
14 accesses the data. That's what we want so we can know
04:04 15 specifically which user name was accessing the data from which
16 IP address at which times.

17 **THE COURT:** So would it be possible, although I have a
18 standing order that delegates discovery issues to my magistrate
19 judge, that if I were to request that my receiver file a motion
04:04 20 to compel specifically what they need in that regard that that
21 could be filed, I could order an expedited response, and that I
22 could also render an order compelling the production of this
23 particular log? I assume that you could file something in the
24 next week or so specifically telling me what do you believe is
04:04 25 accessible and what can track all those entry points to the

1 database so that I can review it. We can get a response if the
2 defense feels it's not technologically feasible, etcetera, and
3 then I can immediately go ahead and rule on that.

4 The only reason why I would not do it as my magistrate
04:04 5 judge does it wisely through oral argument is because I
6 wouldn't want to have a motion or an order on a motion to
7 compel that doesn't specify exactly what I'm expecting in that
8 turnover of that log and information.

9 But, again, just like the protective order, to
04:05 10 streamline and try to check off the three boxes so that this
11 data can be made available, which is what I think is what we
12 need to do to put an end to different narratives, I think it
13 would be extremely useful if we went ahead and cleared that
14 issue up. Is that something that you think makes sense? Could
04:05 15 something be filed to give the Court exactly the language I
16 need and then if the defense wants to respond to whether that's
17 feasible or not they can before I rule on that. Because, quite
18 honestly, I'd like to be able to have orders in place requiring
19 production of certain materials that I can then enforce through
04:05 20 the Court's power.

21 So what would you say as to a motion on that?

22 **MR. KOLAYA:** Your Honor, we're happy to file that
23 either today or tomorrow. That's not something that's complex
24 and we're happy to provide it immediately.

04:05 25 **THE COURT:** So, again, another thing I can take off

1 the table so I can resolve it.

2 The third thing that you're worried about in terms of
3 data production and everything else is the log that you
4 mentioned in your order to show cause which -- or your motion
04:06 5 for order to show cause, rather, which indicates that that is
6 yet to be returned and that was an unauthorized access that you
7 alerted the Court about some time ago and now you have
8 requested initiation of civil contempt proceedings.

9 Now it sounds to me, and I'm going to get a brief
04:06 10 response from the defense on these three points in a few
11 minutes here, but it sounds to me like you are being told that
12 they have it. I mean, there's no dispute they have this data,
13 I don't think anyone is saying they don't have it, they just
14 don't believe it makes sense to return that static data because
04:06 15 it's easier for them to work with it.

16 Did I get that explanation correct?

17 **MR. KOLAYA:** That's correct, Your Honor, what they
18 told us is for the past several weeks or months they have not
19 been accessing the data, but they still have it and they think
04:06 20 it's more efficient for them to simply use the copies they
21 have.

22 And just to clarify one point, Your Honor, it's not
23 only the static copy of the Quickbooks database, it's also
24 several other accounting files that Mr. Cole downloaded and
04:07 25 uploaded to a new G Suite called New Logic. There is a whole

1 host, and we have a full log of the data. Ms. Schein did not
2 provide us a log of the data they have. We have filed that as
3 an attachment to some of our prior pleadings. The New Logic
4 database also contains extensive amounts, tens and tens of
04:07 5 thousands of files of accounting files from Par Funding.

6 So those are the other documents that we would like
7 returned such that the defendants no longer maintain a copy and
8 we can provide appropriate documents through production through
9 a formal process subject to a protective order so we know
04:07 10 exactly what's been produced and who has copies of which data.

11 **THE COURT:** Would it be possible, since it's, again, a
12 very specific request on what you were able to track from the
13 database that was taken out and that needs to be returned and,
14 again, this, to me -- correct me if I'm wrong -- would possibly
04:08 15 assist us in circumventing or eliminating the need, and I don't
16 know if you agree with me on this, for a civil contempt
17 proceeding because I get the sense that the thrust behind this
18 civil contempt that is being sought by the receiver and counsel
19 for the receiver is, in large part, motivated by the repeated
04:08 20 failure to return this data.

21 So in the motion that you were going to file or can
22 file to compel the log information, which is point two, it
23 seems that a second section of that, it could be a motion to
24 compel as directed by the Court, that would specify the items
04:08 25 that you believe were taken so that I could, upon review, try

1 to determine, it would be swifter to simply enter an order
2 requiring those items to be produced or sent back to the
3 receiver.

04:08 4 Does that make sense as a possible other request that
5 you could file so that I could get exactly the sense of what
6 databases you're talking about?

7 **MR. STUMPHAUZER:** Your Honor, I'd like respond to that
8 in two parts. We absolutely can provide you with a complete
9 and comprehensive list of exactly what we need so that you're
04:09 10 not left guessing, and we can, of course, put that in the form
11 of a proposed order so you don't have to try to describe the
12 minutiae, obviously, we wouldn't want to waste your time, but
13 that absolutely does not render our motion moot, and I'll let
14 you know what brought that to a head.

04:09 15 If you remember, you know, the defense never really
16 denied that they took the data. Instead, what they did is
17 filed this, quote-unquote, motion to clarify which we really
18 viewed as, you know, we violated the order so give us some
19 relief by changing what the order says. It was never unclear.
04:09 20 There was never a need to clarify.

21 So, and at various points you said, you know, if you
22 got the proof, bring it. So we spent a ton of time nailing
23 down exactly what you told us to do to prove who took what and
24 when and, more importantly, our forensic company had to spend a
04:10 25 lot of time and money because you were then provided a

1 completely false excuse, which is, oh, we didn't take anything
2 intentionally, it was an auto download, which, again, we look
3 forward to the evidentiary hearing, that, too, is false.

4 But what happened is when we finally put together our
04:10 5 bill it was just thousands and thousands of lines of entries.
6 Believe it or not, it took me multiple days to go through it
7 and what really occurred to me is I can't believe how much
8 money these investors are going to have to pay precisely
9 because the defense engaged in this conduct, violated the
04:10 10 Court's order, made affirmative misstatements, misled many,
11 many people. They should have to pay for that. They should
12 have to pay for that. There's no way these investors should
13 have to pay and we are still going to get the exact figure from
14 our DSI company, but, you know, multiple days up until midnight
04:10 15 and 3:00 in the morning trying to chase all this stuff down and
16 the defenses' only response to it was, shame on the receiver
17 for not locking down the data that we stole.

18 It's aggravating and it's got to be horrible to hear
19 as an investor. I think they should pay for it.

04:11 20 **THE COURT:** I'm fine with letting it, obviously,
21 proceed. I think that is one of the key motives behind seeking
22 the sanctions is because of all the time that, unfortunately,
23 was wasted on that, and, so I wouldn't want to give the
24 impression, we have a timeline, obviously, I believe the 22nd
04:11 25 is the deadline I set for a response to the show cause.

1 So, to me, we can separate that and that's really not
2 for today. It's just to see if that was going to be part of
3 the resolution there, and we'll let that play out on its own
4 when I get a written response from the defense on that and what
04:11 5 exactly happened and what their explanation is for the access,
6 et cetera.

7 But going back to the earlier point, I think,
8 Mr. Kolaya, you still believe that it would be beneficial --
9 correct me if I'm wrong -- even with the civil contempt issue
04:11 10 on the side, it would be beneficial that the Court explicitly
11 require the return of materials that you would spell out in a
12 motion and a proposed order, the same way you would spell out
13 what you need in terms of access logs so that the Court can
14 require that those specific access points and time and date
04:12 15 stamps be provided.

16 Is that a fair assessment?

17 **MR. KOLAYA:** Yes, Your Honor, very fair, and as I
18 mentioned, we're happy to get that on file, if not today, by
19 tomorrow at the very latest.

04:12 20 **THE COURT:** And so everyone understands, you know, the
21 reason why -- I'm going to shortcut this because what I can't
22 understand is I cannot have it be a sword and a shield issue
23 here where, you know, I'm being told that the data is being
24 processed wrong. The receiver is standing by ready to give
04:12 25 access to the data so that a competing expert or CPA can look

1 at what was produced and try on the merits with the same data
2 to put forth a similar sworn statement like that produced by
3 Mr. Sharp to counteract what defendants believe is some sort of
4 a false narrative. And so I would prefer that we put in
04:12 5 everything we can to grant that access, and if it is true that
6 the defendants feel strongly that Mr. Sharp is not able to
7 properly calculate the numbers to get the right analysis of
8 this business model, then I find it hard to believe that
9 defendants wouldn't want to jump through whatever protective
04:13 10 order hoop they need to to get this done.

11 Now I will look at that to see that something that for
12 some reason defense counsel feels is too heavy-handed, but I
13 would rather skip all of this protracted litigation and check
14 off all three boxes that the receiver, my receiver is telling
04:13 15 me is the gateway to them coordinating an expert to come over,
16 sit with DSI, sit with the people in the receiver's camp, and
17 figure out exactly where there is a divergence of opinion from
18 a true CPA perspective, not from an unsworn declaration or some
19 sort of an objection, that's not really a motion but just
04:13 20 positioning on the docket as to the views of one side regarding
21 the data versus what Sharp has produced.

22 I mean, this is not effective. It's not how I manage
23 litigation, and I don't think it helps anybody. It doesn't
24 help the defendants, it definitely doesn't help the receiver or
04:14 25 the SEC, and the ones that suffer ends up being the investors

1 and I would contemplate the Court as well because as I'm trying
2 to get my hands around the model and helping -- or using my
3 receiver whose goal it is is to clarify this for me, it makes
4 the most sense that I would try to lift all impediments to the
04:14 5 receiver being able to provide the data so that if there's an
6 argument to be made that something is being miscalculated, I
7 want to know, I want to know what that miscalculation is. But
8 that's miscalculation is not coming from the defense lawyers,
9 it should come from their expert who has access to the same
04:14 10 data that Mr. Sharp does because then I would be confronted
11 either with two different, but mathematically supported ways to
12 analyze this business and we can get into a more philosophical
13 discussion of that, or perhaps we have an expert on the defense
14 side that ends up agreeing, or at least agreeing in part, with
04:15 15 some conclusions reached by Mr. Sharp.

16 But it just -- it makes sense that I give -- you know,
17 the defendants are talking a lot about due process. I get a
18 due process indication in almost every other pleading and I'm
19 frustrated because, obviously, I can't afford all the due
04:15 20 process I'd like if we don't agree to some safeguards, and I
21 think we have all the reason and belief to need those
22 safeguards, number one) the allegations in and of themselves
23 and how the money has moved is disconcerting. It's hard to
24 track some of this money. Some of it is in different
04:15 25 entities, it's not an easy thing to see.

1 So having a little more protection I think is in
2 everyone's best interest as we litigate the case and because we
3 do have at least a purported data breach concern that worries
4 the Court. So I don't think it's heavy-handed at all for the
04:15 5 Court to get involved here and require these checkpoints that
6 Mr. Stumphauzer and Mr. Kolaya have afforded defendants as the
7 gateway to them getting the data that they so desperately need
8 so that they can schedule appointments, start working on this
9 stuff, and really get a countervailing expert opinion from the
04:16 10 defense camp, which we don't have. I'm hearing only one
11 version. Now, it's a court-appointed version. Let's remember
12 it's not the SEC's version, I keep trying to explain that, I
13 think, to my investors who believe that somehow the receiver is
14 in the SEC's camp. They have an independent obligation to me.
04:16 15 They're appointed by me. They are an extension of me.

16 So the findings that are being made by the receiver,
17 although they can be contested, are essentially court, or a
18 findings for Court approval. And so I want to approve these
19 findings and actually give them the weight and the support of
04:16 20 the Court, but when I have my flank of defense lawyers telling
21 me that they are miscalculating, I think it's time to put, you
22 know, your data where your mouth is. If that's the case, then
23 let's get you guys the data, and I want to see you guys give me
24 a -- something certified or something sworn that counteracts
04:17 25 point by point with real data from a real expert, not

1 posturing, real data from a real defense expert what Mr. Sharp
2 is saying. And if I've got to get through these hoops to get
3 there, that's what we have got to do.

4 So that's my intent. I do not -- I'm not going to
04:17 5 un-mute and listen to be a dissertation from any defense
6 counsels on this. The purpose of this call was to talk to the
7 receiver and get a clear picture. I'm going to un-mute
8 Mr. Futerfas so that I can hear point by point. This is not a
9 show for investors. This is to figure out how to get this
04:17 10 thing done. Okay? So I want to know what issues you may have
11 -- you're going to get a chance to file your protective order,
12 so I don't really think we have to deal with that. I just want
13 to help you instead of having to keep having discovery
14 hearings, to just get that done.

04:17 15 But on the second and third point, maybe you want to
16 tell me the concern you have with the log-in information. If
17 you tell me you can't technologically do it, we'll deal with
18 that another day, and that last point is just about returning
19 the data and we're going to not talk about sanctions now, but
04:18 20 I'm just wondering, you know, it seems that in good faith from
21 a meet and confer perspective, we should have returned some of
22 this stuff so that I don't have to get involved and entertain
23 any kind of sanctions.

24 But, be that as it may, do you see a problem,
04:18 25 Mr. Futerfas, for the Court trying to check off these three

1 things so I get you the access that you so desperately keep
2 asking me for? And with that, I'll turn it over to you.

3 Go ahead.

4 **MR. FUTERFAS:** Thank you, Your Honor. From my
04:18 5 perspective, Your Honor, I wholeheartedly agree with everything
6 Your Honor said in the last five minutes. Wholeheartedly.
7 That's my position on behalf of Lisa McElhone, and I believe it
8 will all be defense counsels' position.

9 I want to state, because I think Your Honor should
04:18 10 understand, that we have been requesting these materials, it's
11 not -- it's Quickbooks, it's bank records, it's merchant data
12 in terms of the cash flows, it's all the things that are
13 incorporated the report, for four months. I have filed -- I
14 have sent a subpoena to Par's accounting firm. I've sent a
04:19 15 subpoena to that firm for all tax records to get all of their
16 tax information, and to get all of the back and forth because
17 that accounting firm was literally monitoring the cash inflows
18 every single day at Par. That subpoena went out weeks ago.

19 On September 23rd, on behalf of Lisa McElhone, I filed
04:19 20 a document demand, that's more than two months ago, three
21 months ago, with the receiver for all the documents that we are
22 talking about today. My document demand was dated September
23 23rd. I then followed it up with a second document demand,
24 maybe six weeks ago, and last night, after I got the receiver's
04:20 25 report, or Sunday night, we received the DSI report, I sent a

1 third document demand, either this morning or last night,
2 requesting specifically every piece of paper they reviewed or
3 considered in determining their report.

4 So just so we're -- and at each time, by the way, we
04:20 5 let the receiver know and the SEC knows and probably some of
6 our filings to Your Honor, that we hired forensic accountants.
7 I am not a CPA. I am not a forensic accountant. We hired
8 forensic accountants three-and-a-half months ago, one of the
9 most reputable accounting firms in Miami, or three months ago.
04:20 10 They have been on standby to receive material.

11 So just so the record is clear, very clear, we have
12 been asking for documents so we could do just what Your Honor
13 expects us to do, file declarations by CPAs and forensic people
14 who looked at underlying data, who know what they're doing, are
04:21 15 independent, are responsible, and can provide whatever guidance
16 to the Court and to us, quite frankly, because we need to know
17 that, too, Your Honor.

18 You know, we're advocates, we're lawyers, hopefully
19 we're decent at what we do, but we can only work with the
04:21 20 information that we have. So it's helpful for to, obviously,
21 to understand from people that he hire what the facts are. So
22 it's important for all of us, including Your Honor and the
23 lawyers.

24 **THE COURT:** And let me ask you something because I
04:21 25 think the challenge I'm having here is it's not my practice

1 nor, quite honestly, with the amount, the caliber of expertise
2 on this Zoom, the amount of defense lawyers in the community on
3 this case who are very seasoned, the receiver's background, the
4 SEC, it shouldn't -- this shouldn't happen. I shouldn't have
04:21 5 to get into this kind of weeds in the discovery process. But I
6 think this is -- and I don't want to shortcut or circumvent the
7 discovery process -- an ongoing Request For Production,
8 depositions. I don't want to do that.

9 I think what I'm focused on, though, is I think it
04:22 10 would benefit everyone if we, number one) the Court gets
11 involved at a granular level right now as I've asked Mr. Kolaya
12 to help the Court do, so I can take away the three key
13 roadblocks that the receiver feels if I can address will allow
14 me to unlock the keys to all the data that you guys need to
04:22 15 begin to study to figure out exactly where the discrepancies
16 are. So that's the first step.

17 The second step is, I just want to make sure, and this
18 will be, quite honestly, my goal behind this, that every piece
19 of data that Mr. Sharp used to prepare this affidavit be
04:22 20 provided pursuant to the guidelines I put in place to a defense
21 expert. And that would be the goal so that a defense expert
22 can come in and study this data, and whether that comes out to
23 be something that is used later on in trial or at some other
24 phase, so be it, but I think it's something that I would like
04:23 25 to see in the court file, an actual representation of what the

1 defense camp feels an expert can give a snapshot about when it
2 comes to this company. I think that would be helpful for
3 everyone and it would be part and parcel of ongoing discovery,
4 but at least that would let us know where in this case are
04:23 5 there discrepancies, you know, and that's what I'm trying to
6 figure out.

7 And so does it make sense that we would kind of
8 streamline, at least this portion of discovery, so that you
9 guys have pointed out in your response, we don't know where
04:23 10 Sharp's conclusions are being based off of, what data, we want
11 to see all that. I can at least require that anything and
12 everything Sharp used to get here, he turned over to your
13 expert and provided we get these checkboxes done, right?
14 Doesn't that make sense?

04:23 15 **MR. FUTERFAS:** Let me answer very quickly. That's
16 exactly what my discovery demand was last night that I served
17 on everybody. Here is where we are. We had actually set up
18 for next week an appearance with the magistrate to deal with
19 these issues, but now before Your Honor I can give them very
04:24 20 quickly, very quickly.

21 We have always agreed to a protective order. In fact,
22 we proposed a protective order in writing in e-mail back when
23 Mr. Fridman was representing before Mr. Soto came in, back when
24 Mr. Fridman was involved three months ago. We have e-mails
04:24 25 proposing a protective order over this material three months

1 ago in e-mail. The only issue today on the protective order is
2 this: There are two versions of protective orders and we'll
3 send them to Your Honor later. But, very simply, I can tell
4 Your Honor what the issue is.

04:24 5 The protective order that we proposed is one that's
6 been used in other SEC cases like this one. It's simple, it's
7 clear. It allows either side to designate things as
8 confidential information. It also says that anything that's
9 been put in the record to date, in the public record, is not
04:25 10 subject to a protective order. And based on Mr. Kolaya --
11 Mr. Kolaya and I have actually been in very close touch about
12 this, Your Honor, because Mr. Kolaya yesterday sent me an
13 e-mail in response to my latest version of the protective order
14 he said, "Yeah, but we're particularly concerned about merchant
04:25 15 information, contact information, things like that."

16 You know what I did? I immediately went to my draft.
17 I revised it to accord with his concerns, and I sent him a
18 revised version which included exactly what he wanted word for
19 word in my version of the protective order. So we have a
04:25 20 simple version that's been used in other SEC cases that has
21 exactly the language that Mr. Kolaya was concerned about with
22 respect to the merchant contact information in our version.

23 The one that they had proposed about a week ago or so,
24 Your Honor, is -- Your Honor can see them, but it's very
04:26 25 convoluted and I think it would just lead to a lot more

1 litigation about what's in or what's out a protective order.

2 The one that we proposed --

3 **THE COURT:** I'll tell you this. Listen, I get it,
4 but, look, I'll read the protective orders, you guys tell me
04:26 5 what you agree, you tell me where's a difference, I'll be the
6 judge of that. If I think that it's unnecessary and litigious,
7 I'll strip it out. If I think it gives me cause or concern
8 because it's going to be complicating matters, I'll strip it
9 out.

04:26 10 I think at this point, you don't have -- we've been
11 litigating for three months, like the bottom line is the rubber
12 hits the road. We have a district judge that's ripping things
13 out of his mag's hands because he wants to get things done, you
14 know you've gone to the limit.

04:26 15 So let's just send it to me and I'll read it. That's
16 it. All right.

17 **MR. FUTERFAS:** That's number one.

18 **THE COURT:** So give me second point, give me that
19 second point on the logs. Go ahead.

04:26 20 **MR. FUTERFAS:** The logs is, just to give you just a
21 hair of background on that, it's really more Ms. Schein's issue
22 but I'll give you a hair of background on that. Your Honor may
23 recall from some of the pleadings that prior to the institution
24 of this case in late July of 2020, the law firm representing
04:27 25 the company Fox Rothschild recommended that they back up

1 documents and they back up financial files. They clearly made
2 their recommendation to Joe Cole. Joe Cole did that. So the
3 files we're talking about are files that were created at the
4 recommendation of Fox Rothschild towards the end of July before
04:27 5 -- it was the third week of July, fourth, whatever it was
6 before this action was actually instituted.

7 Now, in addition to that, about two, two-and-a-half
8 months ago, Ms. Schein and, again, she can address this but
9 everything is in writing that I'm telling you. Ms. Schein
04:27 10 advised the receiver of a G Suite, of a separate G Suite that
11 Mr. Cole had set up, again, at the direction of counsel. She
12 wrote to the receiver two-and-a-half months ago and she said,
13 "Here is the access information to look at to get that
14 information." And she asked the receiver flat out, "What would
04:28 15 you like me to do? Would you like me to delete the
16 information? Would you like me to send you the information?
17 What would you like me to do? We are not going to access it."

18 She never heard back from the receiver. That e-mail
19 is there. It was sent. This Suite, the static copy of the
04:28 20 Quickbooks that Mr. Kolaya is talking about now was a static
21 copy that was created, again, at the request of counsel before
22 the receivership in late July 2020. Okay. That's a static
23 copy. What Ms. Schein told the receiver was it's hosted
24 remotely. It's hosted remotely.

04:28 25 So what Ms. Schein said to the receiver is, "Look, I

1 will give you access. I haven't looked at it. The defense has
2 not looked at those documents. We don't have access to them
3 because of prior court orders. So we don't have them. But
4 they're out there and they're hosted," and she said to the
04:29 5 receiver, "If you want access, take 00 go get access. We'd
6 like access, too, because it's the same set of materials and we
7 can move forward."

8 May I just tell Your Honor the same Quickbooks also
9 the receiver has in five other places. They had it on the Par
04:29 10 G Suite when they took over in July 28, 2020. They had it on
11 various computers that they seized where they got access to.
12 So those same static Quickbooks is all over Par. They have had
13 those documents since they took over. This is just yet another
14 copy.

04:29 15 So the bottom line is, Your Honor, I just want the
16 record to be clear what the actual context is of this. So what
17 I'm saying to Your Honor is in terms of this log, they asked
18 for a log, Ms. Schein contacted the company directly that hosts
19 the site, got information directly from the company, and
04:30 20 forwarded it right to the receiver. But whatever additional
21 log the receiver wants, Your Honor orders, we will do in three
22 hours. You don't even have to wait for an order, you don't
23 have to wait for a motion, they don't have to move, we're not
24 going to oppose. If Your Honor says, "Look, I want to
04:30 25 streamline this, I want these two protective orders tonight, I

1 want to look at them," number one.

2 Number two) whatever log they want about access to
3 this particular, it's called Summit Hosting, get that log and
4 provide it, that's it. We don't need a motion, we don't have
04:30 5 to waste the time or the resources, we'll go, whatever
6 information Summit Hosting has about access to that, we'll get
7 it and we'll forward it directly to the receiver. We have had
8 an account -- a CPA firm, the best firm in Miami, at least as
9 reportedly are, best forensic accounting firm on hold for three
04:31 10 months. I served a document request last night which asked for
11 exactly what Your Honor just said, every piece of paper the
12 receiver or DSI looked at, considered or reviewed to have the
13 report, we'll get that, we'll give it to our people, we'll let
14 them work it up, and I would like nothing better.

04:31 15 So the defense joins Your Honor's *sua sponte*
16 application one thousand percent.

17 **THE COURT:** Well, I will say this. I think the
18 important thing is Mr. Kolaya, having heard the representations
19 from defense counsel, whether we can do this by way of simply
04:31 20 suggesting to the court or filing a joint motion, or perhaps it
21 is in the form of an agreed order that you guys are able to
22 craft, a proposed agreed order for the Court's review on the
23 heels of today's status conference, I am prepared and I'm
24 asking that all defense counsels and the receiver sit down and
04:31 25 get this done. And I mean that in all seriousness that these

1 three obstacles that have prevented us from getting where we
2 need to go, if the protective order comes down to us simply
3 getting me competing protective orders, that's fine. I can
4 make that call on my own. But the other two issues which seem
04:32 5 to be not really opposed, I think that we should be able to
6 craft a resolution on that. And I would much rather see a
7 joint filing with an update, and I think the best thing to do
8 is perhaps give us until, let's say, Friday or even Thursday,
9 maybe we do 48 hours, so that I can get an update as to
04:32 10 discussions being had.

11 You guys all, I think, understand the will of the
12 Court. It is to resolve the protective order issue. It is to
13 take this off Reinhart's plate by basically resolving both the
14 access and the return of the spreadsheet or whatever else was
04:32 15 taken off the Suite. I should be able -- those two other
16 issues, I think the parties understand that either you agree to
17 something with a timeline you can all live with together or I
18 have my receiver file a motion and then and I'm going review it
19 and then I'm going to enter a different order.

04:33 20 So it makes sense that the parties work out a timeline
21 to return these materials and, quite honestly, it seems to me
22 that you guys should do one better and that is that you should
23 be able to provide to me that upon the Court's blessing of one
24 of the protective orders or a combination of the two, and the
04:33 25 satisfaction of these other two requirements of access and

1 return of data, that by a date certain the parties will go
2 ahead and schedule, whether we want to call it an inspection of
3 the books and records utilized by Mr. Sharp through a defense
4 expert, or their production, but there should already be
04:33 5 something in place. I think you guys should agree to it. I
6 have no problem memorializing it. If we need to handhold
7 everybody so that we have deadlines for which we're going to
8 have an expert come see it, great. But I'm trying to take
9 issues off the table and so what I think we need to do is you
04:33 10 guys I think all -- it's unmistakable what I'm trying to do, I
11 think the parties understand if you get it done on your own or
12 Court intervention will get it done for you. It's one or the
13 other.

14 I think you guys are sophisticated enough without to
04:34 15 figure out what works best for you without me getting involved,
16 but I stand at the ready, Mr. Kolaya, that if you are going to
17 spend the next 48 hours, and you don't get an answer and we're
18 spinning our gears for three months, file what you need to file
19 asking for the relief you need, whether that, you know,
04:34 20 protective order competing drafts, whether that is I want this
21 particular information we tracked being taken from the database
22 returned, and this particular set of log-in information
23 produced, I'm happy to do that and put it with a date certain,
24 and we put some momentum behind this because this is now, I
04:34 25 think, the second or third time I've heard about this back and

1 forth and it's not getting any better, and all I -- and this is
2 why I have docket entry 430 because it's defense who are saying
3 we can't verify Sharp's data, but a lot of that is the parties
4 haven't been able to meet and confer successfully on these
04:34 5 things.

6 Now I have know that I have a lot of other defense
7 lawyers. I've heard a lot from Mr. Futerfas. I don't want to
8 go ahead and have everybody weigh in yet. Quite honestly, I
9 think he speaks for Ms. Schein and for Mr. Fridman, so just
04:35 10 briefly, I want to make sure you guys are in agreement for the
11 rest of the team that's been handling this and I know
12 Mr. Hirschhorn also signed off on yesterday's pleading, but I
13 think this is a good solution to try to take away this
14 roadblock on what seems to be a discovery issue. I just want
04:35 15 to make sure that everyone is in agreement with Mr. Futerfas
16 who is representing, kind of talking on behalf of all of the
17 defendants, is everybody in agreement that we should be able to
18 work this out, at least if not by way of competing protective
19 orders, but maybe you guys can give me some language on the
04:35 20 other two items and, if not, I'll just rule on whatever the
21 receiver files and if he's got to file it, he's got to file it
22 so we put an end to this.

23 Mr. Fridman, if you are there, do you have a
24 particular view on this or are you in agreement that this has
04:35 25 been a roadblock you want to get rid of as well, like Mr.

1 Futerfas said?

2 MR. SOTO: Your Honor, this is Alex Soto. Mr.
3 Fridman --

4 THE COURT: I'm sorry, I'm sorry, Mr. Soto. Go ahead.

04:36 5 MR. SOTO: Your Honor, I'm obviously in full agreement
6 with what's been proposed. The defendants' access to the
7 documents has been the biggest impediment to this point. There
8 is no need to rehash what's been said, we're in agreement, and
9 we appreciate the Court's intervention in order to get that
04:36 10 problem resolved.

11 I would like to just ask the Court now that I have a
12 moment, and I will be brief, to recognize that to this point
13 based probably, in part, on each side's inability to come to an
14 agreement as you've seen, we haven't had the documents. And
04:36 15 one of the points that I want the Court to just appreciate for
16 a moment is that when we started this status conference Your
17 Honor said very clearly that you were -- you understood the
18 context of this proceeding that you were only hearing from the
19 receiver, from one side.

04:36 20 We haven't had an opportunity to test the allegations,
21 the assertions made by the receiver on Sunday night. That's
22 what we'd like to do. We stand ready to do that. But, Your
23 Honor, to this point, the status conferences have taken a
24 particular sort of pattern, which is the receiver on at least
04:37 25 -- on more than one occasion has filed reports shortly before

1 the status conference basing allegations, assertions, not just
2 collection efforts and amounts, which is typically what's done
3 in receiver reports, but assertions with respect to the conduct
4 of the defendants based on documents that we, to this point,
04:37 5 have not had an opportunity to possess, review or provide to an
6 accountant.

7 I would ask the Court to consider requiring the
8 receiver to, if it's going to prepare a report, present a
9 report, to do so no later than 14 days before any status
04:37 10 conference to give the defense an opportunity to review and
11 test those allegations before we have a status conference.

12 **THE COURT:** Let me address that, a couple things.

13 One) I think you would agree with me that that is
14 precisely why I'm trying to lift the impediments to the data
04:38 15 because I think, Mr. Soto, you would agree that what good is a
16 response from you guys if I cancelled this without the data.

17 **MR. SOTO:** Absolutely.

18 **THE COURT:** It's worthless, right? It's worthless.
19 The problem is I get this and it's -- okay, I get where you
04:38 20 guys are coming from and Mr. Stumphauzer is trying to
21 extrapolate your numbers, but what hurts is I want to give you
22 a fulsome response but until you have access, your responses
23 aren't verifiable because I don't have any of your experts
24 looking at the same data.

04:38 25 So my view on this is let's get the same data in the

1 same room with the defense expert so that if there's a true
2 problem with the methodology, we can figure this out. If
3 there's something that Mr. Sharp is missing, if there's
4 something there that he wasn't aware of that is a collection
04:38 5 prong for the benefit of investors, let it be flagged by a
6 defense expert or maybe some minutia in the data that may have
7 been missed because we all know it is a lot of numbers, a lot
8 of data over several years, mistakes can happen. So a second
9 set of eyes I don't think hurts anybody.

04:38 10 Now, to your earlier point about timing, I will pledge
11 this to all of the defense lawyers who are concerned about this
12 that in the next setting that I have for a status conference,
13 my paperless order will have a deadline by which to submit any
14 documents to be considered at the status conference, and I will
04:39 15 do that with enough time so that if the receiver is submitting
16 something for my review, that what we make sure happens is
17 everyone sees that with enough time to file a response that I
18 can digest before the status.

19 So going from here on out, I can tell you that I agree
04:39 20 with you a hundred percent. So that we don't have any sense of
21 a gotcha or an inability to prepare, what we're going to do is
22 we're just going to have a drop dead deadline for anything you
23 want to us discuss well before the actual status conference.
24 And I think if we do that, this won't happen again, but I agree
04:39 25 that you need access if we're going to have any kind of merit-

1 based response. And the only way to do that is for me to get
2 you guys in the same room in which Sharp is looking at and the
3 only way to do that is to take care of the three issues Mr.
4 Kolaya has mentioned that we have yet, after three months, not
04:40 5 been able to agree on.

6 So now I'm going to get involved, I'll roll up my
7 sleeves, I'll issue a couple orders, you guys work it out,
8 great. If not, don't worry about it, I'll take care of it by
9 entering orders that require compliance and we'll go from
04:40 10 there.

11 So does that take care, I think, of some of your
12 concern?

13 **MR. SOTO:** Yes, Your Honor.

14 **THE COURT:** Excellent. Ms. Schein, I wanted to hear
04:40 15 from you as well if you wanted to chime in just to make sure
16 you agree with the Court's strategy to try to eliminate
17 discovery battles, get you guys away from having to go through
18 another round of this because you'd end up going to see me,
19 then you're going to see Reinhart, I can think of no more
04:40 20 efficient way that to just streamline this by the end of the
21 week and get orders in place to start eliminating these
22 barriers to the data you guys need.

23 Any disagreement or concerns on this?

24 **MS. SCHEIN:** No, Your Honor. Thank you very much for
04:40 25 recognizing what the problem has been and what we have been

1 arguing with the receiver to turn over these documents since
2 August.

3 With regard to my client Mr. Cole, there has not been
4 any unauthorized access. He set up the hosting of the static
04:40 5 copy of the Quickbooks which we have asked for from the
6 receiver since August, a static copy as of the date prior --
7 the date the receiver took over. We're talking about in July,
8 just that static copy. And he put that on. He didn't access
9 it. All he did was check to see if the remote desk access was
04:41 10 working properly so that when the accountants, expert
11 accountants were hired, they would be able to access the data
12 from their desks.

13 So what I proposed to Mr. Kolaya is that in order to
14 not incur additional costs by the receiver, or additional legal
04:41 15 fees, that we be permitted to provide this static copy which is
16 hosted by Summit Hosting, to the accountants to start looking
17 at the copy of the Quickbooks. I think it's the most
18 expeditious way and it won't incur any additional cost.

19 If the receiver wants to look at that static copy,
04:42 20 which they have already several copies of it, they can take a
21 look at it, but you need a license. The way Summit hosts, each
22 person who looks at it has to have a license to look at it,
23 it's hosted on a site, it's not possessed, a copy of it isn't
24 possessed by anyone. So it's on a Summit Hosting site.

04:42 25 So there's been -- no one else has accessed it.

1 Mr. Cole has checked the remote desk access and that's it.

2 So we propose to Your Honor that this be the static
3 copy of the Quickbooks to be used by our accountants who are,
4 if I could say, in the bullpen ready to receive these
04:42 5 documents.

6 **THE COURT:** Now let me ask you a couple of questions
7 just to follow up on that. I want to make clear because I
8 don't know, do we agree, and, Mr. Kolaya, you may want to chime
9 in, do we have an agreement on prong three -- remember prong
04:43 10 one, competing protective orders. Prong two deals with what
11 you're asking them to give you in terms of log-in. I'm going
12 to guess if it hasn't been resolved by everyone meeting and
13 conferring by now, it isn't going happen in the next 48 hours.
14 Maybe I'm being a little too cynical and you guys work it out,
04:43 15 but if not, I've already been told that you can provide me
16 exactly what log-in info you need.

17 That third prong, you guys have a finite set of items
18 you believe were improperly and in contravention of court
19 orders taken from the Suite. You, I'm assuming, have provided
04:43 20 that to Ms. Schein and other defense counsels and said, "This
21 is specifically what we want back," and according to the motion
22 for civil contempt that has not happened.

23 Am I going -- either I'm going have an order that I
24 enter that says, "Return these items," I mean, if there's no
04:43 25 dispute that they have them, or am I going to have a back and

1 forth on this tangential issue which is, again, more akin to
2 the civil contempt part but something that I'm just trying to
3 get out of the way so the receiver feels like you can open up
4 the coffers, let them look at your data.

04:44 5 What's your take on that last prong? I'm just worried
6 that I have mixed signals here about what they have and what
7 they don't have and what they can return. I don't want to
8 create more litigation on this point.

9 What do you think, Mr. Kolaya, on that?

04:44 10 **MR. KOLAYA:** Your Honor, there are two sources of
11 data. The first one is a Quickbooks database that Mr. Cole is
12 hosting on Summit Hosting. The second category is all the
13 other accounting files that he uploaded to a server called New
14 Logic.

04:44 15 To the best of my knowledge, and we have had
16 discussions with Ms. Schein about this over e-mail and
17 otherwise, it's not in dispute that Mr. Cole has and is hosting
18 these two sets of data. It is the receiver's position that the
19 data has to be returned. Under the receivership order we get
04:44 20 exclusive control of the receivership property.

21 At that time, we are prepared, I have a static copy of
22 the Quickbooks database in my possession ready to produce
23 subject to a protective order. What we're not comfortable
24 doing is simply releasing the data and allowing them to
04:45 25 continue to access what they have. We want them to return it

1 and we will then provide it in a very controlled, organized
2 fashion, pursuant to a protective order, pursuant to a data
3 transfer that we control.

4 **THE COURT:** Okay. I think the best thing to do is to
04:45 5 provide the proposed language that you need to Ms. Schein and
6 the other defense counsels to see if we can get some agreement
7 on the universe of documents. At the end of the day, I think
8 it's a good faith exchange, quite honestly, given that we have
9 down the pike this issue of contempt coming up and access which
04:45 10 we're going to have a more formal hearing on when the time
11 comes.

12 One of the things that I think would be wise is to try
13 to get whatever data was procured by whatever means back in the
14 receiver's hands so that, again, we can get access to what we
04:45 15 need.

16 So that takes care of, I think, this piece of the
17 conversation, and I want to touch a couple more things here
18 before we wrap up today.

19 So, obviously, I don't necessarily know how to word it
04:46 20 artfully because we talked about a lot of things, but I think
21 that I will put something very simple and paperless together
22 for the receiver to essentially take a look at with defense
23 counsel that will require that in order to facilitate the
24 orderly progress of discovery, the receiver and defendants and
04:46 25 the SEC will all meet and confer in an attempt to provide the

1 Court with protective order, number one; return of materials,
2 number two; and access to the Suite, something to that effect
3 or maybe I'll just generically say, you know, impediments to
4 discovery. We all know what the three silos are, and then if
04:46 5 we can't reach an agreement on that, then motions can be filed
6 by the receiver specifically requesting relief, and this will
7 circumvent having to re-litigate this in front of my mag who
8 doesn't have the benefit of dealing with all of this
9 day-to-day. So I think this will streamline it, but, again,
04:47 10 the goal is that we check these boxes and the minute that
11 defense counsels comply with these requirements that I will
12 shape, then the receiver has the authority and the ability, on
13 behalf of the Court, to allow the expert from the defense to
14 begin to look through this data. And the hope is that we will
04:47 15 have a much simpler and more streamlined picture of this
16 company. Even if we have two versions of what this business
17 was about, they will be tethered in the same amount of data and
18 I think that will avoid, to Mr. Stumphauzer's original point,
19 not having declarations or statements that are not backed by
04:47 20 verifiable numbers and math. We need to get our hands around
21 the black and white of this business to the extent possible,
22 and I'm trying to lift roadblocks to that.

23 Now, I want to pivot, this is very important, there
24 are a couple of other things we need to talk about on my
04:47 25 agenda, and the number one next thing we need to talk about is

1 expansion of the receiver.

2 Now, let me be very clear. I know that there's been a
3 request to have oral argument on this point. I'm not, at 4:45,
4 going to open up the floor to oral argument on this point.

04:48 5 This is a motion that I have read in full and I'm all but
6 prepared to rule on it. However, I want to point out the fact
7 that I held off on ruling at the request of Mr. Fridman and
8 Mr. Soto who indicated to me that mediation on December 7 could
9 possibly help resolve the case. We know that that never came
04:48 10 to pass. I don't know if that was even a successful endeavor
11 when you guys went to mediation but, obviously, I held off on
12 the expansion of the receiver until that date came and went.
13 That date and has come and gone. I am now fully prepared and
14 read everything on the expansion of the receiver.

04:48 15 It is a very significant development in the case. If
16 the Court goes ahead and expands the receiver, as requested, it
17 will, I think, and I think defense lawyers recognize,
18 dramatically shift the case in the sense of scope and breadth
19 regarding what the receiver is going to be able to control. I
04:49 20 am very much aware of that.

21 I'm also aware of the reasons why the receiver feels
22 that needs to be done, and I've been attempting, as I've read
23 all the pleadings, to balance out with least intrusive means,
24 but I have a couple of very, very clean, small little questions
04:49 25 that I wanted to ask Mr. Stumphauzer or Mr. Kolaya or

1 Mr. Alfano on this particular motion that I think would help
2 the Court. I don't need to open up to oral argument, but there
3 are little details that I want to ask you guys on this motion.

4 The first one is why we need to expand with some of
04:49 5 the protective measures we have in place? Specifically, we
6 have that asset freeze and I understood that asset freeze to be
7 sufficient to save any or prevent any dissipation of assets.

8 Now, I don't know if the argument from the receiver,
9 as I see in the reply, is, "Judge, that would all be well and
04:50 10 good in the normal course. The problem is we have had this
11 unauthorized access. We have concerns that what's in place is
12 not enough." I think that's what I gleaned from the reply, and
13 if that's the case, that's fine. But I don't want to
14 misinterpret the receiver's position because I will confess,
04:50 15 you guys have held off on requesting this for a little while.
16 Part of it was because you needed to see if the money was
17 commingled and I'm not going to get into the fight over
18 disgorgement versus commingling versus tainted assets. I have
19 read all the cases. I am not going to get into that.

04:50 20 I do want to find out from the receiver why we think
21 what we have in place is not good enough. Can you tell me, Mr.
22 Stumphauzer, why we need to take the next step and then I have
23 a couple, one or two followups on that. But that's the
24 overarching concern I think we all have here is, can we put the
04:50 25 receiver in a position now to expand this broadly without, you

1 know, things getting unwieldy and do we need to do this in
2 order to protect investors, because that's the thrust of this
3 entire thing. How can we get these assets for the benefit of
4 investors and I want to know I what -- or protect them because,
04:51 5 again, this doesn't mean we're going to disburse anything, it
6 just means we're not going to lose out on these by the end of
7 the litigation because they won't disappear, they will be
8 dissipated.

9 What does the receiver say as to that question from
04:51 10 the Court?

11 **MR. ALFANO:** It is absolutely necessary for the
12 protection of investors and the asset freeze isn't sufficient.
13 The bulk of the diverted funds are in the profits. They're not
14 subject to an asset freeze. And all the suggestions that are
04:51 15 in place about we won't do anything with the properties and
16 we'll give you access to bank records, quite frankly, isn't
17 enough.

18 We don't know what's happened with those properties
19 and I can give you an example that's occurring right now in
04:51 20 Philadelphia.

21 The first four entities that are subject to our motion
22 to expand are four condominium offices on North Third Street in
23 Philadelphia. There was, in March, owned by CBSG, Par, it's
24 where Full Spectrum operates out of it. There was a demand by
04:52 25 the condominium association for the payment of \$300,000 in

1 assessments that was made in March that the defendants never
2 honored that demand. That property is now subject to an action
3 in contract here in Philadelphia for those unpaid fees as well
4 as foreclosure actions against each of those four properties.

04:52 5 That association has been in touch with us. We have no
6 authority to act there. That property is not subject to the
7 receivership. We don't have the benefit of the litigation
8 injunction. And it is absolutely at risk of being dissipated.

9 **THE COURT:** Mr. Alfano, not to interrupt, as you're
04:52 10 making that point I would surmise then that a lis pendens would
11 be insufficient to protect this concern.

12 **MR. ALFANO:** Absolutely, it's not going to prevent a
13 foreclosure action, Your Honor. I mean, it would just put them
14 on notice that there's a claim, but that's not going to prevent
04:53 15 a foreclosure action.

16 That's why we need control. We need to be able to
17 speak, continue to speak directly with the property manager
18 with no impediments. We need the control over those properties
19 and, again, let me flip this around as far as the way the
04:53 20 defendants portray it.

21 We can't sell those properties, or do anything with
22 those properties if they are added to the receivership without
23 Your Honor's permission. So there would be full notice and due
24 process. But we would certainly have the benefit of knowing
04:53 25 what's happening with those properties, controlling them, if

1 they're being utilized in any other way, because the path of
2 the diverted funds, the investor funds right into those
3 properties, it's very direct, and we need that.

4 We need the expansion over the other consulting
04:53 5 companies. Certain of those consulting companies have made
6 separate transactions, sometimes loans to some -- and, again,
7 I'm talking about loans, not merchant cash advances, but
8 actually loans that secure real property to certain merchants
9 that are in this portfolio, and we're unable to resolve matters
04:54 10 with those merchants with respect to their cash advances
11 because those properties and those agreements are impinged by
12 those other transactions.

13 For instance, in Colorado Homes, there is a common
14 interest agreement with Pink Lion. Pink Lion is just an entity
04:54 15 that was create Ms. McElhone to take an interest in a merchant
16 who was not keeping current with his merchant cash advance.
17 They provided that merchant through one of the consulting
18 companies' additional funds.

19 Now, we have no control over that. And that merchant
04:54 20 has come to us and said, for instance, "You know, I want to
21 refinance, but I need to resolve these common interest
22 agreements."

23 We have no control over that. We don't control the
24 consulting company that made the loan. We don't control the
04:55 25 company the nominally has its interest in the common interest

1 agreement. So we cannot protect the investor's interest
2 without Your Honor expanding the receivership as we have asked.

3 And those are just the two most recent examples that
4 come to mind.

04:55 5 **THE COURT:** And, like I said, I want, because I know
6 there's a -- there's someone talking if you could silence your
7 iPhone, please, or your phone.

8 I am look through every single line of this, again, I
9 have read the motion a couple of times, and so I'm trying to
04:55 10 decide if there's a combination of relief, if full relief, so I
11 want the defendants to understand I need it for clarification
12 of the pleadings. This is not an issue of entertaining oral
13 argument today, and if I need oral argument, you will be
14 prompted to present oral argument at this point, but I just
04:55 15 wanted to get into it.

16 The only other question I really have that I want to
17 touch on, and, Mr. Alfano, you can follow up with me on this.
18 I would venture a guess that if we expand the receiver, it
19 would absolutely enable us to make a larger potential recovery
04:56 20 for all investors.

21 **MR. ALFANO:** There's absolutely no question about
22 that, Your Honor. Those properties in Philadelphia in
23 particular are worth tens of millions of dollars.

24 **THE COURT:** In fact, I would venture a guess that
04:56 25 looking at commingling of funds and everything that is moved

1 around here, that ultimately, even if we find ourselves in an
2 inability to collect on outstanding loans as much as we would
3 like, we will never be able to make up the shortfall, but we
4 can at least significantly close the gap if we have control
04:56 5 down the line. Again, we need to remember, this is for
6 dissipation and protection so that everyone understands what
7 we're talking about, this isn't about disgorgement at this
8 junction, but this is to make sure that if we get to the end of
9 this litigation, that we have funds that are sitting and
04:56 10 protected for the benefit of investors if the evidence leads us
11 to disbursing these funds for the benefit of investors, but I
12 think it's pretty clear to me, again, maybe if circumstances
13 change on some of the loans, but that the efforts on collection
14 I think are going to a major struggle, whereas a lot of the
04:57 15 money that is sitting in real estate and in some of these other
16 companies is readily ascertainable and could at least provide
17 investors a lot more relief than anything we may be able to
18 get, especially from the exclusive portfolio that dominates the
19 holdings of the MCA, right?

04:57 20 I mean, a lot of this money that -- you know, we talk
21 a lot about chasing the money, the investors write me every day
22 and they say, "What's happening to our loans, Judge, collect
23 our loans," and we have attempted, I think, through the
24 receiver's presentations to explain some of these loans are
04:57 25 very difficult or challenging to collect given the

1 circumstances under which some of these businesses find
2 themselves, whether it's criminal, bankruptcy, foreclosure or
3 otherwise.

4 But the expansion is talking about money that went to
04:57 5 some of these related entities, properties and investments,
6 and similar to the initial seizure of the airplane and other
7 things that was very easily verifiable, this gives us funds
8 that we can actually look at that don't require collection
9 efforts, but can be protected by the receiver as a potential
04:58 10 benefit for investors at the end of the day.

11 Is that a correct statement of how things look?

12 **MR. ALFANO:** Your Honor, absolutely. There's no
13 question about that, and, again, they would be within the
14 Court's jurisdiction and we couldn't take any significant
04:58 15 action with respect to those assets without Your Honor's
16 approval.

17 **THE COURT:** Right. Meaning, again, that a lot of the
18 concerns we're having on this, I think, I don't want to say
19 they're overblown, but all we're doing is we're putting in an
04:58 20 extra level of protection on some of these entities.

21 Now, that's not to say that the Court doesn't have to
22 satisfy itself that the standard is met on some of the law that
23 has been presented to me to make sure I'm not granting the
24 receiver powers in equity they're not entitled to have or that
04:58 25 they haven't made a sufficient preliminary showing to ask for,

1 but I just wanted to get that clarification.

2 So I appreciate that, and for the benefit of all
3 defendants to understand, the Court is going to attempt to rule
4 on that expansion as soon as possible.

04:58 5 I will just ask Mr. Alfano, again, I don't know if you
6 were privy to it, I really held off on this only because, you
7 know, I'm reading tea leaves, I was asked by defendants give
8 use a chance to work this out.

9 Do we have even a conversation because before I pull
04:59 10 the trigger on the expansion, I don't know if conversations are
11 even ongoing for resolution. I mean, I don't even -- it sounds
12 to me like they aren't. I mean, if we can't even get
13 production of data, we are nowhere near this and the Court
14 should be ready to rule, but I did want to ask you if there is
04:59 15 any development in that front so that I can rule or should hold
16 off on ruling, because I think at this point we just have to
17 deal with this expansion, right?

18 **MR. ALFANO:** Your Honor, I would ask you to simply
19 rule. We haven't had a conversation about this since before
04:59 20 the mediation and, again, I wasn't privy, the receiver was not
21 privy to the mediation, what occurred there, but this hasn't
22 been resolved and we would ask you to rule.

23 **THE COURT:** So I will make this promise to all parties
24 here that by the end of the week, the Court will have ruled on
04:59 25 the expansion, whether I grant, deny, or find something in the

1 middle, I am going to go back, take a look at this. I just
2 wanted to double-check my intuition on some of the pleading
3 that I read so that I can figure out what exactly I'm able to
4 do and the comfort level I have in regards to opening up the
05:00 5 receiver.

6 You know, I do understand that Mr. Abbonizio has his
7 own little issue on New Field. I'm looking at that as well so
8 I don't want Mr. Abbonizio's counsel to see that we are not
9 seeing his arguments on that point as well.

05:00 10 Let me finish, if I could because, again, this is not
11 oral argument and we have already, I think, taken care of the
12 discovery roadblock and we're going move to that.

13 I want to point out a couple -- one second. I want to
14 point out a couple of other deadlines, if you will, that are
05:00 15 fast approaching and the Court is looking out for.

16 I'm aware that joint motion to dismiss is not yet
17 ripe. It will be ripe, as far as I know, unless there's any
18 other extensions requested, the reply is due December 18th.

19 The receiver's motion for leave to file unredacted
05:00 20 copies of Ms. McElhone's financial statements and related
21 communications, a response, if any, is due today, 12-15. I
22 have not checked my NEFs in docket, so I don't know if one has
23 been filed or if one is forthcoming.

24 Did you want to --

05:01 25 **MR. FUTERFAS:** Your Honor, may I speak to that? This

1 is Alan Futerfas.

2 THE COURT: Yeah, are we getting a reply to that today
3 or do you want to address that?

4 MR. FUTERFAS: We are going to go do brief reply but I
05:01 5 can tell Your Honor what our reply is going to say.

6 THE COURT: Listen let, me read the reply, Mr.
7 Futerfas, don't waste my time.

8 MR. FUTERFAS: We are going to get it. It's should be
9 brief. It's going to be brief.

05:01 10 THE COURT: All right. I'll read it and I'll rule on
11 that but I just wanted to make sure that was forthcoming before
12 I do anything.

13 Now, I never got a mediation report. Please, they are
14 required even if it's to tell me there is an impasse, it was
05:01 15 due, I believe, yesterday, December 14th. Let's go ahead and
16 comply with local rules, please, and rules that I require my
17 scheduling orders, let's get in a report from Mr. Shafer, I
18 think it was who did the mediation, to let me know what
19 happened.

05:01 20 Obviously, the receiver's fee application is due
21 tomorrow. The Court will be waiting for that to see what that
22 looks like so that I can get my hands around that, and, of
23 course, as I mentioned earlier, Ms. McElhone and Mr. Barleta's
24 response to show to cause is due on December 22nd. Once that
05:02 25 hits, I will be in touch about setting another hearing.

1 Those are all the immediate deadlines. In the
2 background lurking is the discovery impediments that I think
3 today we're going start drilling down on to get that out of the
4 way, and the expansion of the receiver is on my to-do list.

05:02 5 It's the only thing that I have right now that is ripe and that
6 I need to rule on. But I'm going get involved, as I said, on
7 the discovery front to see if I can clean this thing up so that
8 we can get one narrative here and we stop saying the sky is
9 green and the sky is red. We got to try to get one set of
05:02 10 numbers we can all live with and study. That should help this
11 litigation, no matter what, going forward.

12 So I know that some folks wanted to chime in briefly
13 if we could, it's 5:00 o'clock, we have done, I think, a very
14 productive two hours and moved the needle, I hope, and we have
05:02 15 some to-do things to do over the next few days.

16 What did you want to add, Ms. Berlin?

17 **MS. BERLIN:** Thank you, Your Honor. I just wanted to
18 add the dispute, the issues about the numbers or the defendant
19 and the receiver, I just wanted to make sure I didn't miss
05:03 20 anything, the SEC is not involved in that discovery dispute
21 that we're having nor are we planning on being sort of like
22 roped into or hamstrung into some sort of set of numbers that
23 the defendant and the receiver agree to. We have our own
24 accountants and experts and they will analyze the numbers.

05:03 25 And, once again, you know, I think a lot of what

1 they're arguing about, there are matters that are not relevant
2 to the elements of the case that maybe have to do with side
3 disputes between the receiver and the defendants. But I just
4 wanted to identify my that.

05:03 5 And thank you, Your Honor, for ruling on the motion to
6 expand the receivership this week. It has been a concern about
7 investor monies that might be held in various entities.

8 And just one thing to add to what the Court was saying
9 about, you know, that it would sort of hold on to the assets
05:03 10 and protect them. Another thing that it would do is it would
11 allow the receiver to have -- to step into their shoes, do they
12 have any potential claims. So, for example, sometimes we see
13 investor money goes into a property or it goes into a business
14 and then it goes out on the other end.

05:04 15 And, you know, if the receiver is -- if the receiver
16 moves into these properties or these entities, they can then
17 bring the fraudulent transfer claims or any other claims they
18 need to, to bring money back in. So it's -- there are multiple
19 ways that it helps with the collection effort.

05:04 20 **THE COURT:** Let me point out a couple of things and to
21 your point, Ms. Berlin, because I'm a little worried about the
22 characterization that the numbers that the receiver is pulling
23 together is a side issue.

24 You know, let me be clear, unless I'm missing
05:04 25 something, you know, the SEC brought this case. Okay. The SEC

1 expedited this matter. The SEC asked me to put in a receiver.
2 It's not never lost on me that the SEC got the receiver in here
3 with me and now the SEC couldn't run further away from the
4 receiver. Every time I deal with this I feel like you have
05:05 5 washed your hands of what the receiver is doing and you're just
6 -- the SEC is kind of over here in the corner, we're not
7 getting into this thing, although, let's remember, you brought
8 this, you asked for this, the Court agreed, based upon what I
9 saw. So let's take ownership of the way we're litigating this
05:05 10 case from the SEC's perspective.

11 You know, I get a little cautious and a little
12 concerned when we make it look like this is a receiver-
13 defendant fight. You got a case to prove.

14 As far as I can tell --

05:05 15 **MS. BERLIN:** Yes.

16 **THE COURT:** -- I know you got your numbers, but I
17 think you would agree with me that the last time I checked, a
18 defense is allowed to put on their own set of data and numbers
19 to try to show the Court or a jury down the road why your
05:05 20 calculations are off. So it seems to me that it makes a lot of
21 sense to streamline litigation to enable Ryan and Tim on the
22 receiver side to provide what they need to provide and what
23 they found at the Court's direction to the defendants and,
24 arguably, to the SEC because this material is not only crucial,
05:05 25 but it shows everybody the nature of the business and I think

1 would go a long way towards the eventually disgorgement battles
2 that will be waged at the end. So I want to be very clear that
3 I would pray that the SEC does not believe that the first hour
4 of the status conference to try to destroy the blockade on
05:06 5 discovery to the defense side and give the receiver peace of
6 mind was a waste because I think that we have got -- we won't
7 move in this litigation at all, and we have talked a lot about
8 keeping the costs down, and you know what doesn't keep the
9 costs down, not having a situation where my receiver can feel
05:06 10 comfortable turning over data. All that's doing is generating
11 bills, right, and I've got investors who are worried about
12 sticker shock just like I am and, you know what, that wouldn't
13 happen if I get involved right now, roll up my sleeves and say,
14 "Turn it over, we got these protection, we're good."

05:06 15 But I just want to be clear because that statement I'm
16 just worried, I want to make sure the SEC understands and
17 agrees with the Court that it is important to expedite
18 discovery in this matter and get not only the receivership part
19 expanded, I know that's what you want to do, and I'm going to
05:07 20 look at that, but I think you agree with me that getting the
21 universe of numbers that Sharp and DSI are looking at in front
22 of a defense expert so that we can figure out where the rubber
23 hits the road, I think is very important and it would help a
24 lot of defense lawyers, I think, sit down and have
05:07 25 conversations with their clients about what they have and don't

1 have to mount their defense. And I'm not going to sit here and
2 allow this to be, you know, litigation one hand tied behind
3 their back and the SEC getting a drop on them. We have done
4 this long enough. We have got to be able to have some exchange
5 in a way that lets everybody look at the veracity of the
6 numbers so that I can get to the bottom of it, too.

7 So do you understand my concern on this? Is the SEC
8 with me on this.

9 MS. BERLIN: Yes, Your Honor, and I so sorry, I must
05:07 10 have spoken in a way that completely expressed something that
11 was not at all what I was trying to convey.

12 First of all, the SEC and the receiver and the staff
13 work very closely together, and I don't think we have ever run
14 from the receiver or what they are doing. In fact, we try to
05:08 15 support whatever they need and provide it and there's
16 absolutely no running away from the receiver whatsoever or the
17 tremendous work that he's doing. So that's just --

18 THE COURT: Remember, you don't have to be with the
19 receiver on all issues. The receiver is an arm of the Court
05:08 20 so, at the end of the day, the receiver's only obligation is to
21 follow the Court's direction and try to protect investors and
22 recover funds, which is --

23 MS. BERLIN: Of course.

24 THE COURT: -- why I put them there in the first
05:08 25 place.

1 MS. BERLIN: Yeah.

2 THE COURT: But I want to make sure that any dispute
3 on the discovery, the SEC cannot tell me, listen, you know,
4 that's between defense versus the receiver. You're not being
05:08 5 asked to get involved in this, that's not what I mean, but it
6 is important in the life of the case that we get the right data
7 in front of all parties so we work off one set of reality.

8 What I can't keep working off is alternative
9 realities.

10 MS. BERLIN: Agreed.

11 THE COURT: And that's been the frustration for the
12 Court and, as you heard Mr. Stumphauzer, that's the receiver's
13 frustration because they're not able to clear things up because
14 they can't turn over what they believe supports Sharp's
05:09 15 position, and I would imagine that the SEC, as well, is very
16 invested in making sure that the narrative and the declaration
17 affidavit from Sharp is the one the SEC has been explaining,
18 and I think you missed this part, you hadn't joined this yet,
19 and I'm not going to belabor it, but I opened recalling your
05:09 20 statement early in the litigation that as far as the SEC knew
21 this wasn't a Ponzi scheme, and I read Sharp's report and, I
22 mean, as Mr. Stumphauzer put it eloquently, there are many
23 definitions of a Ponzi scheme.

24 Well, this Court knows a couple and taking from Peter
05:09 25 to pay Paul is one of them, and that's what it said in Sharp's

1 entire report.

2 Now you don't want to call it that, and I think the
3 receiver's careful not to go there but, you know --

4 **MS. BERLIN:** No.

05:09 5 **THE COURT:** -- we need to be sure we focus on what the
6 case is about as it evolves.

7 **MS. BERLIN:** Thank you so much.

8 May I please respond to that?

9 **THE COURT:** Yeah, briefly.

05:09 10 **MS. BERLIN:** Yes. First of all, we never said it was
11 not a Ponzi scheme. What we stated at the beginning of the
12 case is that we had not yet done that analysis to determine
13 whether or not it was a Ponzi scheme, so we were not making any
14 claim one way or the other at that time because we didn't have
05:10 15 all of the records, first of all.

16 Second of all, yes, in fact, the receiver is utilizing
17 part of our same expert witness, so we are working off of the
18 same data and everyone is going to use the same data. All I
19 was -- we have never at single turn run from the receiver nor
05:10 20 have we had any discovery dispute with any party. Instead, we
21 have been working collaboratively and wonderfully, I think,
22 with defense counsel and the receiver.

23 My point was that the discovery dispute between the
24 receiver and the defense counsel we have not been involved in.
05:10 25 We have found our own way to address production of documents

1 with defendant. That I don't think we are part of that issue.
2 And, of course, I think there should be complete flow of
3 documents which is why we have turned over every single thing
4 in our investigative file, Your Honor, and we have working with
05:11 5 the receiver and sharing the same information.

6 There might be two experts who have two different
7 opinions at the end of the day, which is something for the
8 Court to decide.

9 The only thing I was saying, Your Honor, is that we're
05:11 10 not involved in the discovery dispute between them. We have
11 resolved our -- we have resolved it ourselves with them which
12 is why you don't see us referenced in those motions.

13 **THE COURT:** Look, I don't want to spend more time and
14 money involving a party that has no skin in the game. This is
05:11 15 about the receiver trying to offer its data for inspection to
16 the defense and doing what they need to do as an officer of the
17 Court and looking for sufficient safeguards do so, which the
18 Court is standing at the ready to facilitate along with a
19 ruling on the expansion of the receiver.

05:11 20 So with that being said, I think we have made this
21 issue clear. I just want to make sure that we're all on the
22 same page regarding the importance of what the Court is trying
23 to do to try to knock down some of these delays that have
24 literally plagued us for months and I think is a large source
05:11 25 of multiple filings from the defense where they feel that

1 they're not being able to address the data appropriately
2 because we haven't been be able to sort out things like this
3 protective order.

05:12 4 But, you know, these numbers, again, these numbers are
5 the core of this case so that we can get a better picture of
6 recovery we can and cannot do and what exactly is going on in
7 this business, which I think goes a large part to some of the
8 elements of the claim and some of the issues regarding the
9 notes that were being offered.

05:12 10 Now, Mr. Soto, did you want to add something before we
11 conclude here today on something else I may have missed?

12 Go ahead.

13 **MR. SOTO:** Yes, Your Honor, it's not anything that
14 you've missed but you've just been touching on it right now,
05:12 15 which is the fact that the data, the documents that we have yet
16 to receive, are critical to this case, it's critical to the
17 defendant's ability to defend themselves, and when you're
18 analyzing the issue with respect to expansion of the trust,
19 it's part and parcel to our argument when you look at the issue
05:12 20 of commingling and the arguments first alleged by the SEC that
21 there were gross proceeds of the investor dollars that were
22 used to pay two of the defendants in this case and some of that
23 money went to some of the entities at issue here in the trust,
24 we haven't had access to the documents in order to unearth and
05:13 25 to do a forensic accounting of that very information in order

1 to respond to the allegations made by the receiver. That's the
2 first thing, Your Honor.

3 The second thing is there are less restrictive means
4 available to the Court in order to accomplish what it wants,
05:13 5 which is to maintain the status quo, and I'll give you one
6 example just to respond briefly because I know you didn't want
7 this to be oral argument on this.

8 Ms. Berlin just mentioned that there is a possibility
9 that money could move out of assets held in the trust and, of
05:13 10 course, that's a possibility. Now, that would be a violation
11 of an asset freeze because the trust is under a 14.3 million
12 dollar asset freeze, so that is a protection that's already in
13 place.

14 And with that, the Court, based on the case law as the
05:13 15 Court has already said a few times here, can use that
16 least-restrictive mean, which is the asset freeze that's
17 already in place.

18 The second thing is we have proposed to the receiver
19 to provide the receiver access to information including bank
05:14 20 accounts, including a live look at bank accounts in addition to
21 lis pendens on these properties in order to give the Court and
22 the receiver comfort that not a single dollar has moved from
23 July 27th to this day, and going forward will not move without
24 the receiver knowing it or anyone else in this Court.

05:14 25 So there are other less restrictive means and I would

1 remind the Court you already have one fee application by this
2 receiver. This receiver is an arm of the Court but this
3 receiver is not cheap, it's expensive, and to have the receiver
4 come in and take over properties and expand the receivership is
05:14 5 going to expand the cost of this receivership, and if at the
6 end of the day a conclusion is made that some of this money
7 should go to investors, we should all be concerned about the
8 cost, and it is much less costly to have a lis pendens in place
9 and to give the receiver access to documents in order to allay
05:15 10 any concerns about dissipation.

11 And one other thing, Your Honor, there's no evidence
12 of dissipation in the receiver's motion. There's no evidence
13 that a single property has been sold, that a single dollar has
14 left the trust asset.

05:15 15 Now, I'm arguing and I don't mean to argue, but my
16 request here, Your Honor, is if you are going to rule on this,
17 especially since the receiver and, to some degree, the SEC has
18 had an opportunity to weigh in, we'd like to have oral
19 argument. We can schedule it for any time the Court is
05:15 20 available in order to have these issues hashed out, but my
21 primary concern, Judge, as you just touched on it a moment ago,
22 is the SEC initially filed a complaint, an amended complaint.
23 This was not alleged as a Ponzi scheme.

24 Now, I'm not suggesting that the SEC is married to
05:15 25 that position. Ms. Berlin just said she filed it based on the

1 information she had at the time and perhaps things have
2 evolved. But to this point, the defendants have not had an
3 opportunity to review documents to defend themselves, to
4 provide a meaningful opportunity to the expansion argument and
05:16 5 the other assertions made here.

6 We'd ask, at minimum, that documents be produced to us
7 that our forensic accountant be given an opportunity to review
8 them so that, if necessary, we can further respond to these
9 allegations of money leaving Par Funding, the fact that some of
05:16 10 the -- the allegations that these are commingled funds or that
11 gross investor proceeds are at issue here.

12 These are not things that we can answer without access
13 to the documents. So it would be -- Your Honor, you mentioned
14 due process. It would -- it has to implicate due process if
05:16 15 you're talking about a receiver taking over bank accounts,
16 properties, businesses that belong to a trust.

17 And so we'd ask for, at minimum, access to those
18 documents and an opportunity to be heard by this Court before
19 Your Honor rules on it.

05:16 20 Right now, there's an asset freeze in place and there
21 are other means that we can -- and there is no evidence of
22 dissipation to this point.

23 Thank you, Your Honor.

24 **THE COURT:** Understood. I will briefly turn to Mr.
25 Alfano, who just wants to make a final --

1 **MR. ALFANO:** Your Honor, I don't know, first of all,
2 how counsel can say there's no evidence of dissipation when
3 they failed to pay a \$300,000 building assessment and the
4 properties which we don't control, they control, are now
05:17 5 subject to foreclosure here in Philadelphia.

6 **MR. SOTO:** I can answer that.

7 **THE COURT:** Here is the issue, I'll tell you this.
8 We're not here for oral argument. I understand the request. I
9 also understand the pleading is very fulsome and I read it and
05:17 10 I read a number of cases and what the standard is to make this
11 request from an equitable perspective.

12 I will say this, I don't think that anyone could make
13 a lack of due process argument in that the Court is going to
14 review all the pleadings, we have allowed this to be fully
05:17 15 briefed before the Court even considers it. If I have any
16 further questions when I go back and review it now that I've
17 had the last few points of it kind of clarified, I will set it.

18 But, again, I also want everyone to understand that
19 it's very thorough briefing. So, to me, I should be able to
05:17 20 rule on the papers and part and parcel is to your exact point,
21 I'm trying to keep the train moving, making it fair and not
22 spending too much more time and money when the pleadings are
23 very thorough.

24 But I will take a second look before ultimately I rule
05:18 25 and if I feel I cannot make an effective ruling or

1 determination without oral argument, I will contact the parties
2 to set one. I think that the same argument, though, of course
3 of the receiver and the costs that will be borne by investors
4 and the receiver has a flip side to it, and that is to the
05:18 5 point Mr. Alfano has made about the dissipation.

6 I understand, Mr. Soto, in the view of the defendants
7 that there is no true evidence purportedly of any dissipation
8 of assets and that the protections are sufficient. Obviously,
9 Mr. Alfano believes otherwise, as does the receiver.

05:18 10 I think at the same time I have to consider what would
11 be mounting costs that the receiver would actually incur to
12 manage a larger portfolio. The flip side of that is stopping
13 short of expansion and when the time comes to collect for
14 investors, we don't have money left or that money is no longer
05:19 15 as protected as it could be in the case of properties, for
16 example, because it's either subject to foreclosure or some
17 other claim.

18 So there's a balancing here as many times happens in
19 these types of cases with receiverships. I have to look at the
05:19 20 equities on both sides, I will do so, and I know this has been
21 pending, really at the request of the parties, because I didn't
22 want to get involved until mediation came and went.

23 But I will look at it, I will try to rule as promptly
24 as possible, and I will take a second look, Mr. Soto, and I
05:19 25 will entertain oral argument if I think it is necessary.

1 Was there something else? I do want to wrap up here.
2 Does anybody else need to chime in? But other than what we
3 have discussed, I think we have a game plan for what I'm
4 expecting to see from the parties over the next few days, try
05:19 5 to take care of some these protective order issues, but
6 anything else before we conclude today from any counsel?

7 **MR. FUTERFAS:** Yes, Your Honor, Alan Futerfas. The
8 date of December 22nd, I've got a family member in Miami who is
9 quite ill, I just spent many weeks there. She's quite elderly.
05:20 10 I'm going to be filing a motion if Your Honor, requests that I
11 do to just move our response because I'm going be tied up with
12 that and other --

13 **THE COURT:** That's fine. That's fine. Just file a
14 motion so I know the date range and I can calculate it.

05:20 15 **MR. FUTERFAS:** Just a couple weeks into early January.
16 That's fine.

17 **THE COURT:** That's fine. It will be met with no
18 opposition from the Court. I'd rather give you the time, make
19 sure you have a chance to respond, just let me know how much
05:20 20 time you need.

21 **MR. FUTERFAS:** Thank you. That's it.

22 **THE COURT:** Did the receiver want to add in something?
23 Guys, anything else I may have missed on the receiver's end or
24 anything we have discussed? I have been hearing from
05:20 25 Mr. Alfano. I don't know if you wanted to add anything else to

1 the expansion. I mean, again, I don't want us to argue it, I
2 think you guys explained your reasons for it, but anything else
3 on the receiver's end?

05:20 4 **MR. STUMPHAUZER:** Your Honor, I just wanted to make a
5 practical point. The receivership has admittedly required a
6 lot of hours and is undoubtedly expensive.

7 The main asset we're talking about is the properties.
8 Luckily, they have one property management group that handles
9 everything. As it just so happens, Mr. Alfano knows the person
05:20 10 that runs that property management group. We have been in
11 touch. We plug and play. They will continue to manage the
12 property. There will not be additional expenses from what I
13 can tell, and we will have the security knowing that tens of
14 millions of dollars of investor money will be protected.

05:21 15 **THE COURT:** So what you're telling me is I don't have
16 to worry about Mr. Stumphauzer collecting rent in a
17 condominium, because that was my worry when I read it, the next
18 thing I know is that you guys were going to be playing landlord
19 and I was going to have more costs. And I do not want anybody
05:21 20 to be spending that time and money.

21 **MR. STUMPHAUZER:** There is a property management
22 company in place. I don't think there's just more, but I just
23 wanted to add that practical point and that's it.

24 **THE COURT:** That's useful because it is a concern of
05:21 25 mine, as Mr. Soto pointed out. The costs spiral out of control

1 and make it unmanageable, but if it is plug and play, that will
2 make life a lot easier, I think, for everybody and save time
3 and money.

4 **MR. SOTO:** Your Honor, I don't want to belabor the
05:21 5 point, I sure would appreciate an hour of the Court's time to
6 argue this. This is a significant motion that's being filed.
7 I'd like to be able to explain why this is not going to be plug
8 and play. I don't think it would take a lot of the Court's
9 time. I'll make myself available any time this week. I think
05:22 10 it's worth the time, Your Honor, to talk about this, and I feel
11 like I need to respond every time you give the receiver an
12 opportunity to respond.

13 I don't mean to belabor the point but I would
14 reiterate and ask for that time, Your Honor.

05:22 15 **THE COURT:** Sure, and, again, I will seriously take it
16 under consideration. I can't give you that promise now, but
17 I'm going to go back and look at it again and if it's necessary
18 for the Court, I'll set it. If the Court feels comfortable
19 that I can cobble together an order on my own, then I will do
05:22 20 so.

21 Anybody else that needs to address any points we have
22 made before we conclude today? Any other points? This,
23 obviously, will -- our next step here is to get this discovery
24 issue under control, deal with the expansion, go on from there,
05:22 25 get into next year, and then I anticipate setting a followup

1 status conference with the new parameters in place requested by
2 Mr. Soto and Mr. Futerfas on production of reports, et cetera,
3 at some point in January, early February.

4 So anything else from anybody that I have not touched
05:23 5 on or needs to be heard? Anybody else?

6 **MS. BERLIN:** Your Honor, if I may, one quick thing.
7 Just to remind all defense counsel in case they're not aware, I
8 know we have fresh faces, hearing them argue and talk about
9 their financial documents, any defendant who wants, we have the
05:23 10 financial records, we have our own expert who has analyzed them
11 and done an accounting, and any defendant can have them, you
12 don't even know need to do a Request For Production, you just
13 send me an e-mail, I will tell you size data locker to send,
14 send it to me, you get it back, and you have it within a matter
05:23 15 of days.

16 So I just wanted to, for some of the folks who are new
17 today, I just wanted to sort of restate that on the record.
18 That might also help move things forward.

19 And then, Your Honor, also as to -- I'm not going to
05:23 20 respond to what Mr. Soto stated, I disagree with it. I think
21 the transcript of the hearing speaks for itself about what we
22 stated and demonstrated on the Ponzi scheme before he was on
23 the case.

24 I did just want to offer defendants can contact me for
05:24 25 any documents in the full investigative file and all records at

1 any time.

2 **THE COURT:** Thank you for that update.

3 With that being said, I do not believe there's

4 anything left to cover for today's purposes and we have some

05:24 5 homework to do to try to get defense counsels' access to

6 records that have been sorrily needed and to get the receiver

7 the protections he needs to make those available, and the Court

8 will, as I stated earlier, get down to brass tacks, take a look

9 at the expansion motion for the third or fourth time I think at

05:24 10 this stage, and entertain and debate over whether I will set an

11 oral argument. If necessary, you will hear from me in short

12 order. If not, you will receive an order one way or the other.

13 With that being said, I'm going to conclude the status

14 conference at this time. Thank you, everyone, for your time

05:24 15 and attention to this matter and, as always, we will be in

16 touch.

17 Have a great rest of your day, everyone. The Court is

18 adjourned.

19 (Thereupon, the above hearing was concluded.)

20

21

* * *

22

23

24

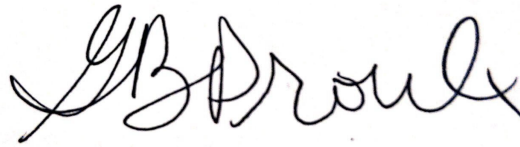
25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of reporting remotely.

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



01/04/2021

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

\$	<p>22nd [3] - 51:24, 88:24, 103:8</p> <p>23rd [2] - 57:19, 57:23</p> <p>24.4 [1] - 21:23</p> <p>25 [4] - 11:22, 11:23, 12:6</p> <p>2525 [2] - 2:10, 2:24</p> <p>26 [2] - 19:14, 19:15</p> <p>27th [1] - 98:23</p> <p>28 [1] - 64:10</p> <p>2nd [1] - 2:6</p>	<p>6.6 [2] - 21:2, 21:3</p> <p>6.9 [1] - 22:2</p> <p>614-1405 [1] - 4:2</p> <p>684-8400 [1] - 2:3</p>	<p>54:9, 57:1, 63:13, 63:17, 64:1, 64:2, 64:5, 64:6, 64:11, 65:2, 65:6, 66:14, 66:25, 69:6, 70:22, 71:25, 73:4, 73:8, 73:9, 73:11, 74:1, 75:25, 76:9, 76:14, 77:2, 79:11, 80:16, 97:24, 98:19, 99:9, 100:12, 100:17, 107:5</p> <p>accessed [6] - 39:25, 43:15, 43:17, 46:8, 73:25</p> <p>accesses [1] - 46:14</p> <p>accessible [1] - 46:25</p> <p>accessing [2] - 46:15, 48:19</p> <p>accommodate [1] - 26:19</p> <p>accomplish [1] - 98:4</p> <p>accord [1] - 61:17</p> <p>according [2] - 27:25, 74:21</p> <p>Accounting [1] - 26:3</p> <p>account [2] - 39:10, 65:8</p> <p>accountable [8] - 23:25, 24:1, 24:2, 24:8, 24:16, 31:22, 31:23, 31:24</p> <p>accountant [6] - 24:13, 25:18, 28:5, 58:7, 70:6, 100:7</p> <p>accountants [12] - 17:6, 22:16, 22:17, 22:18, 31:24, 58:6, 58:8, 73:10, 73:11, 73:16, 74:3, 89:24</p> <p>accounting [17] - 16:21, 22:24, 25:6, 27:6, 39:13, 39:17, 42:3, 44:4, 48:24, 49:5, 57:14, 57:17, 58:9, 65:9, 75:13, 97:25, 106:11</p> <p>accounts [4] - 31:11, 98:20, 100:15</p> <p>accurate [2] - 32:23, 108:6</p> <p>accurately [1] - 42:6</p> <p>act [2] - 41:8, 81:6</p> <p>acting [2] - 41:4, 41:9</p> <p>action [6] - 7:25, 63:6, 81:2, 81:13, 81:15, 85:15</p> <p>actions [1] - 81:4</p> <p>actual [12] - 22:12, 22:23, 29:16, 29:17, 29:24, 30:17, 34:20, 37:14, 38:16, 59:25, 64:16, 71:23</p> <p>acutely [1] - 13:12</p> <p>ADAM [1] - 3:24</p> <p>add [8] - 29:25, 89:16, 89:18, 90:8, 97:10, 103:22, 103:25, 104:23</p> <p>added [1] - 81:22</p> <p>addition [2] - 63:7, 98:20</p> <p>additional [8] - 24:6, 29:19, 64:20, 73:14, 73:18, 82:18, 104:12</p> <p>address [15] - 16:3, 18:14,</p>
\$1,000,231,298 [1] - 26:15			
\$1,231,298,329 [1] - 27:17			
\$300,000 [2] - 80:25, 101:3			
0			
00 [1] - 64:5			
1	3	7	
<p>1.097 [2] - 20:20, 20:23</p> <p>1.1 [2] - 20:19, 39:16</p> <p>1.103 [1] - 20:24</p> <p>1.257 [2] - 26:5, 28:1</p> <p>1.275 [1] - 26:14</p> <p>1.32 [1] - 30:10</p> <p>10017 [2] - 2:3, 2:14</p> <p>103W [1] - 2:20</p> <p>11050 [1] - 2:21</p> <p>119.6 [1] - 22:5</p> <p>12 [1] - 22:15</p> <p>12-15 [1] - 87:21</p> <p>12/18/2020 [1] - 108:10</p> <p>1240 [1] - 2:17</p> <p>14 [1] - 70:9</p> <p>14.3 [1] - 98:11</p> <p>144 [1] - 21:11</p> <p>14th [1] - 88:15</p> <p>15 [1] - 1:5</p> <p>1600 [1] - 3:25</p> <p>1750 [2] - 3:2, 3:6</p> <p>177-52 [1] - 24:20</p> <p>18 [1] - 18:2</p> <p>1800 [1] - 1:15</p> <p>1818 [1] - 3:21</p> <p>18th [1] - 87:18</p> <p>19103 [1] - 3:22</p> <p>1:30 [1] - 5:20</p>	<p>3 [2] - 24:10, 26:3</p> <p>3000 [1] - 1:22</p> <p>301 [1] - 2:17</p> <p>3010 [1] - 3:16</p> <p>305 [8] - 1:16, 1:23, 2:7, 3:3, 3:12, 4:2, 4:7, 4:11</p> <p>305-434-4941 [1] - 3:7</p> <p>305-569-7720 [2] - 2:11, 2:25</p> <p>3200 [1] - 2:6</p> <p>33128 [1] - 4:11</p> <p>33131 [7] - 1:15, 1:23, 2:7, 3:3, 3:7, 3:12, 4:1</p> <p>33131-2362 [1] - 4:6</p> <p>33134 [2] - 2:10, 2:24</p> <p>333 [1] - 2:6</p> <p>33431 [2] - 2:17, 3:17</p> <p>3402 [1] - 3:21</p> <p>358-6300 [1] - 4:7</p> <p>3:00 [1] - 51:15</p>	<p>7 [1] - 78:8</p> <p>700 [2] - 28:14, 28:18</p> <p>701 [1] - 1:22</p> <p>711 [2] - 26:5, 26:14</p> <p>750 [2] - 2:10, 2:24</p> <p>789-7788 [1] - 1:23</p> <p>7th [2] - 2:2, 2:13</p>	
	4	8	
	<p>400 [1] - 4:10</p> <p>400-4260 [1] - 3:3</p> <p>41.5 [1] - 21:18</p> <p>4100 [1] - 4:6</p> <p>416-6880 [1] - 2:7</p> <p>430 [2] - 38:7, 68:2</p> <p>48 [3] - 66:9, 67:17, 74:13</p> <p>4:45 [1] - 78:3</p>	<p>8 [2] - 24:10, 26:3</p> <p>801 [1] - 1:15</p> <p>880-9417 [1] - 2:14</p> <p>8th [1] - 4:10</p>	
	5	9	
<p>2 [4] - 1:23, 3:2, 3:6, 4:1</p> <p>20 [3] - 2:20, 30:19, 31:10</p> <p>20-CV-81205 [1] - 5:8</p> <p>20-CV-81205-RAR [1] - 1:2</p> <p>200 [1] - 4:6</p> <p>2000 [1] - 8:13</p> <p>2015 [1] - 31:11</p> <p>2017 [5] - 2:6, 6:21, 24:12, 24:25, 31:11</p> <p>2018 [2] - 24:12, 25:8</p> <p>2019 [5] - 19:11, 20:1, 21:1, 24:12, 25:9</p> <p>2020 [5] - 1:5, 21:2, 62:24, 63:22, 64:10</p> <p>203.5 [1] - 22:10</p> <p>210 [1] - 3:16</p> <p>212 [2] - 2:3, 2:14</p> <p>215 [1] - 3:22</p>	<p>5 [1] - 17:22</p> <p>516 [1] - 2:21</p> <p>523-5634 [1] - 4:11</p> <p>53 [4] - 11:8, 11:21, 11:24, 12:12</p> <p>561 [1] - 3:17</p> <p>565 [2] - 2:2, 2:13</p> <p>5:00 [1] - 89:13</p> <p>5th [1] - 2:13</p>	<p>9 [1] - 30:16, 31:8, 31:13</p> <p>944-5062 [1] - 2:21</p> <p>954)895-5566 [1] - 2:18</p> <p>98 [1] - 3:11</p> <p>982-5586 [1] - 3:12</p> <p>982-6300 [1] - 1:16</p> <p>988-1441 [1] - 3:22</p> <p>989-9080 [1] - 3:17</p>	
	6	A	
	<p>6 [1] - 21:23</p> <p>6.2 [1] - 22:1</p>	<p>Abbonizio [2] - 6:16, 87:6</p> <p>ABBONIZIO [1] - 3:1</p> <p>abbonizio's [1] - 87:8</p> <p>ability [3] - 23:8, 77:12, 97:17</p> <p>able [27] - 12:19, 16:10, 22:4, 32:10, 47:18, 49:12, 53:6, 54:5, 65:21, 66:5, 66:15, 66:23, 68:4, 68:17, 72:5, 73:11, 78:19, 81:16, 84:3, 84:17, 87:3, 93:4, 94:13, 97:1, 97:2, 101:19, 105:7</p> <p>above-entitled [1] - 108:7</p> <p>absolute [1] - 43:4</p> <p>absolutely [14] - 26:21, 42:9, 42:25, 50:8, 50:13, 70:17, 80:11, 81:8, 81:12, 83:19, 83:21, 85:12, 93:16</p> <p>abuse [1] - 39:15</p> <p>accepting [1] - 41:15</p> <p>access [53] - 13:20, 35:15, 35:16, 36:16, 39:25, 40:6, 42:3, 42:4, 43:11, 43:14, 44:7, 45:24, 46:7, 48:6, 52:5, 52:13, 52:14, 52:25, 53:5,</p>	

<p>28:19, 39:7, 39:8, 41:20, 43:16, 46:16, 59:13, 63:8, 70:12, 88:3, 95:25, 97:1, 105:21</p> <p>addressed [1] - 8:19</p> <p>addresses [1] - 39:18</p> <p>adequate [2] - 18:19, 23:21</p> <p>adjourned [1] - 107:18</p> <p>admittedly [1] - 104:5</p> <p>adopt [1] - 45:16</p> <p>advance [3] - 30:12, 31:6, 82:16</p> <p>advanced [2] - 30:18, 31:5</p> <p>advances [4] - 10:3, 30:16, 82:7, 82:10</p> <p>adversarial [1] - 23:24</p> <p>adverse [1] - 25:7</p> <p>advised [1] - 63:10</p> <p>advocates [1] - 58:18</p> <p>advocating [1] - 38:13</p> <p>affidavit [12] - 10:16, 13:15, 15:10, 15:20, 26:10, 35:1, 35:9, 36:5, 36:12, 37:10, 59:19, 94:17</p> <p>affidavits [1] - 21:21</p> <p>afford [1] - 54:19</p> <p>afforded [1] - 55:6</p> <p>afoslid@sfsllaw.com [1] - 4:3</p> <p>afternoon [8] - 5:4, 6:4, 6:11, 6:17, 6:19, 6:22, 6:25, 7:15</p> <p>agenda [1] - 77:25</p> <p>agent [1] - 15:19</p> <p>aggravating [1] - 51:18</p> <p>aggressive [1] - 36:8</p> <p>ago [14] - 14:7, 48:7, 57:18, 57:20, 57:21, 57:24, 58:8, 58:9, 60:24, 61:1, 61:23, 63:8, 63:12, 99:21</p> <p>agree [17] - 38:18, 49:16, 54:20, 57:5, 62:5, 66:16, 67:5, 70:13, 70:15, 71:19, 71:24, 72:5, 72:16, 74:8, 89:23, 91:17, 92:20</p> <p>Agreed [1] - 94:10</p> <p>agreed [8] - 25:17, 25:20, 37:8, 44:2, 60:21, 65:21, 65:22, 91:8</p> <p>agreed-upon [1] - 25:20</p> <p>agreeing [2] - 54:14</p> <p>agreement [13] - 13:2, 68:10, 68:15, 68:17, 68:24, 69:5, 69:8, 69:14, 74:9, 76:6, 77:5, 82:14, 83:1</p> <p>agreements [2] - 82:11, 82:22</p> <p>agrees [1] - 92:17</p> <p>ahead [22] - 5:6, 5:11, 8:23, 11:20, 16:1, 16:14, 40:12,</p>	<p>40:14, 42:9, 42:20, 42:21, 44:10, 47:3, 47:13, 57:3, 62:19, 67:2, 68:8, 69:4, 78:16, 88:15, 97:12</p> <p>AICPA [1] - 17:5</p> <p>Aida [2] - 26:25, 27:1</p> <p>airplane [1] - 85:6</p> <p>airtight [1] - 38:19</p> <p>Akerman [2] - 3:10, 6:20</p> <p>akin [2] - 14:11, 75:1</p> <p>AL [2] - 1:7, 1:19</p> <p>al [2] - 3:21, 5:10</p> <p>Alan [3] - 6:4, 88:1, 103:7</p> <p>ALAN [1] - 2:1</p> <p>ALEJANDRO [1] - 3:10</p> <p>Alejandro [2] - 4:13, 8:12</p> <p>alejandro.paz@akerman.com [1] - 3:13</p> <p>alerted [1] - 48:7</p> <p>Alex [2] - 6:22, 69:2</p> <p>alfano [1] - 100:25</p> <p>ALFANO [12] - 3:20, 11:7, 11:23, 12:16, 12:25, 16:2, 80:11, 81:12, 83:21, 85:12, 86:18, 101:1</p> <p>Alfano [19] - 3:21, 7:16, 9:4, 10:14, 10:17, 11:2, 12:14, 14:1, 15:23, 38:23, 41:6, 79:1, 81:9, 83:17, 86:5, 102:5, 102:9, 103:25, 104:9</p> <p>allay [1] - 99:9</p> <p>allegation [2] - 24:14, 26:1</p> <p>allegations [10] - 27:20, 28:9, 35:11, 54:22, 69:20, 70:1, 70:11, 98:1, 100:9, 100:10</p> <p>alleged [2] - 97:20, 99:23</p> <p>allegedly [1] - 21:16</p> <p>Allison [3] - 4:13, 5:15, 7:6</p> <p>allow [7] - 18:15, 33:1, 36:2, 59:13, 77:13, 90:11, 93:2</p> <p>allowed [2] - 91:18, 101:14</p> <p>allowing [2] - 42:13, 75:24</p> <p>allows [1] - 61:7</p> <p>almost [2] - 46:12, 54:18</p> <p>alone [1] - 22:3</p> <p>alternative [2] - 32:5, 94:8</p> <p>amalgamation [1] - 45:15</p> <p>ambiguity [1] - 16:22</p> <p>amenable [1] - 34:24</p> <p>amended [1] - 99:22</p> <p>Amie [1] - 42:13</p> <p>AMIE [1] - 1:13</p> <p>amount [13] - 20:21, 21:8, 22:5, 22:6, 29:12, 30:18, 31:13, 33:21, 39:2, 59:1, 59:2, 77:17</p> <p>amounts [2] - 49:4, 70:2</p>	<p>ample [1] - 30:25</p> <p>analysis [6] - 18:25, 22:12, 34:4, 44:4, 53:7, 95:12</p> <p>analyze [2] - 54:12, 89:24</p> <p>analyzed [1] - 106:10</p> <p>analyzing [1] - 97:18</p> <p>AND [2] - 1:4, 1:14</p> <p>ANDRE [1] - 2:16</p> <p>Andre [1] - 2:16</p> <p>Andrew [1] - 5:18</p> <p>answer [7] - 12:4, 30:6, 30:7, 60:15, 67:17, 100:12, 101:6</p> <p>anticipate [2] - 11:15, 105:25</p> <p>apart [1] - 33:15</p> <p>apologize [3] - 16:9, 42:14, 42:17</p> <p>appear [2] - 12:21, 22:14</p> <p>appearance [5] - 5:24, 8:1, 8:5, 8:11, 60:18</p> <p>appearances [2] - 5:11, 7:2</p> <p>application [3] - 65:16, 88:20, 99:1</p> <p>appointed [3] - 36:4, 55:11, 55:15</p> <p>appointments [1] - 55:8</p> <p>appreciate [4] - 69:9, 69:15, 86:2, 105:5</p> <p>approaching [1] - 87:15</p> <p>appropriate [4] - 31:6, 43:10, 44:24, 49:8</p> <p>appropriately [1] - 97:1</p> <p>approval [2] - 55:18, 85:16</p> <p>approve [1] - 55:18</p> <p>arguably [1] - 91:24</p> <p>argue [5] - 35:14, 99:15, 104:1, 105:6, 106:8</p> <p>arguing [4] - 13:18, 73:1, 90:1, 99:15</p> <p>argument [26] - 9:22, 9:23, 12:9, 33:14, 34:11, 43:21, 47:5, 54:6, 78:3, 78:4, 79:2, 79:8, 83:13, 83:14, 87:11, 97:19, 98:7, 99:19, 100:4, 101:8, 101:13, 102:1, 102:2, 102:25, 107:11</p> <p>arguments [2] - 87:9, 97:20</p> <p>arlaw@raikhelsonlaw.com [1] - 2:18</p> <p>arm [2] - 93:19, 99:2</p> <p>artfully [1] - 76:20</p> <p>ascertainable [1] - 84:16</p> <p>asfuterfas@futerfaslaw.com [1] - 2:4</p> <p>aside [1] - 24:17</p> <p>assertions [4] - 69:21, 70:1, 70:3, 100:5</p> <p>assessment [2] - 52:16, 101:3</p>	<p>assessments [1] - 81:1</p> <p>asset [10] - 79:6, 80:12, 80:14, 98:11, 98:12, 98:16, 99:14, 100:20, 104:7</p> <p>assets [8] - 13:3, 79:7, 79:18, 80:3, 85:15, 90:9, 98:9, 102:8</p> <p>assist [2] - 44:13, 49:15</p> <p>Associates [1] - 24:14</p> <p>association [2] - 80:25, 81:5</p> <p>assume [1] - 46:23</p> <p>assuming [1] - 74:19</p> <p>assumption [1] - 15:9</p> <p>assurances [1] - 43:4</p> <p>assure [2] - 39:4, 42:14</p> <p>Astarita [1] - 3:16</p> <p>attached [2] - 25:2, 27:12</p> <p>attachment [1] - 49:3</p> <p>attempt [2] - 76:25, 86:3</p> <p>attempted [3] - 33:1, 40:20, 84:23</p> <p>attempting [1] - 78:22</p> <p>attention [2] - 40:25, 107:15</p> <p>attorney [2] - 20:7, 30:23</p> <p>attributable [1] - 30:20</p> <p>audio [4] - 7:22, 16:6, 16:10, 41:11</p> <p>audit [6] - 13:22, 25:1, 25:2, 25:8, 25:16, 25:18</p> <p>audited [4] - 24:11, 24:13, 24:25</p> <p>auditors [1] - 25:15</p> <p>audits [1] - 25:21</p> <p>August [2] - 73:2, 73:6</p> <p>authority [2] - 77:12, 81:6</p> <p>auto [1] - 51:2</p> <p>available [8] - 5:21, 23:12, 45:6, 47:11, 98:4, 99:20, 105:9, 107:7</p> <p>Ave [1] - 2:13</p> <p>Avenue [6] - 1:15, 1:22, 2:2, 2:6, 2:20, 4:10</p> <p>average [1] - 31:12</p> <p>avoid [1] - 77:18</p> <p>aware [6] - 13:12, 71:4, 78:20, 78:21, 87:16, 106:7</p> <p>aways [2] - 15:18, 15:20</p> <p>awfully [1] - 42:2</p>
B			
<p>B&T [2] - 20:7, 30:14</p> <p>BAAN [2] - 4:9, 108:11</p> <p>BAAN-PROULX [2] - 4:9, 108:11</p> <p>backed [3] - 33:10, 34:2, 77:19</p> <p>background [6] - 28:5,</p>			

<p>59:3, 62:21, 62:22, 89:2 backing [1] - 34:4 balance [9] - 29:6, 29:12, 29:22, 29:23, 30:2, 30:20, 31:12, 39:9, 78:23 balances [3] - 28:20, 28:24, 29:3 balancing [1] - 102:18 banded [1] - 38:8 bank [11] - 16:20, 22:12, 22:14, 22:23, 31:10, 39:10, 57:11, 80:16, 98:19, 98:20, 100:15 banking [1] - 22:19 bankruptcy [2] - 10:25, 85:2 BARLETA [1] - 2:13 Barleta [1] - 6:9 Barleta's [1] - 88:23 Barletta [1] - 6:7 barriers [1] - 72:22 base [1] - 9:20 based [15] - 14:25, 22:12, 22:23, 23:11, 27:20, 28:25, 30:11, 60:10, 61:10, 69:13, 70:4, 72:1, 91:8, 98:14, 99:25 basing [1] - 70:1 basis [1] - 11:17 battles [2] - 72:17, 92:1 BEACH [1] - 1:2 become [1] - 20:1 becomes [1] - 30:3 bed [1] - 37:19 BEFORE [1] - 1:10 begged [1] - 42:15 begin [3] - 10:13, 59:15, 77:14 beginning [3] - 10:20, 32:6, 95:11 behalf [28] - 5:13, 5:16, 5:25, 6:2, 6:6, 6:10, 6:16, 6:18, 6:20, 6:21, 6:23, 6:24, 7:1, 7:6, 7:8, 7:13, 7:16, 8:13, 10:1, 12:15, 39:1, 41:4, 41:8, 41:9, 57:7, 57:19, 68:16, 77:13 behind [6] - 35:25, 49:17, 51:21, 59:18, 67:24, 93:2 behold [1] - 39:11 belabor [3] - 94:19, 105:4, 105:13 belief [1] - 54:21 believes [2] - 27:9, 102:9 belong [1] - 100:16 below [1] - 19:16 beneficial [2] - 52:8, 52:10 benefit [11] - 9:13, 59:10, 71:5, 77:8, 80:3, 81:7, 81:24, 84:10, 84:11, 85:10, 86:2</p>	<p>Berger [1] - 8:12 Berlin [8] - 5:16, 5:19, 14:8, 42:13, 89:16, 90:21, 98:8, 99:25 BERLIN [12] - 1:13, 42:12, 89:17, 91:15, 93:9, 93:23, 94:1, 94:10, 95:4, 95:7, 95:10, 106:6 berlina@sec.gov [1] - 1:16 best [12] - 9:9, 9:12, 23:8, 23:11, 28:8, 55:2, 65:8, 65:9, 66:7, 67:15, 75:15, 76:4 better [5] - 10:1, 65:14, 66:22, 68:1, 97:5 BETTINA [1] - 2:13 bettina [1] - 42:23 Bettina [1] - 6:8 between [6] - 14:20, 18:17, 90:3, 94:4, 95:23, 96:10 beyond [1] - 12:6 biggest [1] - 69:7 bill [2] - 45:11, 51:5 billion [8] - 20:19, 20:20, 20:23, 20:24, 26:5, 26:14, 28:1, 39:16 bills [1] - 92:11 Biscayne [7] - 3:2, 3:2, 3:6, 3:6, 3:25, 4:1, 4:6 bit [10] - 8:17, 9:4, 10:9, 10:12, 11:6, 12:4, 13:10, 14:3, 33:15, 35:20 black [1] - 77:21 blessing [1] - 66:23 blockade [1] - 92:4 blow [1] - 27:13 blown [1] - 25:16 blue [1] - 19:18 Blvd [6] - 2:10, 2:24, 3:2, 3:6, 4:1, 4:6 board [1] - 30:6 Boca [2] - 2:17, 3:17 bold [1] - 36:7 books [1] - 67:3 born [1] - 41:12 borne [2] - 35:4, 102:3 bottom [5] - 26:2, 33:17, 62:11, 64:15, 93:6 Bowen [1] - 4:5 boxes [3] - 47:10, 53:14, 77:10 brass [1] - 107:8 breach [1] - 55:3 breadth [1] - 78:18 break [1] - 21:12 breakdown [4] - 14:3, 15:24, 18:4, 35:1 Brian [1] - 6:19 BRIAN [1] - 3:9 brian.miller@akerman.</p>	<p>com [1] - 3:13 Brickell [3] - 1:15, 1:22, 3:11 brief [5] - 48:9, 69:12, 88:4, 88:9 briefed [1] - 101:15 briefing [1] - 101:19 briefly [7] - 10:4, 32:2, 68:10, 89:12, 95:9, 98:6, 100:24 bring [3] - 50:22, 90:17, 90:18 broadly [1] - 79:25 broken [1] - 21:20 brought [4] - 20:18, 50:14, 90:25, 91:7 BRUECKNER [1] - 2:1 bschein@bettinascheinlaw.com [1] - 2:15 building [1] - 101:3 built [1] - 27:6 bulk [1] - 80:13 bullpen [1] - 74:4 bunch [1] - 38:1 burying [1] - 23:19 business [22] - 5:10, 14:4, 14:23, 15:4, 17:13, 17:14, 17:20, 18:17, 18:23, 20:23, 25:19, 32:23, 33:6, 33:11, 33:13, 53:8, 54:12, 77:16, 77:21, 90:13, 91:25, 97:7 BUSINESS [1] - 1:6 Business [3] - 1:18, 5:9, 21:16 businesses [6] - 10:23, 11:1, 14:24, 18:23, 85:1, 100:16 button [1] - 44:18 buy [1] - 21:24 BY [1] - 4:9</p>	<p>41:10, 41:24, 95:3 carefully [1] - 14:5 Case [1] - 5:8 CASE [1] - 1:2 case [36] - 7:23, 8:3, 9:11, 9:13, 10:20, 14:8, 14:9, 18:6, 27:2, 28:7, 34:9, 38:1, 46:10, 55:2, 55:22, 59:3, 60:4, 62:24, 78:9, 78:15, 78:18, 79:13, 90:2, 90:25, 91:10, 91:13, 94:6, 95:6, 95:12, 97:5, 97:16, 97:22, 98:14, 102:15, 106:7, 106:23 cases [6] - 12:19, 61:6, 61:20, 79:19, 101:10, 102:19 cash [25] - 10:3, 11:7, 18:25, 20:25, 21:4, 22:7, 22:10, 22:22, 26:5, 28:18, 30:12, 30:16, 30:17, 31:12, 39:2, 39:3, 41:12, 41:16, 57:12, 57:17, 82:7, 82:10, 82:16 categories [1] - 21:20 category [1] - 75:12 caught [2] - 8:10, 42:4 cautious [1] - 91:11 caveat [1] - 21:1 CBSG [17] - 13:2, 17:24, 18:8, 18:11, 18:12, 19:2, 24:10, 26:4, 26:15, 27:17, 28:1, 29:19, 30:18, 30:19, 31:7, 80:23 CBSG's [1] - 24:13 Centre [1] - 3:11 certain [7] - 11:11, 25:19, 47:19, 67:1, 67:23, 82:5, 82:8 certainly [3] - 26:8, 31:17, 81:24 certified [2] - 17:6, 55:24 certify [1] - 108:6 cetera [3] - 15:8, 52:6, 106:2 challenge [1] - 58:25 challenged [1] - 29:14 challenges [1] - 32:22 challenging [1] - 84:25 chance [4] - 24:5, 56:11, 86:8, 103:19 change [3] - 15:4, 25:5, 84:13 changing [1] - 50:19 characterization [1] - 90:22 chart [6] - 18:7, 18:10, 18:21, 19:25, 36:12 charts [1] - 19:16 chase [1] - 51:15 chasing [1] - 84:21 cheap [1] - 99:3 check [9] - 8:22, 9:8, 41:6,</p>
C			
<p>calculate [2] - 53:7, 103:14 calculating [1] - 15:7 calculation [1] - 23:11 calculations [2] - 13:14, 91:20 caliber [1] - 59:1 camp [4] - 53:16, 55:10, 55:14, 60:1 campaign [1] - 36:2 cancelled [1] - 70:16 cannot [6] - 45:17, 52:22, 83:1, 94:3, 97:6, 101:25 Capital [1] - 8:13 care [7] - 45:19, 72:3, 72:8, 72:11, 76:16, 87:11, 103:5 careful [5] - 18:24, 21:4,</p>			

<p>47:10, 53:13, 56:25, 73:9, 77:10, 87:2</p> <p>checkboxes [1] - 60:13</p> <p>checked [3] - 74:1, 87:22, 91:17</p> <p>checking [1] - 9:16</p> <p>checkpoints [1] - 55:5</p> <p>chime [4] - 72:15, 74:8, 89:12, 103:2</p> <p>chiming [1] - 44:17</p> <p>choosing [1] - 14:5</p> <p>chopping [1] - 12:3</p> <p>Circuit [1] - 17:4</p> <p>circumstances [5] - 13:1, 13:4, 41:7, 84:12, 85:1</p> <p>circumvent [3] - 37:24, 59:6, 77:7</p> <p>circumventing [1] - 49:15</p> <p>citing [1] - 20:17</p> <p>City [1] - 3:11</p> <p>civil [8] - 35:22, 38:3, 48:8, 49:16, 49:18, 52:9, 74:22, 75:2</p> <p>claim [5] - 41:12, 81:14, 95:14, 97:8, 102:17</p> <p>claims [3] - 90:12, 90:17</p> <p>clarification [4] - 12:9, 12:10, 83:11, 86:1</p> <p>clarified [1] - 101:17</p> <p>clarify [4] - 48:22, 50:17, 50:20, 54:3</p> <p>clean [3] - 25:2, 78:24, 89:7</p> <p>clear [23] - 9:17, 15:11, 19:21, 28:23, 32:4, 33:11, 33:22, 35:1, 45:22, 56:7, 58:11, 61:7, 64:16, 74:7, 78:2, 84:12, 90:24, 92:2, 92:15, 94:13, 96:21</p> <p>cleared [1] - 47:13</p> <p>clearer [1] - 15:21</p> <p>clearest [1] - 13:16</p> <p>clearly [2] - 63:1, 69:17</p> <p>clicking [1] - 44:18</p> <p>client [1] - 73:3</p> <p>client's [1] - 28:9</p> <p>clients [1] - 92:25</p> <p>CliftonLarsonAllen [2] - 24:12, 25:8</p> <p>close [2] - 61:11, 84:4</p> <p>closely [2] - 42:8, 93:13</p> <p>clouded [1] - 34:12</p> <p>cobble [1] - 105:19</p> <p>coffers [1] - 75:4</p> <p>coincidentally [1] - 19:10</p> <p>Cole [11] - 6:6, 6:9, 46:4, 48:24, 63:2, 63:11, 73:3, 74:1, 75:11, 75:17</p> <p>collaboratively [1] - 95:21</p> <p>collect [11] - 12:22, 29:13, 39:15, 40:22, 41:12, 41:16,</p>	<p>41:21, 84:2, 84:22, 84:25, 102:13</p> <p>collected [7] - 29:7, 30:5, 31:4, 31:10, 41:2, 41:8</p> <p>collecting [6] - 10:20, 30:10, 30:12, 40:2, 40:19, 104:16</p> <p>collection [11] - 10:18, 11:3, 11:9, 12:13, 13:9, 40:21, 70:2, 71:4, 84:13, 85:8, 90:19</p> <p>collectively [1] - 41:1</p> <p>Colorado [3] - 19:15, 19:16, 82:13</p> <p>combination [2] - 66:24, 83:10</p> <p>combined [1] - 31:11</p> <p>comfort [2] - 87:4, 98:22</p> <p>comfortable [4] - 17:21, 75:23, 92:10, 105:18</p> <p>coming [9] - 11:15, 12:23, 15:3, 19:20, 34:17, 35:14, 54:8, 70:20, 76:9</p> <p>comments [1] - 36:1</p> <p>commingled [2] - 79:17, 100:10</p> <p>commingling [3] - 79:18, 83:25, 97:20</p> <p>COMMISSION [2] - 1:4, 1:14</p> <p>Commission [3] - 1:14, 5:9, 5:13</p> <p>commitment [1] - 43:19</p> <p>committed [1] - 43:20</p> <p>common [3] - 82:13, 82:21, 82:25</p> <p>Common [1] - 11:4</p> <p>communicate [1] - 31:19</p> <p>communications [1] - 87:21</p> <p>community [1] - 59:2</p> <p>companies [6] - 21:13, 30:8, 46:11, 82:5, 84:16</p> <p>companies' [1] - 82:18</p> <p>company [38] - 13:17, 19:2, 19:7, 19:10, 21:1, 21:15, 21:16, 21:17, 21:18, 21:22, 21:23, 21:24, 21:25, 22:1, 22:5, 22:7, 24:22, 24:23, 24:25, 27:5, 27:10, 30:15, 31:12, 34:22, 43:23, 44:2, 46:4, 46:5, 50:24, 51:14, 60:2, 62:25, 64:18, 64:19, 77:16, 82:24, 82:25, 104:22</p> <p>company's [1] - 16:21</p> <p>compel [4] - 46:20, 47:7, 49:22, 49:24</p> <p>compelling [1] - 46:22</p> <p>competing [8] - 37:10, 43:9, 44:22, 52:25, 66:3,</p>	<p>67:20, 68:18, 74:10</p> <p>complaint [3] - 21:6, 99:22</p> <p>COMPLETE [1] - 1:6</p> <p>complete [2] - 50:8, 96:2</p> <p>Complete [2] - 1:18, 5:9</p> <p>COMPLETED [1] - 108:11</p> <p>completely [3] - 20:1, 51:1, 93:10</p> <p>complex [1] - 47:23</p> <p>compliance [1] - 72:9</p> <p>complicated [2] - 28:8, 33:13</p> <p>complicating [1] - 62:8</p> <p>comply [2] - 77:11, 88:16</p> <p>comprehensive [1] - 50:9</p> <p>computers [1] - 64:11</p> <p>concern [11] - 23:1, 55:3, 56:16, 62:7, 72:12, 79:24, 81:11, 90:6, 93:7, 99:21, 104:24</p> <p>concerned [9] - 23:13, 32:23, 39:12, 39:17, 61:14, 61:21, 71:11, 91:12, 99:7</p> <p>concerns [6] - 13:12, 61:17, 72:23, 79:11, 85:18, 99:10</p> <p>conclude [4] - 97:11, 103:6, 105:22, 107:13</p> <p>concluded [1] - 107:19</p> <p>conclusion [3] - 32:25, 42:2, 99:6</p> <p>conclusions [2] - 54:15, 60:10</p> <p>condition [2] - 13:7, 27:9</p> <p>conditions [1] - 43:2</p> <p>condominium [3] - 80:22, 80:25, 104:17</p> <p>conduct [2] - 51:9, 70:3</p> <p>conducted [1] - 25:8</p> <p>conducting [1] - 13:22</p> <p>confer [4] - 45:10, 56:21, 68:4, 76:25</p> <p>conference [13] - 12:1, 42:16, 65:23, 69:16, 70:1, 70:10, 70:11, 71:12, 71:14, 71:23, 92:4, 106:1, 107:14</p> <p>conferences [1] - 69:23</p> <p>conferring [1] - 74:13</p> <p>confers [1] - 42:23</p> <p>confess [3] - 14:15, 33:15, 79:14</p> <p>confessions [1] - 13:8</p> <p>confidential [1] - 61:8</p> <p>confronted [1] - 54:10</p> <p>confuse [1] - 36:3</p> <p>confusing [1] - 38:5</p> <p>confusion [1] - 20:14</p> <p>conjecture [1] - 22:13</p> <p>connected [1] - 16:6</p>	<p>connection [1] - 12:4</p> <p>consent [1] - 12:23</p> <p>conservative [1] - 16:18</p> <p>consider [4] - 17:10, 22:4, 70:7, 102:10</p> <p>consideration [1] - 105:16</p> <p>considered [4] - 17:10, 58:3, 65:12, 71:14</p> <p>considers [1] - 101:15</p> <p>consistent [1] - 17:3</p> <p>consistently [1] - 19:22</p> <p>constant [2] - 32:16, 35:2</p> <p>consultant [1] - 36:10</p> <p>consultants [2] - 23:10, 31:24</p> <p>Consulting [1] - 21:16</p> <p>consulting [6] - 21:17, 21:19, 82:4, 82:5, 82:17, 82:24</p> <p>contact [5] - 40:22, 61:15, 61:22, 102:1, 106:24</p> <p>contacted [1] - 64:18</p> <p>contains [1] - 49:4</p> <p>contemplate [2] - 36:13, 54:1</p> <p>contempt [8] - 35:22, 48:8, 49:16, 49:18, 52:9, 74:22, 75:2, 76:9</p> <p>contest [3] - 34:6, 34:7</p> <p>contested [1] - 55:17</p> <p>context [3] - 15:17, 64:16, 69:18</p> <p>continuance [1] - 24:4</p> <p>continue [5] - 35:14, 45:13, 75:25, 81:17, 104:11</p> <p>continued [1] - 36:2</p> <p>continues [1] - 24:23</p> <p>continuing [2] - 11:12, 12:12</p> <p>contract [1] - 81:3</p> <p>contradicts [1] - 24:24</p> <p>contravention [1] - 74:18</p> <p>control [14] - 75:20, 76:3, 78:19, 81:16, 81:18, 82:19, 82:23, 82:24, 84:4, 101:4, 104:25, 105:24</p> <p>controlled [2] - 21:18, 76:1</p> <p>controlling [1] - 81:25</p> <p>controls [1] - 25:19</p> <p>conversation [6] - 14:7, 14:20, 36:24, 76:17, 86:9, 86:19</p> <p>conversations [2] - 86:10, 92:25</p> <p>convey [1] - 93:11</p> <p>conveyed [1] - 23:4</p> <p>convoled [1] - 61:25</p> <p>coordinating [1] - 53:15</p> <p>copies [6] - 40:1, 41:19,</p>
--	--	---	---

<p>48:20, 49:10, 73:20, 87:20 copy [24] - 38:17, 39:23, 43:18, 43:21, 43:23, 43:24, 44:1, 44:2, 44:7, 48:23, 49:7, 63:19, 63:21, 63:23, 64:14, 73:5, 73:6, 73:8, 73:15, 73:17, 73:19, 73:23, 74:3, 75:21 Coral [2] - 2:10, 2:24 core [1] - 97:5 corner [1] - 91:6 corporate [1] - 21:9 correct [11] - 12:16, 16:15, 16:23, 23:24, 38:23, 40:24, 48:16, 48:17, 49:14, 52:9, 85:11 correctly [1] - 38:13 corresponded [1] - 22:20 correspondence [1] - 23:19 corresponding [2] - 22:22, 44:12 corruption [1] - 40:4 cost [4] - 35:4, 73:18, 99:5, 99:8 costly [2] - 33:8, 99:8 costs [9] - 44:1, 45:12, 73:14, 92:8, 92:9, 102:3, 102:11, 104:19, 104:25 Counsel [1] - 11:20 counsel [19] - 7:3, 7:13, 9:4, 11:12, 12:14, 42:10, 45:2, 49:18, 53:12, 63:11, 63:21, 65:19, 76:23, 87:8, 95:22, 95:24, 101:2, 103:6, 106:7 counsel's [1] - 45:5 counsels [14] - 9:15, 9:20, 12:11, 13:13, 14:19, 35:5, 35:10, 37:13, 38:8, 56:6, 65:24, 74:20, 76:6, 77:11 counsels' [2] - 57:8, 107:5 counteract [1] - 53:3 counteracts [1] - 55:24 counterclaim [1] - 29:8 countervailing [1] - 55:9 countless [1] - 19:4 couple [16] - 7:23, 20:13, 24:9, 70:12, 72:7, 74:6, 76:17, 77:24, 78:24, 79:23, 83:9, 87:13, 87:14, 90:20, 94:24, 103:15 course [20] - 13:5, 15:7, 17:19, 19:20, 21:6, 21:17, 22:20, 25:6, 26:8, 26:10, 27:3, 29:4, 30:21, 50:10, 79:10, 88:23, 93:23, 96:2, 98:10, 102:2 COURT [73] - 1:1, 1:11, 5:4, 5:16, 5:22, 6:6, 6:10, 6:15,</p>	<p>6:18, 6:21, 6:24, 7:2, 7:8, 7:18, 8:7, 8:14, 11:20, 12:3, 12:8, 12:17, 13:9, 16:4, 16:11, 26:21, 32:2, 36:25, 40:12, 42:9, 42:18, 44:10, 44:14, 44:16, 46:17, 47:25, 49:11, 51:20, 52:20, 58:24, 62:3, 62:18, 65:17, 69:4, 70:12, 70:18, 72:14, 74:6, 76:4, 81:9, 83:5, 83:24, 85:17, 86:23, 88:2, 88:6, 88:10, 90:20, 91:16, 93:18, 93:24, 94:2, 94:11, 95:5, 95:9, 96:13, 100:24, 101:7, 103:13, 103:17, 103:22, 104:15, 104:24, 105:15, 107:2 Court [90] - 4:10, 8:21, 9:15, 9:24, 9:25, 10:4, 10:8, 10:9, 10:11, 11:4, 12:17, 14:21, 16:5, 16:19, 18:15, 19:17, 23:3, 23:7, 23:14, 23:19, 27:25, 29:3, 30:24, 31:15, 31:17, 32:6, 32:25, 33:4, 33:22, 34:1, 36:4, 36:17, 47:15, 48:7, 49:24, 52:10, 52:13, 54:1, 55:4, 55:5, 55:18, 55:20, 56:25, 58:16, 59:10, 59:12, 66:12, 67:12, 69:11, 69:15, 70:7, 77:1, 77:13, 78:16, 79:2, 80:10, 85:21, 86:3, 86:13, 86:24, 87:15, 88:21, 90:8, 91:8, 91:19, 92:17, 93:19, 94:12, 94:24, 96:8, 96:17, 96:18, 96:22, 98:4, 98:14, 98:15, 98:21, 98:24, 99:1, 99:2, 99:19, 100:18, 101:13, 101:15, 103:18, 105:18, 107:7, 107:17 court [13] - 5:2, 12:21, 17:3, 23:5, 23:6, 28:10, 34:17, 55:11, 55:17, 59:25, 64:3, 65:20, 74:18 Court's [14] - 8:16, 27:5, 40:7, 47:20, 51:10, 65:22, 66:23, 69:9, 72:16, 85:14, 91:23, 93:21, 105:5, 105:8 court-appointed [1] - 55:11 courtroom [1] - 5:19 courts [1] - 17:2 cover [1] - 107:4 covering [1] - 5:22 covers [2] - 18:3, 18:4 COVID [1] - 19:11 COVID-19 [2] - 15:12, 108:3 COX [2] - 3:15, 6:25 Cox [2] - 3:16, 6:25 CPA [13] - 22:17, 24:22, 27:11, 28:5, 33:16, 34:22,</p>	<p>35:7, 52:25, 53:18, 58:7, 65:8 CPAs [2] - 28:7, 58:13 craft [2] - 65:22, 66:6 create [2] - 75:8, 82:15 created [3] - 27:4, 63:3, 63:21 creation [1] - 45:5 credibility [4] - 23:9, 23:10, 25:23, 34:2 credit [1] - 22:22 criminal [2] - 27:22, 85:2 critical [2] - 97:16 crucial [1] - 91:24 cumulatively [2] - 18:11, 20:22 curious [2] - 35:2, 35:3 current [1] - 82:16 cut [1] - 36:20 cynical [1] - 74:14</p>	<p>D</p> <p>dan.small@hklaw.com [1] - 1:24 DANIEL [3] - 1:21, 2:9, 2:23 data [91] - 13:19, 13:20, 24:6, 27:4, 27:6, 27:21, 34:25, 35:17, 35:20, 36:16, 37:10, 37:22, 39:13, 39:14, 39:17, 39:21, 40:4, 40:8, 42:3, 42:7, 42:24, 42:25, 43:14, 43:16, 43:25, 45:4, 45:6, 46:5, 46:8, 46:14, 46:15, 47:11, 48:3, 48:12, 48:14, 48:19, 49:1, 49:2, 49:10, 49:20, 50:16, 51:17, 52:23, 52:25, 53:1, 53:21, 54:5, 54:10, 55:3, 55:7, 55:22, 55:23, 55:25, 56:1, 56:19, 57:11, 58:14, 59:14, 59:19, 59:22, 60:10, 67:1, 68:3, 70:14, 70:16, 70:24, 70:25, 71:6, 71:8, 72:22, 73:11, 75:4, 75:11, 75:18, 75:19, 75:24, 76:2, 76:13, 77:14, 77:17, 86:13, 91:18, 92:10, 94:6, 95:18, 96:15, 97:1, 97:15, 106:13 database [9] - 44:1, 44:3, 47:1, 48:23, 49:4, 49:13, 67:21, 75:11, 75:22 databases [1] - 50:6 DATE [1] - 108:11 date [13] - 21:8, 43:14, 46:7, 52:14, 61:9, 67:1, 67:23, 73:6, 73:7, 78:12, 78:13, 103:8, 103:14 dated [1] - 57:22 David [1] - 6:13</p> <p>Davis [3] - 21:7, 26:4, 27:25 Davis's [3] - 26:9, 26:11, 27:18 day-to-day [1] - 77:9 days [6] - 51:6, 51:14, 70:9, 89:15, 103:4, 106:15 de [2] - 2:10, 2:24 dead [1] - 71:22 deadline [3] - 51:25, 71:13, 71:22 deadlines [3] - 67:7, 87:14, 89:1 deal [6] - 56:12, 56:17, 60:18, 86:17, 91:4, 105:24 dealing [3] - 32:4, 44:20, 77:8 deals [1] - 74:10 dealt [1] - 14:9 Dean [1] - 6:18 DEAN [1] - 3:10 debate [1] - 107:10 debit [1] - 22:22 December [7] - 1:5, 19:25, 78:8, 87:18, 88:15, 88:24, 103:8 decent [1] - 58:19 decide [3] - 45:15, 83:10, 96:8 decision [1] - 9:25 declaration [21] - 16:13, 16:17, 21:7, 22:8, 24:2, 24:20, 25:12, 25:23, 26:4, 27:4, 27:6, 27:8, 27:18, 28:17, 28:23, 30:14, 31:25, 32:9, 34:17, 53:18, 94:16 declarations [5] - 21:6, 26:12, 27:2, 58:13, 77:19 deems [1] - 9:24 defend [2] - 97:17, 100:3 DEFENDANT [6] - 2:1, 2:13, 2:20, 3:1, 3:9, 3:15 defendant [9] - 6:6, 6:18, 7:7, 89:18, 89:23, 91:13, 96:1, 106:9, 106:11 defendant's [2] - 27:15, 97:17 defendants [39] - 1:7, 5:25, 7:3, 9:14, 13:21, 18:20, 22:15, 23:22, 24:16, 25:22, 27:7, 29:10, 35:4, 37:8, 41:25, 43:6, 44:8, 46:7, 49:7, 53:3, 53:6, 53:9, 53:24, 54:17, 55:6, 68:17, 70:4, 76:24, 81:1, 81:20, 83:11, 86:3, 86:7, 90:3, 91:23, 97:22, 100:2, 102:6, 106:24 DEFENDANTS [3] - 1:18, 1:21, 2:5 defendants' [1] - 69:6 DEFENSE [2] - 6:4, 7:15</p>
---	--	--	---

<p>defense [71] - 7:10, 9:20, 12:10, 13:13, 14:19, 24:3, 24:4, 27:22, 28:17, 29:4, 32:24, 33:2, 34:20, 35:5, 35:10, 36:16, 37:13, 37:22, 38:8, 38:14, 39:12, 39:19, 40:14, 45:1, 47:2, 47:16, 48:10, 50:15, 51:9, 52:4, 53:12, 54:8, 54:13, 55:10, 55:20, 56:1, 56:5, 57:8, 59:2, 59:20, 59:21, 60:1, 64:1, 65:15, 65:19, 65:24, 67:3, 68:2, 68:6, 70:10, 71:1, 71:6, 71:11, 74:20, 76:6, 76:22, 77:11, 77:13, 78:17, 91:18, 92:5, 92:22, 92:24, 93:1, 94:4, 95:22, 95:24, 96:16, 96:25, 106:7, 107:5</p> <p>defense's [1] - 44:13</p> <p>defenses' [1] - 51:16</p> <p>definitely [2] - 26:23, 53:24</p> <p>definition [4] - 17:1, 17:4, 17:5, 17:7</p> <p>definitions [1] - 94:23</p> <p>degree [1] - 99:17</p> <p>delay [1] - 45:11</p> <p>delays [1] - 96:23</p> <p>delegates [1] - 46:18</p> <p>delete [1] - 63:15</p> <p>delivered [1] - 17:15</p> <p>demand [7] - 57:20, 57:22, 57:23, 58:1, 60:16, 80:24, 81:2</p> <p>demonstrated [1] - 106:22</p> <p>denied [1] - 50:16</p> <p>deny [1] - 86:25</p> <p>depositions [1] - 59:8</p> <p>describe [1] - 50:11</p> <p>described [1] - 42:6</p> <p>descriptions [1] - 16:22</p> <p>designate [1] - 61:7</p> <p>desk [2] - 73:9, 74:1</p> <p>desks [1] - 73:12</p> <p>desperately [2] - 55:7, 57:1</p> <p>destroy [1] - 92:4</p> <p>detail [2] - 10:9, 18:15</p> <p>details [1] - 79:3</p> <p>determination [1] - 102:1</p> <p>determine [2] - 50:1, 95:12</p> <p>determined [1] - 31:6</p> <p>determining [1] - 58:3</p> <p>development [2] - 78:15, 86:15</p> <p>devolve [1] - 9:18</p> <p>dfridman@ffslawfirm.com [2] - 2:11, 2:25</p> <p>dice [1] - 38:16</p> <p>difference [1] - 62:5</p> <p>different [17] - 12:19, 21:4, 21:20, 23:5, 25:5, 25:6,</p>	<p>25:15, 31:11, 38:22, 43:7, 47:12, 54:11, 54:24, 66:19, 96:6</p> <p>differently [1] - 19:11</p> <p>difficult [3] - 33:14, 34:14, 84:25</p> <p>difficulties [1] - 33:7</p> <p>difficulty [1] - 10:20</p> <p>digest [2] - 14:22, 71:18</p> <p>digging [1] - 26:17</p> <p>diligence [3] - 14:21, 15:5, 15:22</p> <p>direct [2] - 40:7, 82:3</p> <p>directed [1] - 49:24</p> <p>direction [3] - 63:11, 91:23, 93:21</p> <p>directly [9] - 12:14, 14:2, 16:3, 24:24, 40:10, 64:18, 64:19, 65:7, 81:17</p> <p>director [1] - 10:16</p> <p>dis [1] - 24:15</p> <p>dis-proven [1] - 24:15</p> <p>disagree [1] - 106:20</p> <p>disagreement [1] - 72:23</p> <p>disappear [1] - 80:7</p> <p>disburse [1] - 80:5</p> <p>disbursing [1] - 84:11</p> <p>disclosure [1] - 14:10</p> <p>disconcerting [2] - 10:25, 54:23</p> <p>discovery [24] - 10:5, 37:24, 46:18, 56:13, 59:5, 59:7, 60:3, 60:8, 60:16, 68:14, 72:17, 76:24, 77:4, 87:12, 89:2, 89:7, 89:20, 92:5, 92:18, 94:3, 95:20, 95:23, 96:10, 105:23</p> <p>discrepancies [2] - 59:15, 60:5</p> <p>discuss [2] - 7:23, 71:23</p> <p>discussed [2] - 103:3, 103:24</p> <p>discussing [1] - 21:14</p> <p>discussion [2] - 9:7, 54:13</p> <p>discussions [5] - 11:10, 16:24, 40:10, 66:10, 75:16</p> <p>disgorgement [4] - 34:11, 79:18, 84:7, 92:1</p> <p>disinfectant [1] - 9:12</p> <p>dismiss [1] - 87:16</p> <p>disproportionate [1] - 29:12</p> <p>disproportionately [1] - 28:25</p> <p>dispute [10] - 37:4, 48:12, 74:25, 75:17, 89:18, 89:20, 94:2, 95:20, 95:23, 96:10</p> <p>disputed [2] - 30:22</p> <p>disputes [2] - 35:18, 90:3</p> <p>disputing [1] - 35:12</p>	<p>dissertation [1] - 56:5</p> <p>dissipated [2] - 80:8, 81:8</p> <p>dissipation [8] - 79:7, 84:6, 99:10, 99:12, 100:22, 101:2, 102:5, 102:7</p> <p>dissolve [1] - 13:8</p> <p>distortion [1] - 41:11</p> <p>DISTRICT [3] - 1:1, 1:1, 1:11</p> <p>district [1] - 62:12</p> <p>divergence [1] - 53:17</p> <p>diverted [2] - 80:13, 82:2</p> <p>DO [1] - 41:13</p> <p>docket [7] - 24:20, 26:11, 38:7, 45:3, 53:20, 68:2, 87:22</p> <p>document [7] - 26:19, 26:24, 57:20, 57:22, 57:23, 58:1, 65:10</p> <p>documents [25] - 49:6, 49:8, 57:21, 58:12, 63:1, 64:2, 64:13, 69:7, 69:14, 70:4, 71:14, 73:1, 74:5, 76:7, 95:25, 96:3, 97:15, 97:24, 99:9, 100:3, 100:6, 100:13, 100:18, 106:9, 106:25</p> <p>dollar [3] - 98:12, 98:22, 99:13</p> <p>dollars [18] - 11:8, 21:3, 21:11, 21:19, 21:23, 22:1, 22:2, 22:5, 22:10, 28:1, 28:14, 30:17, 31:8, 31:12, 31:13, 83:23, 97:21, 104:14</p> <p>donates [1] - 84:18</p> <p>done [16] - 8:19, 38:3, 53:10, 56:10, 56:14, 60:13, 62:13, 65:25, 67:11, 67:12, 70:2, 78:22, 89:13, 93:3, 95:12, 106:11</p> <p>door [3] - 20:21, 20:25</p> <p>doting [1] - 31:1</p> <p>double [2] - 41:24, 87:2</p> <p>double-check [1] - 87:2</p> <p>double-down [1] - 41:24</p> <p>doubled [1] - 29:23</p> <p>DOUGLAS [1] - 3:20</p> <p>down [21] - 21:12, 21:20, 27:11, 35:8, 36:1, 37:9, 41:24, 50:23, 51:15, 51:17, 65:24, 66:2, 76:9, 84:5, 89:3, 91:19, 92:8, 92:9, 92:24, 96:23, 107:8</p> <p>download [1] - 51:2</p> <p>downloaded [1] - 48:24</p> <p>draft [1] - 61:16</p> <p>drafts [1] - 67:20</p> <p>dramatically [1] - 78:18</p> <p>drilling [1] - 89:3</p> <p>drop [2] - 71:22, 93:3</p> <p>DSI [23] - 9:22, 10:5, 10:16,</p>	<p>11:9, 13:14, 14:16, 14:17, 15:18, 15:25, 16:24, 17:25, 22:22, 26:8, 31:24, 34:25, 36:5, 36:9, 39:5, 51:14, 53:16, 57:25, 65:12, 92:21</p> <p>DSI's [1] - 23:10</p> <p>due [14] - 14:21, 15:5, 54:17, 54:18, 54:19, 81:23, 87:18, 87:21, 88:15, 88:20, 88:24, 100:14, 101:13</p> <p>dug [2] - 26:10, 31:3</p> <p>during [4] - 21:5, 22:7, 25:1, 108:3</p> <p style="text-align: center;">E</p> <p>e-mail [11] - 39:6, 41:20, 43:13, 46:4, 60:22, 61:1, 61:13, 63:18, 75:16, 106:13</p> <p>e-mails [5] - 23:18, 32:16, 41:19, 60:24</p> <p>Eagle [2] - 21:23, 21:24</p> <p>early [7] - 14:12, 21:5, 21:7, 21:8, 94:20, 103:15, 106:3</p> <p>earned [2] - 19:6, 21:16</p> <p>easier [2] - 48:15, 105:2</p> <p>easiest [1] - 16:25</p> <p>easily [2] - 24:15, 85:7</p> <p>easy [1] - 54:25</p> <p>economics [1] - 33:16</p> <p>effect [2] - 12:2, 77:2</p> <p>effective [3] - 45:1, 53:22, 101:25</p> <p>efficient [3] - 43:22, 48:20, 72:20</p> <p>effort [3] - 13:10, 35:25, 90:19</p> <p>efforts [10] - 10:1, 10:2, 10:18, 11:3, 11:9, 11:13, 12:13, 70:2, 84:13, 85:9</p> <p>either [12] - 8:9, 12:22, 13:7, 34:2, 43:9, 47:23, 54:11, 58:1, 61:7, 66:16, 74:23, 102:16</p> <p>elderly [1] - 103:9</p> <p>elements [2] - 90:2, 97:8</p> <p>eliminate [1] - 72:16</p> <p>eliminates [1] - 45:7</p> <p>eliminating [2] - 49:15, 72:21</p> <p>ELLEN [1] - 2:2</p> <p>eloquently [1] - 94:22</p> <p>elsewhere [2] - 11:4, 41:23</p> <p>Email [1] - 3:8</p> <p>emerging [1] - 33:11</p> <p>emphasize [1] - 22:11</p> <p>emphasized [1] - 22:15</p> <p>emphatically [1] - 28:23</p> <p>employee [1] - 15:19</p> <p>enable [2] - 83:19, 91:21</p>
---	--	---	---

<p>encountering [1] - 10:24 end [24] - 19:11, 34:24, 35:2, 36:15, 36:19, 44:22, 45:14, 47:12, 63:4, 68:22, 72:18, 72:20, 76:7, 80:6, 84:8, 85:10, 86:24, 90:14, 92:2, 93:20, 96:7, 99:6, 103:23, 104:3 endeavor [3] - 29:13, 33:8, 78:10 ends [2] - 53:25, 54:14 enforce [1] - 47:19 engaged [2] - 11:9, 51:9 engaging [1] - 12:13 engineered [1] - 15:14 enter [5] - 43:10, 44:23, 50:1, 66:19, 74:24 entered [2] - 13:6, 44:6 entering [1] - 72:9 enterprise [1] - 15:14 entertain [7] - 9:21, 34:19, 35:3, 37:17, 56:22, 102:25, 107:10 entertaining [1] - 83:12 entire [10] - 16:16, 17:23, 18:3, 19:10, 20:25, 29:6, 30:12, 36:9, 80:3, 95:1 entities [7] - 54:25, 80:21, 85:5, 85:20, 90:7, 90:16, 97:23 entitled [2] - 85:24, 108:7 entity [1] - 82:14 entries [1] - 51:5 entry [6] - 22:21, 24:20, 38:7, 45:4, 46:25, 68:2 equally [1] - 23:3 equitable [1] - 101:11 equities [1] - 102:20 equity [1] - 85:24 especially [3] - 13:24, 84:18, 99:17 Esq [2] - 4:13, 4:14 ESQ [23] - 1:13, 1:21, 2:1, 2:1, 2:2, 2:5, 2:9, 2:13, 2:16, 2:20, 2:23, 3:1, 3:5, 3:9, 3:10, 3:15, 3:15, 3:20, 3:20, 3:24, 3:24, 4:4, 4:5 essential [1] - 9:11 essentially [7] - 12:25, 13:22, 15:2, 20:2, 29:21, 55:17, 76:22 estate [1] - 84:15 et [5] - 3:21, 5:10, 15:7, 52:6, 106:2 ET [2] - 1:7, 1:19 etcetera [1] - 47:2 evening [1] - 35:6 eventually [2] - 37:21, 92:1 evidence [7] - 25:8, 84:10, 99:11, 99:12, 100:21, 101:2,</p>	<p>102:7 evident [1] - 21:8 evidentiary [3] - 34:10, 39:23, 51:3 EVOLUTION [2] - 1:22, 1:23 evolved [1] - 100:2 evolves [1] - 95:6 exact [2] - 51:13, 101:20 exactly [22] - 22:9, 27:17, 38:13, 43:16, 44:20, 46:2, 47:7, 47:15, 49:10, 50:5, 50:9, 50:23, 52:5, 53:17, 59:15, 60:16, 61:18, 61:21, 65:11, 74:16, 87:3, 97:6 example [13] - 17:1, 17:5, 17:12, 20:18, 21:15, 29:16, 29:24, 30:14, 31:7, 80:19, 90:12, 98:6, 102:16 examples [3] - 30:13, 38:20, 83:3 excellent [1] - 72:14 excessively [1] - 17:17 exchange [2] - 76:8, 93:4 EXCHANGE [2] - 1:4, 1:14 Exchange [3] - 1:14, 5:9, 5:13 exclusive [2] - 75:20, 84:18 excuse [3] - 10:21, 30:15, 51:1 exhibit [1] - 27:12 expand [8] - 10:11, 79:4, 79:25, 80:22, 83:18, 90:6, 99:4, 99:5 expanded [1] - 92:19 expanding [1] - 83:2 expands [1] - 78:16 expansion [18] - 10:7, 78:1, 78:12, 78:14, 82:4, 85:4, 86:4, 86:10, 86:17, 86:25, 89:4, 96:19, 97:18, 100:4, 102:13, 104:1, 105:24, 107:9 expecting [2] - 47:7, 103:4 expects [1] - 58:13 expedite [1] - 92:17 expedited [2] - 46:21, 91:1 expeditious [1] - 73:18 expenses [2] - 15:7, 104:12 expensive [2] - 99:3, 104:6 experience [1] - 17:20 expert [32] - 26:3, 27:25, 28:13, 28:17, 35:7, 35:10, 36:17, 37:8, 37:23, 44:4, 44:13, 52:25, 53:15, 54:9, 54:13, 55:9, 55:25, 56:1, 59:21, 60:1, 60:13, 67:4, 67:8, 71:1, 71:6, 73:10, 77:13, 92:22, 95:17, 106:10 expertise [1] - 59:1 experts [3] - 70:23, 89:24,</p>	<p>96:6 explain [4] - 16:25, 55:12, 84:24, 105:7 explained [1] - 104:2 explaining [1] - 94:17 explanation [2] - 48:16, 52:5 explicitly [1] - 52:10 explore [2] - 12:20, 40:3 exposure [2] - 31:8 expressed [1] - 93:10 extension [3] - 33:3, 33:4, 55:15 extensions [1] - 87:18 extensive [2] - 42:22, 49:4 extensively [1] - 10:24 extent [4] - 12:9, 28:8, 31:16, 77:21 extra [1] - 85:20 extract [1] - 22:4 extrapolate [1] - 70:21 extremely [3] - 25:17, 36:8, 47:13 eyes [1] - 71:9</p> <p style="text-align: center;">F</p> <p>faces [1] - 106:8 facilitate [2] - 76:23, 96:18 fact [13] - 14:25, 26:14, 41:5, 41:6, 41:15, 41:21, 60:21, 78:6, 83:24, 93:14, 95:16, 97:15, 100:9 fact-check [1] - 41:6 factor [1] - 17:10 factoring [4] - 13:18, 15:5, 19:6, 33:13 factors [3] - 17:2, 17:8, 17:11 Facts [3] - 24:7, 25:25, 27:16 facts [6] - 23:2, 23:6, 24:8, 24:9, 32:7, 58:21 failed [1] - 101:3 failure [1] - 49:20 fair [5] - 17:7, 32:18, 52:16, 52:17, 101:21 faith [2] - 56:20, 76:8 fall [1] - 33:15 false [5] - 30:10, 30:11, 51:1, 51:3, 53:4 familiar [1] - 26:18 family [1] - 103:8 Family [1] - 6:21 FAMILY [1] - 2:6 far [12] - 13:16, 14:5, 15:10, 15:21, 24:21, 31:5, 32:13, 37:4, 81:19, 87:17, 91:14, 94:20 fashion [2] - 6:1, 76:2</p>	<p>fast [1] - 87:15 FCRR [2] - 4:9, 108:11 feasible [2] - 47:2, 47:17 February [1] - 106:3 fee [3] - 19:6, 88:20, 99:1 feeding [1] - 34:1 fees [12] - 17:17, 21:17, 21:19, 28:25, 29:6, 29:9, 29:23, 29:25, 30:1, 30:21, 73:15, 81:3 Fels [2] - 2:9, 2:23 FERGUSON [1] - 6:13 Ferguson [1] - 6:13 few [7] - 5:7, 46:6, 48:10, 89:15, 98:15, 101:17, 103:4 Field [1] - 87:7 Fifth [1] - 2:2 fight [2] - 79:17, 91:13 figure [11] - 33:17, 40:2, 51:13, 53:17, 56:9, 59:15, 60:6, 67:15, 71:2, 87:3, 92:22 figures [1] - 20:17 file [21] - 42:7, 46:19, 46:23, 47:22, 49:21, 49:22, 50:5, 52:18, 56:11, 58:13, 59:25, 66:18, 67:18, 68:21, 71:17, 87:19, 96:4, 103:13, 106:25 filed [19] - 8:6, 13:13, 24:3, 24:4, 26:4, 27:15, 35:6, 46:21, 47:15, 49:2, 50:17, 57:13, 57:19, 69:25, 77:5, 87:23, 99:22, 99:25, 105:6 files [8] - 48:24, 49:5, 63:1, 63:3, 68:21, 75:13 filing [4] - 9:22, 65:20, 66:7, 103:10 filings [2] - 58:6, 96:25 final [1] - 100:25 finally [1] - 51:4 financial [12] - 10:25, 13:17, 14:4, 25:2, 27:9, 30:2, 32:13, 35:9, 63:1, 87:20, 106:9, 106:10 financials [2] - 34:3, 36:7 findings [5] - 16:13, 33:17, 55:16, 55:18, 55:19 fine [8] - 12:8, 51:20, 66:3, 79:13, 103:13, 103:16, 103:17 finish [1] - 87:10 finished [1] - 21:2 finite [1] - 74:17 firm [8] - 39:5, 57:14, 57:15, 57:17, 62:24, 65:8, 65:9 firms [1] - 58:9 first [17] - 11:25, 12:1, 13:1, 18:7, 40:15, 59:16, 75:11, 79:4, 80:21, 92:3, 93:12, 93:24, 95:10, 95:15, 97:20,</p>
---	--	---	--

<p>98:2, 101:1 five [3] - 20:22, 57:6, 64:9 fix [1] - 31:14 FL [13] - 1:15, 1:23, 2:7, 2:10, 2:17, 2:24, 3:3, 3:7, 3:12, 3:17, 4:1, 4:6, 4:11 flagged [1] - 71:5 flank [1] - 55:20 flat [3] - 20:1, 40:8, 63:14 flatly [1] - 40:6 flawed [1] - 14:19 flies [1] - 9:10 flip [3] - 81:19, 102:4, 102:12 floated [1] - 37:12 floor [2] - 2:13, 78:4 Floor [2] - 2:2, 4:10 FLORIDA [1] - 1:1 flow [5] - 22:8, 22:10, 26:5, 28:18, 96:2 flows [1] - 57:12 focus [2] - 19:18, 95:5 focused [1] - 59:9 folks [3] - 10:22, 89:12, 106:16 follow [4] - 25:5, 74:7, 83:17, 93:21 followed [1] - 57:23 following [2] - 5:2, 7:21 follows [1] - 26:2 followup [1] - 105:25 followups [1] - 79:23 FOR [11] - 1:13, 1:18, 1:21, 2:1, 2:5, 2:13, 2:20, 3:1, 3:9, 3:15, 3:20 forces [1] - 23:23 foreclosure [6] - 81:4, 81:13, 81:15, 85:2, 101:5, 102:16 foregoing [1] - 108:6 forensic [8] - 50:24, 58:6, 58:7, 58:8, 58:13, 65:9, 97:25, 100:7 forgot [1] - 29:5 form [2] - 50:10, 65:21 formal [2] - 49:9, 76:10 forth [6] - 26:16, 38:5, 53:2, 57:16, 68:1, 75:1 forthcoming [2] - 87:23, 88:11 forward [7] - 28:16, 51:3, 64:7, 65:7, 89:11, 98:23, 106:18 forwarded [3] - 41:18, 43:12, 64:20 FOSLID [1] - 3:24 Foslid [1] - 3:25 four [5] - 14:7, 57:13, 80:21, 80:22, 81:4</p>	<p>fourth [2] - 63:5, 107:9 FOX [1] - 4:4 Fox [2] - 62:25, 63:4 frame [1] - 22:7 frank [1] - 9:7 frankly [4] - 23:15, 43:24, 58:16, 80:16 fraudulent [1] - 90:17 Freedman [3] - 24:12, 25:1, 25:5 freeze [8] - 79:6, 80:12, 80:14, 98:11, 98:12, 98:16, 100:20 fresh [1] - 106:8 Friday [1] - 66:8 FRIDMAN [2] - 2:9, 2:23 fridman [1] - 68:23 Fridman [7] - 2:9, 2:23, 60:23, 60:24, 68:9, 69:3, 78:7 FROCCARRO [1] - 6:11 Froccarro [1] - 6:11 Froccaro [2] - 11:19, 12:3 FROCCARO [4] - 2:20, 11:18, 11:21, 12:7 front [8] - 11:6, 35:18, 43:6, 77:7, 86:15, 89:7, 92:21, 94:7 fruitful [1] - 9:24 frustrated [1] - 54:19 frustrating [1] - 32:6 frustration [3] - 32:3, 94:11, 94:13 Full [2] - 1:19, 80:24 full [9] - 25:16, 44:6, 46:11, 49:1, 69:5, 78:5, 81:23, 83:10, 106:25 full-blown [1] - 25:16 fully [3] - 11:9, 78:13, 101:14 fulsome [4] - 24:5, 43:3, 70:22, 101:9 functioning [1] - 22:17 FUND [2] - 1:23, 1:23 Funding [19] - 5:10, 8:5, 8:8, 14:24, 19:19, 20:19, 20:24, 21:12, 21:17, 22:16, 24:11, 29:21, 31:13, 38:17, 39:1, 41:8, 41:20, 49:5, 100:9 funding [6] - 15:11, 15:14, 19:19, 19:22, 20:3, 33:18 Funding's [1] - 31:9 funds [13] - 10:21, 15:1, 29:19, 80:13, 82:2, 82:18, 83:25, 84:9, 84:11, 85:7, 93:22, 100:10 FURMAN [1] - 3:15 Furman [1] - 6:24 furman [1] - 7:1</p>	<p>FUTERFAS [14] - 2:1, 36:23, 40:11, 44:15, 57:4, 60:15, 62:17, 62:20, 87:25, 88:4, 88:8, 103:7, 103:15, 103:21 Futerfas [16] - 6:5, 36:20, 40:5, 40:13, 42:23, 43:12, 43:19, 56:8, 56:25, 68:7, 68:15, 69:1, 88:1, 88:7, 103:7, 106:2</p> <p style="text-align: center;">G</p> <p>GAAP [1] - 37:4 Gabes [2] - 2:10, 2:24 GAETAN [1] - 3:20 Gaetan [1] - 7:15 game [2] - 96:14, 103:3 gap [1] - 84:4 garnished [1] - 13:4 garnishments [1] - 13:7 gateway [2] - 53:15, 55:7 gears [2] - 34:15, 67:18 generated [3] - 10:3, 14:22, 15:2 generating [1] - 92:10 generically [1] - 77:3 Gissas [2] - 7:7, 7:8 GISSAS [1] - 1:24 given [7] - 19:3, 23:21, 39:16, 39:19, 76:8, 84:25, 100:7 GIZELLA [2] - 4:9, 108:11 gizella_baan [1] - 4:12 gizella_baan-proulx@flsd.uscourts.gov [1] - 4:12 GJA@Pietragallo.com [1] - 3:23 gleaned [1] - 79:12 Gmail [1] - 39:8 goal [5] - 8:17, 54:3, 59:18, 59:21, 77:10 Gordon [1] - 3:21 gotcha [1] - 71:21 grant [2] - 53:5, 86:25 granting [1] - 85:23 granular [1] - 59:11 graph [3] - 18:3, 18:4, 19:18 graphs [1] - 18:1 Gray [1] - 2:6 great [5] - 14:16, 31:7, 67:8, 72:8, 107:17 green [1] - 89:9 greeted [1] - 19:4 gross [6] - 20:17, 20:20, 36:6, 97:21, 100:11 ground [1] - 14:23 GROUP [2] - 1:7, 1:22 Group [2] - 1:19, 5:10</p>	<p>group [4] - 31:20, 35:5, 104:8, 104:10 grouped [1] - 30:8 guess [5] - 12:4, 18:1, 74:12, 83:18, 83:24 guessing [1] - 50:10 guidance [1] - 58:15 guidelines [1] - 59:20 guys [32] - 16:1, 16:12, 16:14, 35:13, 40:19, 55:23, 59:14, 60:9, 62:4, 65:21, 66:11, 66:22, 67:5, 67:10, 67:14, 68:10, 68:19, 70:16, 70:20, 72:2, 72:7, 72:17, 72:22, 74:14, 74:17, 78:11, 79:3, 79:15, 103:23, 104:2, 104:18</p> <p style="text-align: center;">H</p> <p>hair [2] - 62:21, 62:22 half [4] - 35:13, 58:8, 63:7, 63:12 hamstrung [1] - 89:22 hand [2] - 11:8, 93:2 handed [2] - 53:12, 55:4 handhold [1] - 67:6 handled [1] - 10:5 handles [1] - 104:8 handling [1] - 68:11 hands [8] - 32:10, 33:24, 54:2, 62:13, 76:14, 77:20, 88:22, 91:5 happy [6] - 43:8, 44:5, 47:22, 47:24, 52:18, 67:23 hard [2] - 53:8, 54:23 harm [1] - 34:8 hashed [1] - 99:20 head [3] - 37:7, 39:7, 50:14 hear [10] - 16:10, 16:11, 33:12, 37:20, 38:11, 40:15, 51:18, 56:8, 72:14, 107:11 heard [7] - 63:18, 65:18, 67:25, 68:7, 94:12, 100:18, 106:5 hearing [14] - 5:14, 9:18, 39:23, 42:14, 51:3, 55:10, 69:18, 76:10, 88:25, 103:24, 106:8, 106:21, 107:19, 108:3 hearings [3] - 34:11, 44:12, 56:14 heavy [2] - 53:12, 55:4 heavy-handed [2] - 53:12, 55:4 heels [1] - 65:23 held [13] - 5:2, 23:25, 24:1, 24:8, 24:16, 31:22, 32:1, 78:7, 78:11, 79:15, 86:6, 90:7, 98:9 help [9] - 53:24, 56:13,</p>
---	--	--	--

<p>59:12, 78:9, 79:1, 89:10, 92:23, 106:18 helpful [4] - 18:10, 42:2, 58:20, 60:2 helping [1] - 54:2 helps [2] - 53:23, 90:19 hereby [1] - 108:6 Heritage [1] - 21:15 high [4] - 19:6, 21:10, 30:3, 30:20 highest [1] - 29:4 highlighted [1] - 27:13 highly [3] - 17:19, 18:16, 19:17 himself [1] - 9:3 hire [1] - 58:21 hired [3] - 58:6, 58:7, 73:11 HIRSCHHORN [1] - 2:5 Hirschhorn [1] - 68:12 history [1] - 21:1 hit [1] - 19:12 hits [3] - 62:12, 88:25, 92:23 hold [4] - 44:17, 65:9, 86:15, 90:9 holding [2] - 31:22, 31:24 holdings [1] - 84:19 hole [2] - 21:2, 21:3 Holland [2] - 1:22, 7:6 Homes [3] - 19:15, 19:16, 82:13 homework [1] - 107:5 honestly [6] - 47:18, 59:1, 59:18, 66:21, 68:8, 76:8 Honor [111] - 5:18, 6:4, 6:13, 6:17, 6:19, 6:22, 6:25, 7:5, 7:15, 8:4, 8:12, 11:7, 11:15, 11:25, 12:25, 16:2, 16:15, 16:19, 18:1, 18:13, 19:13, 20:14, 21:13, 22:11, 23:1, 23:4, 23:20, 24:20, 24:21, 25:14, 26:11, 26:18, 26:25, 28:3, 28:15, 31:14, 38:12, 39:4, 40:24, 42:10, 42:12, 42:17, 42:22, 43:8, 43:9, 43:24, 44:9, 44:15, 46:2, 47:22, 48:17, 48:22, 50:7, 52:17, 57:4, 57:5, 57:6, 57:9, 58:6, 58:12, 58:17, 58:22, 60:19, 61:3, 61:4, 61:12, 61:24, 62:22, 64:8, 64:15, 64:17, 64:21, 64:24, 65:11, 69:2, 69:5, 69:17, 69:23, 72:13, 72:24, 74:2, 75:10, 81:13, 83:2, 83:22, 85:12, 86:18, 87:25, 88:5, 89:17, 90:5, 93:9, 96:4, 96:9, 97:13, 98:2, 99:11, 99:16, 100:13, 100:19, 100:23, 101:1, 103:7, 103:10, 104:4,</p>	<p>105:4, 105:10, 105:14, 106:6, 106:19 Honor's [3] - 65:15, 81:23, 85:15 HONORABLE [1] - 1:10 honored [1] - 81:2 honoring [1] - 13:5 hoop [1] - 53:10 hoops [1] - 56:2 hope [3] - 29:13, 77:14, 89:14 hopefully [1] - 58:18 hopes [1] - 35:2 horrible [1] - 51:18 host [2] - 46:5, 49:1 hosted [5] - 63:23, 63:24, 64:4, 73:16, 73:23 hosting [4] - 43:13, 73:4, 75:12, 75:17 Hosting [6] - 46:4, 65:3, 65:6, 73:16, 73:24, 75:12 hosts [2] - 64:18, 73:21 hour [2] - 92:3, 105:5 hours [6] - 64:22, 66:9, 67:17, 74:13, 89:14, 104:6 house [1] - 18:19 housekeeping [1] - 8:18 hundred [1] - 71:20 hurt [1] - 34:13 hurts [2] - 70:21, 71:9 hypos [1] - 19:5 hypothetical [3] - 19:5, 19:6, 29:16</p>	<p>impressive [2] - 20:17, 20:20 improper [1] - 43:5 improperly [2] - 44:2, 74:18 inability [3] - 69:13, 71:21, 84:2 inaid [1] - 38:16 Inc [1] - 8:13 INC [3] - 1:7, 1:19, 1:20 include [1] - 28:4 included [2] - 21:6, 61:18 including [8] - 11:22, 23:22, 30:14, 31:21, 58:22, 98:19, 98:20 INCOME [2] - 1:23, 1:23 inconsistent [1] - 26:7 incorporated [1] - 57:13 incumbent [1] - 8:22 incur [3] - 73:14, 73:18, 102:11 independent [2] - 55:14, 58:15 indicated [1] - 78:8 indicates [1] - 48:5 indication [1] - 54:18 individual [1] - 18:8 individuals [1] - 35:23 indulged [1] - 23:20 inference [1] - 20:4 inflows [2] - 28:1, 57:17 influence [1] - 26:5 info [2] - 1:18, 74:16 information [29] - 11:5, 16:18, 25:3, 25:13, 29:3, 32:19, 39:11, 43:4, 47:8, 49:22, 56:16, 57:16, 58:20, 61:8, 61:15, 61:22, 63:13, 63:14, 63:16, 64:19, 65:6, 67:21, 67:22, 96:5, 97:25, 98:19, 100:1 initial [2] - 21:6, 85:6 initiation [1] - 48:8 injunction [2] - 11:16, 81:8 injunctions [3] - 12:18, 12:20, 38:1 inquire [1] - 9:8 insiders [2] - 21:9, 21:12 insofar [1] - 22:21 inspection [2] - 67:2, 96:15 instance [6] - 18:3, 18:7, 18:10, 41:18, 82:13, 82:20 instances [1] - 31:4 instead [5] - 27:18, 41:23, 50:16, 56:13, 95:20 instituted [1] - 63:6 institution [1] - 62:23 instructed [1] - 25:4 instructive [1] - 19:17 insufficient [1] - 81:11</p>	<p>integrity [1] - 40:4 intent [1] - 56:4 intentionally [1] - 51:2 interacting [1] - 40:21 interest [9] - 8:9, 9:9, 55:2, 82:14, 82:15, 82:21, 82:25, 83:1 interested [1] - 10:6 interesting [3] - 17:25, 19:24, 27:3 interestingly [1] - 27:5 interests [1] - 8:3 internal [2] - 16:21, 25:19 interrupt [1] - 81:9 interruptions [1] - 40:13 intervene [1] - 8:6 intervenor [1] - 8:9 intervention [2] - 67:12, 69:9 interview [1] - 27:20 intrusion [1] - 27:21 intrusive [1] - 78:23 intuition [1] - 87:2 invested [1] - 94:16 investigating [1] - 41:16 investigative [2] - 96:4, 106:25 investing [1] - 9:14 investments [3] - 15:3, 32:20, 85:5 investor [8] - 17:9, 51:19, 82:2, 90:7, 90:13, 97:21, 100:11, 104:14 investor's [1] - 83:1 investors [45] - 7:19, 7:20, 8:24, 10:2, 10:21, 15:1, 15:6, 15:15, 17:9, 17:15, 23:4, 23:16, 28:11, 28:12, 28:15, 29:9, 30:25, 31:9, 31:16, 31:18, 32:17, 36:3, 38:5, 41:22, 51:8, 51:12, 53:25, 55:13, 56:9, 71:5, 80:2, 80:4, 80:12, 83:20, 84:10, 84:11, 84:17, 84:21, 85:10, 92:11, 93:21, 99:7, 102:3, 102:14 involved [16] - 5:20, 35:23, 40:10, 55:5, 56:22, 59:11, 60:24, 67:15, 72:6, 89:6, 89:20, 92:13, 94:5, 95:24, 96:10, 102:22 involvement [1] - 15:13 involving [1] - 96:14 IP [2] - 43:16, 46:16 iPhone [1] - 83:7 issue [35] - 13:21, 14:10, 20:14, 28:20, 35:15, 37:19, 38:9, 43:8, 43:11, 45:19, 45:20, 47:14, 52:9, 52:22, 61:1, 61:4, 62:21, 66:12, 68:14, 72:7, 75:1, 76:9,</p>
<p>I</p>			
	<p>i.e [1] - 20:3 identify [1] - 90:4 Il [2] - 1:10, 8:5 ill [1] - 103:9 imagine [1] - 94:15 immediate [1] - 89:1 immediately [3] - 47:3, 47:24, 61:16 impasse [1] - 88:14 impediment [1] - 69:7 impediments [5] - 54:4, 70:14, 77:3, 81:18, 89:2 impinged [1] - 82:11 implicate [1] - 100:14 importance [1] - 96:22 important [15] - 9:24, 10:15, 12:8, 13:24, 23:3, 23:5, 23:6, 29:10, 39:24, 58:22, 65:18, 77:23, 92:17, 92:23, 94:6 importantly [2] - 28:14, 50:24 impression [2] - 16:12, 51:24</p>		

<p>83:12, 87:7, 90:23, 96:1, 96:21, 97:18, 97:19, 97:23, 100:11, 101:7, 105:24 issued [2] - 25:1, 35:22 issues [16] - 9:19, 37:2, 40:4, 42:21, 46:18, 56:10, 60:19, 66:4, 66:16, 67:9, 72:3, 89:18, 93:19, 97:8, 99:20, 103:5 items [5] - 49:24, 50:2, 68:20, 74:17, 74:24 iterations [1] - 38:15 itself [2] - 85:22, 106:21</p>	<p>judgment [1] - 12:23 judgments [1] - 13:8 July [7] - 62:24, 63:4, 63:5, 63:22, 64:10, 73:7, 98:23 jump [2] - 36:20, 53:9 jumped [1] - 26:1 junction [1] - 84:8 jurisdiction [1] - 85:14 jury [2] - 5:5, 91:19</p>	<p>larger [2] - 83:19, 102:12 largest [1] - 18:5 last [17] - 12:6, 24:4, 24:25, 27:15, 43:14, 44:9, 45:3, 46:7, 56:18, 57:6, 57:24, 58:1, 60:16, 65:10, 75:5, 91:17, 101:17 late [2] - 62:24, 63:22 latest [3] - 11:6, 52:19, 61:13 Lau [5] - 26:25, 27:1, 27:4, 27:19, 28:2 lau's [1] - 27:8 law [4] - 2:16, 62:24, 85:22, 98:14 lawsuit [1] - 35:23 lawyer [1] - 27:22 lawyers [17] - 28:7, 32:24, 33:2, 34:2, 34:20, 36:16, 37:22, 40:14, 54:8, 55:20, 58:18, 58:23, 59:2, 68:7, 71:11, 78:17, 92:24 Lead [2] - 8:5, 8:8 lead [2] - 15:23, 61:25 leads [1] - 84:10 learn [1] - 41:4 least [19] - 13:15, 15:21, 32:9, 32:19, 33:10, 41:5, 41:7, 54:14, 55:3, 60:4, 60:8, 60:11, 65:8, 68:18, 69:24, 78:23, 84:4, 84:16, 98:16 least-restrictive [1] - 98:16 leave [1] - 87:19 leaves [1] - 86:7 leaving [2] - 39:2, 100:9 led [4] - 25:6, 25:7, 26:13 left [5] - 7:9, 50:10, 99:14, 102:14, 107:4 legal [1] - 73:14 lengths [1] - 14:16 lengthy [2] - 8:16, 9:18 Leon [2] - 2:10, 2:24 less [4] - 15:5, 98:3, 98:25, 99:8 letting [2] - 36:15, 51:20 level [4] - 39:14, 59:11, 85:20, 87:4 levels [1] - 25:15 LEVIN [1] - 4:5 liberty [1] - 27:12 license [2] - 73:21, 73:22 life [3] - 19:2, 94:6, 105:2 lifetime [1] - 27:16 lift [4] - 12:18, 54:4, 70:14, 77:22 lifted [1] - 12:20 likewise [1] - 25:25 limit [1] - 62:14 limitations [1] - 108:4</p>	<p>limited [2] - 25:17, 36:17 line [12] - 19:18, 19:19, 19:21, 19:22, 20:16, 36:8, 39:17, 39:18, 62:11, 64:15, 83:8, 84:5 lines [3] - 18:23, 20:1, 51:5 Lion [2] - 82:14 lis [3] - 81:10, 98:21, 99:8 LISA [2] - 2:1, 2:6 Lisa [6] - 6:2, 6:5, 21:18, 21:22, 57:7, 57:19 list [2] - 50:9, 89:4 listen [4] - 56:5, 62:3, 88:6, 94:3 literally [2] - 57:17, 96:24 litigate [2] - 55:2, 77:7 litigated [1] - 37:25 litigating [4] - 33:3, 45:17, 62:11, 91:9 litigation [25] - 7:21, 8:10, 9:5, 11:16, 12:18, 12:24, 14:12, 18:14, 20:7, 20:15, 32:10, 38:3, 45:1, 53:13, 53:23, 62:1, 75:8, 80:7, 81:7, 84:9, 89:11, 91:21, 92:7, 93:2, 94:20 litigators [1] - 34:13 litigious [1] - 62:6 live [3] - 66:17, 89:10, 98:20 LLC [6] - 1:22, 1:23, 1:24, 2:16, 3:16, 8:5 LLP [4] - 1:22, 3:1, 3:10, 4:4 LME [1] - 6:21 lo [1] - 39:11 loan [2] - 19:5, 82:24 loaned [4] - 30:15, 30:16, 33:21, 39:16 loans [13] - 10:22, 15:5, 32:12, 33:19, 40:23, 82:6, 82:7, 82:8, 84:2, 84:13, 84:22, 84:23, 84:24 local [1] - 88:16 letting [1] - 106:13 locking [1] - 51:17 log [21] - 39:25, 40:6, 43:11, 44:7, 46:11, 46:12, 46:23, 47:8, 48:3, 49:1, 49:2, 49:22, 56:16, 64:17, 64:18, 64:21, 65:2, 65:3, 67:22, 74:11, 74:16 log-in [4] - 56:16, 67:22, 74:11, 74:16 Logic [3] - 48:25, 49:3, 75:14 logs [8] - 45:21, 45:22, 45:24, 46:12, 46:13, 52:13, 62:19, 62:20 long-time [1] - 24:13</p>
J	K		
<p>JAMES [2] - 2:20, 3:15 James [3] - 6:11, 11:18, 24:19 January [2] - 103:15, 106:3 JASON [1] - 3:5 jds@sallahlaw.com [1] - 3:18 Jeff [1] - 6:17 JEFFREY [2] - 3:1, 3:15 Jeffrey [1] - 6:25 jet [1] - 21:24 jlc@sallahlaw.com [1] - 3:18 jmarcus@mnrlawfirm.com [1] - 3:4 jmays@mnrlawfirm.com [1] - 3:8 Joe [3] - 6:12, 63:2 JOEL [1] - 2:5 Joel.hirschhorn@gray [1] - 2:8 Joel.hirschhorn@gray-robinson.com [1] - 2:8 John [1] - 7:7 JOHN [1] - 1:24 join [3] - 8:25, 42:13, 42:15 joined [2] - 7:19, 94:18 joining [4] - 6:2, 7:14, 7:21, 9:2 joins [2] - 5:23, 65:15 joint [4] - 13:13, 65:20, 66:7, 87:16 JOSEPH [2] - 2:13, 2:20 Joseph [4] - 6:6, 6:9, 6:10, 6:13 jrfesq61@aol.com [1] - 2:22 Judge [11] - 6:8, 6:11, 10:6, 11:18, 12:7, 40:11, 43:9, 79:9, 84:22, 99:21 JUDGE [1] - 1:11 judge [7] - 11:18, 35:18, 39:14, 46:19, 47:5, 62:6, 62:12</p>	<p>keep [10] - 5:6, 7:22, 44:18, 45:12, 55:12, 56:13, 57:1, 92:8, 94:8, 101:21 keeping [2] - 82:16, 92:8 KERNISKY [1] - 7:5 Kernisky [1] - 7:6 key [2] - 51:21, 59:12 keys [1] - 59:14 kind [14] - 10:14, 11:5, 12:20, 14:8, 14:9, 35:25, 38:23, 56:23, 59:5, 60:7, 68:16, 71:25, 91:6, 101:17 Klenk [4] - 24:21, 24:24, 25:11, 25:12 Klenk's [1] - 24:19 Knight [2] - 1:22, 7:6 knock [1] - 96:23 knowing [3] - 81:24, 98:24, 104:13 knowledge [1] - 75:15 knows [3] - 58:5, 94:24, 104:9 KOLAYA [8] - 3:24, 42:10, 42:22, 46:2, 47:22, 48:17, 52:17, 75:10 Kolaya [36] - 3:25, 7:16, 9:4, 10:17, 14:2, 16:7, 26:22, 27:1, 27:8, 27:13, 27:23, 29:1, 38:23, 40:9, 40:16, 41:6, 42:5, 42:9, 42:10, 42:19, 45:21, 52:8, 55:6, 59:11, 61:10, 61:11, 61:12, 61:21, 63:20, 65:18, 67:16, 72:4, 73:13, 74:8, 75:9, 78:25</p>		
	L		
	<p>L.M.E [1] - 2:6 lack [3] - 13:20, 32:12, 101:13 LaForte [8] - 2:20, 6:10, 6:12, 6:14, 21:25, 22:2, 22:3, 25:4 landlord [1] - 104:18 language [4] - 47:15, 61:21, 68:19, 76:5 large [4] - 17:17, 49:19, 96:24, 97:7</p>		

<p>look [48] - 18:1, 19:14, 28:3, 28:16, 28:21, 28:24, 30:1, 30:3, 30:17, 33:16, 33:24, 35:8, 35:12, 35:17, 36:18, 36:19, 37:9, 37:18, 38:7, 45:16, 51:2, 52:25, 53:11, 62:4, 63:13, 65:1, 73:19, 73:21, 73:22, 75:4, 76:22, 77:14, 83:8, 85:8, 85:11, 87:1, 91:12, 92:20, 93:5, 96:13, 97:19, 98:20, 101:24, 102:19, 102:23, 102:24, 105:17, 107:8</p> <p>Look [2] - 63:25, 64:24</p> <p>looked [9] - 16:21, 22:19, 25:13, 35:8, 36:18, 58:14, 64:1, 64:2, 65:12</p> <p>looking [11] - 14:17, 22:3, 22:22, 70:24, 72:2, 73:16, 83:25, 87:7, 87:15, 92:21, 96:17</p> <p>looks [2] - 73:22, 88:22</p> <p>lose [1] - 80:6</p> <p>loss [1] - 25:3</p> <p>lost [1] - 91:2</p> <p>luckily [1] - 104:8</p> <p>lurking [1] - 89:2</p>	<p>materials [6] - 47:19, 52:11, 57:10, 64:6, 66:21, 77:1</p> <p>math [4] - 22:9, 32:8, 37:14, 77:20</p> <p>mathematically [1] - 54:11</p> <p>matter [8] - 5:8, 5:20, 89:11, 91:1, 92:18, 106:14, 107:15, 108:7</p> <p>matters [4] - 11:13, 62:8, 82:9, 90:1</p> <p>MAYS [1] - 3:5</p> <p>MCA [7] - 17:20, 18:6, 29:17, 29:21, 29:22, 41:14, 84:19</p> <p>MCA's [4] - 18:6, 18:22, 28:22, 39:16</p> <p>McElhone [12] - 2:1, 2:6, 6:2, 6:5, 21:18, 21:22, 21:25, 22:3, 57:7, 57:19, 82:15, 88:23</p> <p>McElhone's [1] - 87:20</p> <p>mean [19] - 28:9, 36:7, 37:4, 37:23, 48:12, 53:22, 65:25, 74:24, 80:5, 81:13, 84:20, 86:11, 86:12, 94:5, 94:22, 98:16, 99:15, 104:1, 105:13</p> <p>meaning [4] - 15:11, 19:22, 45:22, 85:17</p> <p>meaningful [1] - 100:4</p> <p>meaningless [1] - 29:11</p> <p>means [7] - 36:15, 76:13, 78:23, 80:6, 98:3, 98:25, 100:21</p> <p>measures [1] - 79:5</p> <p>measuring [1] - 19:1</p> <p>mediation [7] - 78:8, 78:11, 86:20, 86:21, 88:13, 88:18, 102:22</p> <p>meet [7] - 36:22, 42:23, 44:13, 45:9, 56:21, 68:4, 76:25</p> <p>meeting [1] - 74:12</p> <p>Mehl [4] - 24:13, 25:9, 25:14, 25:20</p> <p>Melissa [3] - 21:7, 26:3, 27:25</p> <p>member [1] - 103:8</p> <p>members [1] - 38:22</p> <p>memorializing [1] - 67:6</p> <p>mention [1] - 29:5</p> <p>mentioned [7] - 40:18, 48:4, 52:18, 72:4, 88:23, 98:8, 100:13</p> <p>merchant [23] - 10:3, 13:1, 18:11, 18:12, 19:20, 20:3, 29:17, 29:18, 29:21, 30:16, 31:8, 39:9, 39:18, 40:21, 57:11, 61:14, 61:22, 82:7, 82:15, 82:16, 82:17, 82:19</p>	<p>merchant's [1] - 38:25</p> <p>merchants [21] - 11:9, 11:11, 12:13, 12:15, 13:6, 17:21, 17:23, 18:5, 19:3, 19:8, 20:18, 20:24, 28:21, 29:4, 30:7, 39:15, 40:21, 41:11, 41:13, 82:8, 82:10</p> <p>merit [2] - 34:7, 71:25</p> <p>merits [2] - 34:14, 53:1</p> <p>met [2] - 85:22, 103:17</p> <p>method [2] - 25:6, 36:9</p> <p>methodology [6] - 14:19, 35:12, 37:3, 37:22, 38:9, 71:2</p> <p>Miami [13] - 1:15, 1:23, 2:7, 3:3, 3:7, 3:12, 4:1, 4:6, 4:10, 4:11, 58:9, 65:8, 103:8</p> <p>Michael [1] - 6:24</p> <p>MICHAEL [1] - 3:15</p> <p>middle [1] - 87:1</p> <p>midnight [1] - 51:14</p> <p>might [4] - 41:14, 90:7, 96:6, 106:18</p> <p>Military [1] - 3:16</p> <p>Miller [1] - 6:19</p> <p>MILLER [2] - 3:9, 6:19</p> <p>million [26] - 11:8, 11:21, 11:22, 11:23, 11:24, 12:12, 21:2, 21:3, 21:11, 21:19, 21:23, 22:1, 22:2, 22:5, 22:10, 26:6, 26:14, 28:14, 28:18, 30:16, 30:19, 31:8, 31:12, 31:13, 98:11</p> <p>millions [2] - 83:23, 104:14</p> <p>mind [2] - 83:4, 92:6</p> <p>mine [1] - 104:25</p> <p>minimal [1] - 44:1</p> <p>minimum [2] - 100:6, 100:17</p> <p>minute [3] - 16:10, 40:15, 77:10</p> <p>minutes [3] - 5:7, 48:11, 57:6</p> <p>minutia [1] - 71:6</p> <p>minutiae [1] - 50:12</p> <p>MIRANDA [1] - 4:4</p> <p>miscalculated [1] - 54:6</p> <p>miscalculating [1] - 55:21</p> <p>miscalculation [2] - 54:7, 54:8</p> <p>mischacterization [1] - 36:6</p> <p>misinformation [2] - 36:2, 45:8</p> <p>misinterpret [1] - 79:14</p> <p>misled [1] - 51:10</p> <p>miss [1] - 89:19</p> <p>missed [9] - 7:4, 7:10, 7:12, 8:2, 71:7, 94:18, 97:11, 97:14, 103:23</p>	<p>missing [2] - 71:3, 90:24</p> <p>misstate [1] - 29:2</p> <p>misstatements [1] - 51:10</p> <p>mistakes [1] - 71:8</p> <p>misunderstandings [1] - 45:8</p> <p>mixed [1] - 75:6</p> <p>Miyar [2] - 4:13, 8:12</p> <p>MIYAR [1] - 8:12</p> <p>mlundeensoto@shutts.com [1] - 4:7</p> <p>model [4] - 33:6, 33:18, 53:8, 54:2</p> <p>moment [4] - 37:21, 69:12, 69:16, 99:21</p> <p>momentum [1] - 67:24</p> <p>money [48] - 15:3, 15:14, 17:9, 17:24, 18:11, 18:12, 18:19, 19:3, 19:8, 19:23, 20:5, 20:11, 20:12, 20:21, 21:8, 22:6, 29:7, 30:18, 39:2, 40:2, 40:19, 41:8, 41:21, 45:18, 50:25, 51:8, 54:23, 54:24, 79:16, 84:15, 84:20, 84:21, 85:4, 90:13, 90:18, 96:14, 97:23, 98:9, 99:6, 100:9, 101:22, 102:14, 104:14, 104:20, 105:3</p> <p>monies [1] - 90:7</p> <p>monitoring [2] - 42:7, 57:17</p> <p>month [2] - 18:8, 19:9</p> <p>months [18] - 14:7, 18:8, 44:25, 48:18, 57:13, 57:20, 57:21, 58:8, 58:9, 60:24, 60:25, 62:11, 63:8, 63:12, 65:10, 67:18, 72:4, 96:24</p> <p>moot [1] - 50:13</p> <p>morning [4] - 6:8, 7:5, 51:15, 58:1</p> <p>most [12] - 9:22, 11:11, 12:18, 13:14, 17:25, 18:9, 26:23, 32:5, 54:4, 58:9, 73:17, 83:3</p> <p>motion [35] - 8:6, 10:11, 13:13, 24:4, 34:10, 35:6, 46:19, 47:6, 47:21, 48:4, 49:21, 49:23, 50:13, 50:17, 52:12, 53:19, 64:23, 65:4, 65:20, 66:18, 74:21, 78:5, 79:1, 79:3, 80:21, 83:9, 87:16, 87:19, 90:5, 99:12, 103:10, 103:14, 105:6, 107:9</p> <p>motions [3] - 8:19, 77:5, 96:12</p> <p>motivated [1] - 49:19</p> <p>motives [1] - 51:21</p> <p>mount [1] - 93:1</p> <p>mounting [1] - 102:11</p> <p>mouth [2] - 31:23, 55:22</p> <p>move [10] - 7:2, 13:9, 64:7,</p>
<p>M</p>			
<p>mag [1] - 77:7</p> <p>mag's [1] - 62:13</p> <p>Magistrate [1] - 10:6</p> <p>magistrate [4] - 35:18, 46:18, 47:4, 60:18</p> <p>mail [11] - 39:6, 41:20, 43:13, 46:4, 60:22, 61:1, 61:13, 63:18, 75:16, 106:13</p> <p>mails [5] - 23:18, 32:16, 41:19, 60:24</p> <p>main [1] - 104:7</p> <p>maintain [2] - 49:7, 98:5</p> <p>major [3] - 13:21, 33:16, 84:14</p> <p>manage [3] - 53:22, 102:12, 104:11</p> <p>manageable [1] - 45:12</p> <p>management [4] - 7:23, 104:8, 104:10, 104:21</p> <p>manager [1] - 81:17</p> <p>March [2] - 80:23, 81:1</p> <p>MARCUS [2] - 3:1, 6:17</p> <p>Marcus [3] - 3:1, 3:5, 6:17</p> <p>Market [1] - 3:21</p> <p>marketing [1] - 22:1</p> <p>married [1] - 99:24</p> <p>massive [2] - 22:5, 22:6</p> <p>matches [1] - 28:1</p> <p>material [3] - 58:10, 60:25, 91:24</p>			

<p>64:23, 87:12, 92:7, 98:9, 98:23, 103:11, 106:18 moved [4] - 54:23, 83:25, 89:14, 98:22 moves [1] - 90:16 moving [1] - 101:21 MR [60] - 5:18, 6:11, 6:13, 6:17, 6:19, 6:22, 6:25, 8:4, 8:12, 11:7, 11:18, 11:21, 11:23, 12:7, 12:16, 12:25, 16:2, 16:9, 16:15, 26:22, 36:23, 38:12, 40:11, 40:24, 42:10, 42:22, 44:9, 44:11, 44:15, 46:2, 47:22, 48:17, 50:7, 52:17, 57:4, 60:15, 62:17, 62:20, 69:2, 69:5, 70:17, 72:13, 75:10, 80:11, 81:12, 83:21, 85:12, 86:18, 87:25, 88:4, 88:8, 97:13, 101:1, 101:6, 103:7, 103:15, 103:21, 104:4, 104:21, 105:4 MS [15] - 5:15, 6:8, 7:5, 42:12, 72:24, 89:17, 91:15, 93:9, 93:23, 94:1, 94:10, 95:4, 95:7, 95:10, 106:6 multiple [9] - 10:21, 17:2, 26:4, 27:2, 30:10, 51:6, 51:14, 90:18, 96:25 multiples [1] - 31:5 must [2] - 5:20, 93:9 mute [9] - 5:6, 7:22, 8:23, 8:24, 11:20, 40:12, 44:17, 56:5, 56:7 muted [1] - 9:1</p>	<p>76:15, 77:20, 77:24, 77:25, 79:2, 79:4, 79:22, 80:1, 81:16, 81:18, 82:3, 82:4, 82:21, 83:11, 83:13, 84:5, 89:6, 90:18, 91:22, 93:15, 95:5, 96:16, 103:2, 103:20, 105:11, 106:12 needed [3] - 8:20, 79:16, 107:6 needle [1] - 89:14 needless [1] - 26:12 needs [9] - 7:25, 8:19, 44:4, 49:13, 78:22, 105:21, 106:5, 107:7 NEFs [1] - 87:22 negative [2] - 22:7, 22:10 negotiate [1] - 29:20 negotiations [1] - 42:6 Neiman [2] - 3:1, 3:5 net [6] - 20:24, 20:25, 21:4, 26:5, 30:12, 30:17 never [13] - 43:18, 43:20, 50:15, 50:19, 50:20, 63:18, 78:9, 81:1, 84:3, 88:13, 91:2, 95:10, 95:19 New [6] - 2:3, 2:14, 48:25, 49:3, 75:13, 87:7 new [9] - 11:4, 15:2, 15:6, 15:14, 17:9, 29:23, 48:25, 106:1, 106:16 news [1] - 24:14 next [12] - 46:24, 60:18, 67:17, 71:12, 74:13, 77:25, 79:22, 89:15, 103:4, 104:17, 105:23, 105:25 night [8] - 24:4, 27:15, 57:24, 57:25, 58:1, 60:16, 65:10, 69:21 night's [1] - 45:3 Ninth [1] - 17:4 NO [1] - 1:2 nobody [1] - 39:15 nominally [1] - 82:25 nonetheless [1] - 22:18 nonparty [1] - 8:13 normal [1] - 79:10 North [2] - 4:10, 80:22 notes [1] - 97:9 nothing [3] - 38:1, 46:9, 65:14 notice [3] - 18:2, 81:14, 81:23 notion [1] - 30:9 November [1] - 19:25 nowhere [1] - 86:13 number [23] - 5:25, 7:19, 12:18, 13:13, 16:19, 16:23, 16:24, 18:16, 18:17, 19:14, 20:20, 21:10, 43:2, 43:18, 54:22, 59:10, 62:17, 65:1,</p>	<p>65:2, 77:1, 77:2, 77:25, 101:10 numbers [41] - 13:23, 22:13, 22:25, 26:11, 26:13, 26:16, 26:17, 26:20, 27:13, 28:8, 30:3, 30:11, 32:8, 32:11, 33:10, 33:24, 34:4, 34:15, 35:13, 35:16, 36:4, 36:11, 37:6, 37:18, 39:18, 45:7, 53:7, 70:21, 71:7, 77:20, 89:10, 89:18, 89:22, 89:24, 90:22, 91:16, 91:18, 92:21, 93:6, 97:4 NY [3] - 2:3, 2:14, 2:21</p>	<p>66:23, 67:12, 69:15, 69:19, 69:25, 70:13, 73:25, 74:10, 75:11, 76:12, 77:1, 77:25, 79:4, 79:23, 82:17, 87:13, 87:22, 87:23, 89:8, 89:9, 90:8, 93:2, 94:7, 94:17, 94:25, 95:14, 98:5, 99:1, 99:11, 102:2, 104:8, 106:6, 107:12 One [3] - 3:2, 3:6, 3:25 ones [1] - 53:25 ongoing [6] - 10:2, 23:1, 44:12, 59:7, 60:3, 86:11 open [5] - 5:2, 36:14, 75:3, 78:4, 79:2 opened [2] - 11:10, 94:19 opening [1] - 87:4 operate [1] - 33:14 operates [1] - 80:24 operation [3] - 15:11, 15:12, 33:5 operational [1] - 15:7 operations [1] - 19:10 opinion [6] - 25:1, 25:2, 25:7, 53:17, 55:9 opinions [2] - 17:3, 96:7 opportunity [14] - 13:25, 23:21, 27:19, 31:19, 41:14, 69:20, 70:5, 70:10, 99:18, 100:3, 100:4, 100:7, 100:18, 105:12 oppose [1] - 64:24 opposed [1] - 66:5 opposite [1] - 19:7 opposition [1] - 103:18 oral [15] - 9:23, 47:5, 78:3, 78:4, 79:2, 83:12, 83:13, 83:14, 87:11, 98:7, 99:18, 101:8, 102:1, 102:25, 107:11 orange [1] - 19:19 order [73] - 8:17, 8:21, 9:3, 9:21, 11:10, 12:21, 13:12, 27:5, 38:19, 39:21, 40:5, 40:7, 43:3, 43:4, 43:7, 43:10, 44:6, 44:21, 45:1, 45:14, 46:18, 46:21, 46:22, 47:6, 47:9, 48:4, 48:5, 49:9, 50:1, 50:11, 50:18, 50:19, 51:10, 52:12, 53:10, 56:11, 60:21, 60:22, 60:25, 61:1, 61:5, 61:10, 61:13, 61:19, 62:1, 64:22, 65:21, 65:22, 66:2, 66:12, 66:19, 67:20, 69:9, 71:13, 73:13, 74:23, 75:19, 75:23, 76:2, 76:23, 77:1, 80:2, 97:3, 97:24, 97:25, 98:4, 98:21, 99:9, 99:20, 103:5, 105:19, 107:12 orderly [2] - 6:1, 76:24 orders [18] - 35:16, 43:9,</p>
O			
<p style="text-align: center;">N</p> <p>nailing [1] - 50:22 name [2] - 39:7, 46:15 names [2] - 35:10, 46:6 narrative [4] - 34:8, 53:4, 89:8, 94:16 narratives [2] - 34:1, 47:12 nation [1] - 19:12 nature [6] - 9:23, 15:4, 27:11, 32:12, 33:6, 91:25 near [1] - 86:13 necessarily [3] - 21:14, 40:25, 76:19 necessary [6] - 9:23, 80:11, 100:8, 102:25, 105:17, 107:11 need [58] - 8:25, 29:19, 34:1, 38:4, 39:10, 44:4, 45:16, 46:20, 47:12, 47:16, 49:15, 50:9, 50:20, 52:13, 53:10, 54:21, 55:7, 58:16, 59:14, 65:4, 66:2, 67:6, 67:9, 67:18, 67:19, 69:8, 71:25, 72:22, 73:21, 74:16, 76:5,</p>	<p>65:2, 77:1, 77:2, 77:25, 101:10 o'clock [1] - 89:13 oath [3] - 32:9, 34:2, 37:11 objection [1] - 53:19 objections [1] - 35:14 obligation [3] - 23:7, 55:14, 93:20 obligations [2] - 33:4, 41:15 obstacles [1] - 66:1 obtained [1] - 40:1 obviously [14] - 7:18, 7:24, 17:5, 50:12, 51:20, 51:24, 54:19, 58:20, 69:5, 76:19, 78:11, 88:20, 102:8, 105:23 occasion [2] - 41:2, 69:25 occurred [3] - 51:7, 86:21, 108:3 occurring [1] - 80:19 OF [1] - 1:1 offer [2] - 96:15, 106:24 offered [3] - 38:14, 44:13, 97:9 officer [5] - 8:21, 10:8, 14:21, 36:3, 96:16 officers [1] - 23:6 Offices [1] - 2:16 offices [1] - 80:22 often [1] - 18:6 old [3] - 15:6, 17:8, 29:22 once [3] - 31:3, 88:24, 89:25 one [79] - 9:19, 10:19, 10:23, 15:21, 17:25, 18:16, 20:19, 23:1, 24:18, 25:15, 28:6, 32:22, 33:11, 34:16, 34:22, 36:17, 36:21, 36:25, 37:2, 37:6, 37:7, 38:17, 38:18, 39:14, 40:17, 41:9, 43:2, 43:7, 44:9, 44:24, 45:16, 48:22, 51:21, 53:20, 54:22, 55:10, 58:8, 59:10, 61:5, 61:6, 61:23, 62:2, 62:17, 65:1, 65:16, 66:22,</p>	<p>65:2, 77:1, 77:2, 77:25, 101:10 numbers [41] - 13:23, 22:13, 22:25, 26:11, 26:13, 26:16, 26:17, 26:20, 27:13, 28:8, 30:3, 30:11, 32:8, 32:11, 33:10, 33:24, 34:4, 34:15, 35:13, 35:16, 36:4, 36:11, 37:6, 37:18, 39:18, 45:7, 53:7, 70:21, 71:7, 77:20, 89:10, 89:18, 89:22, 89:24, 90:22, 91:16, 91:18, 92:21, 93:6, 97:4 NY [3] - 2:3, 2:14, 2:21</p>	<p>66:23, 67:12, 69:15, 69:19, 69:25, 70:13, 73:25, 74:10, 75:11, 76:12, 77:1, 77:25, 79:4, 79:23, 82:17, 87:13, 87:22, 87:23, 89:8, 89:9, 90:8, 93:2, 94:7, 94:17, 94:25, 95:14, 98:5, 99:1, 99:11, 102:2, 104:8, 106:6, 107:12 One [3] - 3:2, 3:6, 3:25 ones [1] - 53:25 ongoing [6] - 10:2, 23:1, 44:12, 59:7, 60:3, 86:11 open [5] - 5:2, 36:14, 75:3, 78:4, 79:2 opened [2] - 11:10, 94:19 opening [1] - 87:4 operate [1] - 33:14 operates [1] - 80:24 operation [3] - 15:11, 15:12, 33:5 operational [1] - 15:7 operations [1] - 19:10 opinion [6] - 25:1, 25:2, 25:7, 53:17, 55:9 opinions [2] - 17:3, 96:7 opportunity [14] - 13:25, 23:21, 27:19, 31:19, 41:14, 69:20, 70:5, 70:10, 99:18, 100:3, 100:4, 100:7, 100:18, 105:12 oppose [1] - 64:24 opposed [1] - 66:5 opposite [1] - 19:7 opposition [1] - 103:18 oral [15] - 9:23, 47:5, 78:3, 78:4, 79:2, 83:12, 83:13, 83:14, 87:11, 98:7, 99:18, 101:8, 102:1, 102:25, 107:11 orange [1] - 19:19 order [73] - 8:17, 8:21, 9:3, 9:21, 11:10, 12:21, 13:12, 27:5, 38:19, 39:21, 40:5, 40:7, 43:3, 43:4, 43:7, 43:10, 44:6, 44:21, 45:1, 45:14, 46:18, 46:21, 46:22, 47:6, 47:9, 48:4, 48:5, 49:9, 50:1, 50:11, 50:18, 50:19, 51:10, 52:12, 53:10, 56:11, 60:21, 60:22, 60:25, 61:1, 61:5, 61:10, 61:13, 61:19, 62:1, 64:22, 65:21, 65:22, 66:2, 66:12, 66:19, 67:20, 69:9, 71:13, 73:13, 74:23, 75:19, 75:23, 76:2, 76:23, 77:1, 80:2, 97:3, 97:24, 97:25, 98:4, 98:21, 99:9, 99:20, 103:5, 105:19, 107:12 orderly [2] - 6:1, 76:24 orders [18] - 35:16, 43:9,</p>

<p>44:23, 47:18, 61:2, 62:4, 64:3, 64:21, 64:25, 66:3, 66:24, 68:19, 72:7, 72:9, 72:21, 74:10, 74:19, 88:17 ordinary [1] - 38:2 organization [1] - 17:6 organized [1] - 76:1 original [1] - 77:18 otherwise [4] - 31:1, 75:17, 85:3, 102:9 ought [1] - 23:25 ourselves [2] - 84:1, 96:11 outstanding [8] - 28:20, 28:22, 29:3, 29:6, 29:12, 30:17, 40:23, 84:2 over-performing [1] - 33:19 overarching [1] - 79:24 overblown [1] - 85:19 overseer [1] - 33:5 owe [3] - 31:13, 39:1, 39:9 own [17] - 13:22, 20:5, 20:11, 28:13, 31:1, 35:9, 45:5, 52:3, 66:4, 67:11, 87:7, 89:23, 91:18, 95:25, 105:19, 106:10 owned [3] - 21:22, 22:2, 80:23 ownership [1] - 91:9</p>	<p>[1] - 39:8 part [19] - 23:24, 29:22, 32:6, 36:23, 37:24, 49:19, 52:2, 54:14, 60:3, 69:13, 75:2, 79:16, 92:18, 94:18, 95:17, 96:1, 97:7, 97:19, 101:20 particular [14] - 9:20, 14:3, 15:20, 18:5, 19:25, 24:9, 46:23, 65:3, 67:21, 67:22, 68:24, 69:24, 79:1, 83:23 particularly [1] - 61:14 parties [13] - 7:24, 32:24, 36:3, 66:16, 66:20, 67:1, 67:11, 68:3, 86:23, 94:7, 102:1, 102:21, 103:4 parts [1] - 50:8 party [3] - 8:10, 95:20, 96:14 pass [1] - 78:10 passage [1] - 18:6 passed [1] - 28:15 past [1] - 48:18 path [1] - 82:1 pattern [2] - 19:21, 69:24 Paul [1] - 94:25 pay [16] - 15:6, 17:24, 18:20, 20:10, 20:12, 29:22, 39:2, 39:10, 51:8, 51:11, 51:12, 51:13, 51:19, 94:25, 97:22, 101:3 paying [5] - 11:14, 20:3, 20:4, 20:10, 20:11 payment [2] - 11:14, 80:25 payments [2] - 19:20, 19:22 payouts [1] - 15:1 pays [1] - 18:8 PAZ [1] - 3:10 peace [1] - 92:5 pendens [3] - 81:10, 98:21, 99:8 pending [5] - 8:18, 10:5, 10:10, 12:19, 102:21 people [9] - 23:16, 41:2, 41:7, 42:4, 51:11, 53:16, 58:13, 58:21, 65:13 percent [3] - 17:22, 65:16, 71:20 performance [1] - 18:5 performing [3] - 18:18, 33:19, 33:20 perhaps [8] - 10:17, 13:15, 15:17, 34:20, 54:13, 65:20, 66:8, 100:1 period [2] - 33:20, 40:9 permission [1] - 81:23 permitted [1] - 73:15 PERRY [1] - 3:1 Perry [1] - 6:16 person [8] - 10:14, 26:23,</p>	<p>38:25, 39:3, 39:11, 73:22, 104:9 perspective [5] - 53:18, 56:21, 57:5, 91:10, 101:11 perturbed [1] - 32:15 PETER [1] - 4:5 Peter [1] - 94:24 petty [1] - 38:20 phase [1] - 59:24 Philadelphia [9] - 3:22, 11:4, 12:21, 27:22, 80:20, 80:23, 81:3, 83:22, 101:5 philosophical [1] - 54:12 phone [4] - 20:9, 39:18, 40:16, 83:7 pick [3] - 32:2, 34:22, 35:6 picking [1] - 42:20 picture [14] - 12:11, 13:16, 14:4, 32:13, 32:23, 33:7, 33:11, 33:25, 35:9, 38:6, 40:16, 56:7, 77:15, 97:5 pictures [1] - 15:21 piece [6] - 25:10, 38:3, 58:2, 59:18, 65:11, 76:16 piecemeal [1] - 45:24 Pietragallo [1] - 3:21 pike [1] - 76:9 Pineiro [1] - 3:5 Pink [2] - 82:14 pivot [2] - 40:16, 77:23 place [16] - 11:17, 47:18, 59:20, 67:5, 72:21, 79:5, 79:11, 79:21, 80:15, 93:25, 98:13, 98:17, 99:8, 100:20, 104:22, 106:1 places [1] - 64:9 plagued [1] - 96:24 plaintiff [1] - 1:5 PLAINTIFF [1] - 1:13 plan [2] - 11:14, 103:3 planning [1] - 89:21 plate [1] - 66:13 play [5] - 33:1, 52:3, 104:11, 105:1, 105:8 playing [2] - 12:24, 104:18 pleading [8] - 28:11, 29:1, 35:11, 36:8, 54:18, 68:12, 87:2, 101:9 pleadings [8] - 24:1, 24:18, 49:3, 62:23, 78:23, 83:12, 101:14, 101:22 Pleas [1] - 11:4 pledge [1] - 71:10 PLLC [2] - 2:9, 2:23 plug [3] - 104:11, 105:1, 105:7 poignant [1] - 9:19 point [54] - 10:14, 12:1, 18:14, 20:19, 24:19, 28:24, 29:11, 32:2, 32:10, 33:12,</p>	<p>33:23, 33:25, 36:19, 44:9, 48:22, 49:22, 52:7, 55:25, 56:8, 56:15, 56:18, 62:10, 62:18, 62:19, 69:7, 69:12, 69:23, 70:4, 71:10, 75:8, 77:18, 78:3, 78:4, 78:6, 81:10, 83:14, 86:16, 87:9, 87:13, 87:14, 90:20, 90:21, 95:23, 100:2, 100:22, 101:20, 102:5, 104:5, 104:23, 105:5, 105:13, 106:3 pointed [2] - 60:9, 104:25 points [11] - 10:14, 20:13, 25:21, 46:25, 48:10, 50:21, 52:14, 69:15, 101:17, 105:21, 105:22 Ponce [2] - 2:10, 2:24 Ponzi [12] - 14:11, 14:13, 16:16, 17:1, 17:3, 17:7, 94:21, 94:23, 95:11, 95:13, 99:23, 106:22 Port [1] - 2:21 portfolio [7] - 10:23, 17:23, 18:3, 28:21, 82:9, 84:18, 102:12 portfolios [1] - 18:18 portion [6] - 25:19, 30:4, 30:5, 30:20, 30:21, 60:8 portions [1] - 17:25 portray [1] - 81:20 position [10] - 20:8, 23:21, 46:3, 57:7, 57:8, 75:18, 79:14, 79:25, 94:15, 99:25 positioning [1] - 53:20 positive [1] - 26:5 possess [1] - 70:5 possessed [2] - 73:23, 73:24 possession [1] - 75:22 possibility [5] - 34:18, 35:4, 35:24, 98:8, 98:10 possible [6] - 46:17, 49:11, 50:4, 77:21, 86:4, 102:24 possibly [2] - 49:14, 78:9 posturing [1] - 56:1 potential [3] - 83:19, 85:9, 90:12 power [1] - 47:20 powers [1] - 85:24 practical [3] - 38:20, 104:5, 104:23 practice [4] - 28:6, 29:18, 34:10, 58:25 pray [1] - 92:3 precise [1] - 41:10 precisely [4] - 26:15, 28:2, 51:8, 70:14 prefer [2] - 45:13, 53:4 preliminary [2] - 38:1, 85:25</p>
P			
<p>PA [1] - 3:22 page [3] - 19:14, 26:1, 96:22 Page [2] - 24:10, 26:2 paid [6] - 20:24, 21:11, 21:18, 29:9, 39:3, 39:11 paint [1] - 32:23 paints [1] - 15:21 PALM [1] - 1:2 pandemic [1] - 108:3 paper [4] - 25:11, 30:4, 58:2, 65:11 paperless [6] - 8:17, 8:21, 9:21, 13:12, 71:13, 76:21 papers [1] - 101:20 paperwork [1] - 27:15 Par [22] - 5:10, 14:24, 19:19, 20:19, 20:24, 21:12, 21:17, 22:16, 24:10, 29:21, 31:9, 31:13, 38:17, 39:1, 41:8, 41:20, 49:5, 57:18, 64:9, 64:12, 80:23, 100:9 Par's [1] - 57:14 paragraph [4] - 18:2, 19:14, 19:15 parameters [1] - 106:1 parcel [3] - 60:3, 97:19, 101:20 Parfunding@gmail.com</p>	<p></p>	<p></p>	<p></p>

<p>prepare [3] - 59:19, 70:8, 71:21</p> <p>prepared [5] - 14:17, 65:23, 75:21, 78:6, 78:13</p> <p>preposterous [1] - 44:25</p> <p>present [5] - 4:13, 16:19, 23:7, 70:8, 83:14</p> <p>presentations [1] - 84:24</p> <p>presented [4] - 16:18, 32:7, 32:8, 85:23</p> <p>presently [2] - 11:8, 11:17</p> <p>pretty [4] - 33:22, 38:6, 84:12</p> <p>prevent [3] - 79:7, 81:12, 81:14</p> <p>prevented [1] - 66:1</p> <p>prevents [1] - 13:21</p> <p>previously [1] - 13:2</p> <p>primary [2] - 18:22, 99:21</p> <p>principals [1] - 31:9</p> <p>principles [1] - 37:4</p> <p>privy [3] - 86:6, 86:20, 86:21</p> <p>problem [13] - 29:11, 35:20, 37:3, 37:25, 38:11, 45:5, 56:24, 67:6, 69:10, 70:19, 71:2, 72:25, 79:10</p> <p>problematic [3] - 23:15, 32:19</p> <p>problems [2] - 10:25, 38:20</p> <p>procedure [1] - 25:17</p> <p>procedures [1] - 25:20</p> <p>proceed [1] - 51:21</p> <p>proceeding [2] - 49:17, 69:18</p> <p>proceedings [3] - 5:2, 48:8, 108:7</p> <p>proceeds [2] - 97:21, 100:11</p> <p>process [18] - 23:23, 23:24, 29:20, 31:2, 31:4, 31:7, 33:1, 37:24, 49:9, 54:17, 54:18, 54:20, 59:5, 59:7, 81:24, 100:14, 101:13</p> <p>processed [1] - 52:24</p> <p>Processing [1] - 1:20</p> <p>procured [1] - 76:13</p> <p>produce [1] - 75:22</p> <p>produced [7] - 49:10, 50:2, 53:1, 53:2, 53:21, 67:23, 100:6</p> <p>product [1] - 15:2</p> <p>Production [2] - 59:7, 106:12</p> <p>production [9] - 45:2, 46:22, 47:19, 48:3, 49:8, 67:4, 86:13, 95:25, 106:2</p> <p>productive [2] - 11:15, 89:14</p> <p>professionals [1] - 17:19</p>	<p>profit [4] - 18:22, 19:1, 20:16, 21:4</p> <p>profitability [4] - 17:12, 17:13, 32:12, 32:21</p> <p>profitable [1] - 18:16</p> <p>profits [3] - 18:19, 30:4, 80:13</p> <p>progress [3] - 43:6, 43:20, 76:24</p> <p>prominent [1] - 27:21</p> <p>promise [2] - 86:23, 105:16</p> <p>prompted [1] - 83:14</p> <p>promptly [2] - 25:4, 102:23</p> <p>prong [6] - 71:5, 74:9, 74:10, 74:17, 75:5</p> <p>proof [4] - 24:19, 31:1, 50:22</p> <p>proper [1] - 17:4</p> <p>properly [2] - 53:7, 73:10</p> <p>properties [18] - 80:15, 80:18, 81:4, 81:18, 81:21, 81:22, 81:25, 82:3, 82:11, 83:22, 85:5, 90:16, 98:21, 99:4, 100:16, 101:4, 102:15, 104:7</p> <p>property [11] - 75:20, 81:2, 81:6, 81:17, 82:8, 90:13, 99:13, 104:8, 104:10, 104:12, 104:21</p> <p>proposal [1] - 37:21</p> <p>propose [1] - 74:2</p> <p>proposed [11] - 50:11, 52:12, 60:22, 61:5, 61:23, 62:2, 65:22, 69:6, 73:13, 76:5, 98:18</p> <p>proposing [1] - 60:25</p> <p>protect [6] - 80:2, 80:4, 81:11, 83:1, 90:10, 93:21</p> <p>protected [4] - 84:10, 85:9, 102:15, 104:14</p> <p>protection [6] - 55:1, 80:12, 84:6, 85:20, 92:14, 98:12</p> <p>protections [2] - 102:8, 107:7</p> <p>protective [4] - 35:16, 38:19, 39:21, 40:5, 43:3, 43:7, 43:10, 44:6, 44:21, 44:23, 45:14, 47:9, 49:9, 53:9, 56:11, 60:21, 60:22, 60:25, 61:1, 61:2, 61:5, 61:10, 61:13, 61:19, 62:1, 62:4, 64:25, 66:2, 66:3, 66:12, 66:24, 67:20, 68:18, 74:10, 75:23, 76:2, 77:1, 79:5, 97:3, 103:5</p> <p>protest [1] - 14:18</p> <p>protracted [1] - 53:13</p> <p>PROULX [2] - 4:9, 108:11</p> <p>proulx@flsd.uscourts.</p> <p>gov [1] - 4:12</p>	<p>prove [2] - 50:23, 91:13</p> <p>proven [2] - 24:15</p> <p>provide [28] - 10:17, 40:6, 42:25, 43:1, 43:21, 44:3, 44:5, 47:24, 49:2, 49:8, 50:8, 54:5, 58:15, 65:4, 66:23, 70:5, 73:15, 74:15, 76:1, 76:5, 76:25, 84:16, 91:22, 93:15, 98:19, 100:4</p> <p>provided [10] - 12:2, 35:1, 43:14, 46:3, 50:25, 52:15, 59:20, 60:13, 74:19, 82:17</p> <p>provides [2] - 46:6, 46:7</p> <p>proxy [1] - 19:1</p> <p>pslevine2@gmail.com [1] - 4:8</p> <p>public [3] - 9:14, 17:6, 61:9</p> <p>pull [2] - 26:23, 86:9</p> <p>pulling [1] - 90:22</p> <p>purported [2] - 13:20, 55:3</p> <p>purportedly [2] - 35:21, 102:7</p> <p>purporting [2] - 39:3, 41:7</p> <p>purpose [2] - 36:17, 56:6</p> <p>purposely [1] - 29:15</p> <p>purposes [2] - 43:5, 107:4</p> <p>pursuant [3] - 59:20, 76:2</p> <p>pursuing [1] - 13:6</p> <p>put [27] - 15:15, 23:10, 23:21, 31:25, 34:24, 35:25, 36:15, 37:19, 47:12, 50:10, 51:4, 53:2, 53:4, 55:21, 59:20, 61:9, 67:23, 67:24, 68:22, 73:8, 76:21, 79:24, 81:13, 91:1, 91:18, 93:24, 94:22</p> <p>putting [4] - 35:2, 39:13, 39:14, 85:19</p>	<p style="text-align: center;">R</p> <p>RAIKHELSON [1] - 2:16</p> <p>Raikhelson [1] - 2:16</p> <p>raised [1] - 13:12</p> <p>range [1] - 103:14</p> <p>rare [1] - 31:19</p> <p>Rashbaum [2] - 3:1, 3:5</p> <p>rather [6] - 10:22, 29:15, 48:5, 53:13, 66:6, 103:18</p> <p>Raton [2] - 2:17, 3:17</p> <p>RE [1] - 1:23</p> <p>re [1] - 77:7</p> <p>re-litigate [1] - 77:7</p> <p>reach [3] - 41:1, 41:2, 77:5</p> <p>reached [4] - 13:2, 39:9, 41:19, 54:15</p> <p>reaching [1] - 42:1</p> <p>read [17] - 13:25, 26:10, 28:12, 62:4, 62:15, 78:5, 78:14, 78:22, 79:19, 83:9, 87:3, 88:6, 88:10, 94:21, 101:9, 101:10, 104:17</p> <p>readily [1] - 84:16</p> <p>reading [3] - 23:16, 34:17, 86:7</p> <p>reads [1] - 26:2</p> <p>ready [9] - 14:14, 43:2, 52:24, 67:16, 69:22, 74:4, 75:22, 86:14, 96:18</p> <p>real [9] - 29:17, 34:4, 55:25, 56:1, 82:8, 84:15</p> <p>realities [2] - 32:5, 94:9</p> <p>reality [4] - 34:12, 36:10, 37:18, 94:7</p> <p>really [2] - 9:25, 13:14, 13:25, 20:17, 26:1, 28:20, 31:20, 39:24, 42:5, 50:15, 50:17, 51:7, 52:1, 53:19, 55:9, 56:12, 62:21, 66:5, 83:16, 86:6, 102:21</p> <p>reason [9] - 13:3, 16:17, 20:2, 27:10, 29:9, 47:4, 52:21, 53:12, 54:21</p> <p>reasons [3] - 23:5, 78:21, 104:2</p> <p>recalling [1] - 94:19</p> <p>receipt [1] - 22:21</p> <p>receivable [1] - 28:22</p> <p>receivables [1] - 11:10</p> <p>receive [6] - 44:2, 44:7, 58:10, 74:4, 97:16, 107:12</p> <p>received [6] - 19:4, 21:23, 22:1, 22:2, 30:16, 57:25</p> <p>receiver [148] - 1:18, 7:3, 7:13, 7:16, 7:17, 8:20, 9:8, 9:16, 10:7, 10:15, 14:21, 15:17, 15:18, 15:19, 16:5, 29:5, 32:17, 33:3, 33:5, 33:12, 34:5, 34:18, 35:3,</p>
		<p style="text-align: center;">Q</p> <p>Quest [1] - 21:24</p> <p>questions [7] - 9:7, 12:9, 12:10, 17:16, 74:6, 78:24, 101:16</p> <p>quick [1] - 106:6</p> <p>Quickbooks [16] - 16:22, 22:21, 38:15, 40:1, 42:7, 42:24, 48:23, 57:11, 63:20, 64:8, 64:12, 73:5, 73:17, 74:3, 75:11, 75:22</p> <p>quickly [4] - 29:25, 60:15, 60:20</p> <p>quite [12] - 23:14, 33:15, 47:17, 58:16, 59:1, 59:18, 66:21, 68:8, 76:8, 80:16, 103:9</p> <p>quo [1] - 98:5</p> <p>quote [2] - 36:6, 50:17</p> <p>quote-unquote [1] - 50:17</p>	

<p>35:25, 36:13, 36:21, 37:9, 37:13, 37:15, 38:10, 38:11, 40:15, 40:23, 42:11, 45:10, 46:19, 49:18, 49:19, 50:3, 51:16, 52:24, 53:14, 53:24, 54:3, 54:5, 55:13, 55:16, 56:7, 57:21, 58:5, 59:13, 63:10, 63:12, 63:14, 63:18, 63:23, 63:25, 64:5, 64:9, 64:20, 64:21, 65:7, 65:12, 65:24, 66:18, 68:21, 69:19, 69:21, 69:24, 70:3, 70:8, 71:15, 73:1, 73:6, 73:7, 73:14, 73:19, 75:3, 76:22, 76:24, 77:6, 77:12, 78:1, 78:12, 78:14, 78:16, 78:19, 78:21, 79:8, 79:20, 79:25, 80:9, 83:18, 85:9, 85:24, 86:20, 87:5, 89:4, 89:19, 89:23, 90:3, 90:11, 90:15, 90:22, 91:1, 91:2, 91:4, 91:5, 91:12, 91:22, 92:5, 92:9, 93:12, 93:14, 93:16, 93:19, 94:4, 95:16, 95:19, 95:22, 95:24, 96:5, 96:15, 96:19, 98:1, 98:18, 98:19, 98:22, 98:24, 99:2, 99:3, 99:9, 99:17, 100:15, 102:3, 102:4, 102:9, 102:11, 103:22, 105:11, 107:6</p> <p>RECEIVER [1] - 3:20</p> <p>receiver's [25] - 7:3, 10:2, 13:16, 15:18, 15:19, 15:22, 15:24, 33:25, 34:24, 37:1, 53:16, 57:24, 59:3, 75:18, 76:14, 79:14, 84:24, 87:19, 88:20, 93:20, 94:12, 95:3, 99:12, 103:23, 104:3</p> <p>receivership [14] - 10:11, 13:3, 41:22, 63:22, 75:19, 75:20, 81:7, 81:22, 83:2, 90:6, 92:18, 99:4, 99:5, 104:5</p> <p>receiverships [1] - 102:19</p> <p>receives [1] - 18:9</p> <p>receiving [2] - 15:2, 28:16</p> <p>recent [3] - 9:22, 13:14, 83:3</p> <p>recently [1] - 12:18</p> <p>recognize [3] - 7:20, 69:12, 78:17</p> <p>recognizing [1] - 72:25</p> <p>recommendation [2] - 63:2, 63:4</p> <p>recommended [1] - 62:25</p> <p>record [8] - 5:12, 23:22, 25:12, 58:11, 61:9, 64:16, 106:17</p> <p>recorded [2] - 30:1, 30:2</p> <p>records [14] - 16:20, 16:21,</p>	<p>22:12, 22:24, 23:12, 28:15, 57:11, 57:15, 67:3, 80:16, 95:15, 106:10, 106:25, 107:6</p> <p>recover [2] - 11:10, 93:22</p> <p>recovered [1] - 33:21</p> <p>recovery [3] - 10:1, 83:19, 97:6</p> <p>red [2] - 30:19, 89:9</p> <p>referenced [1] - 96:12</p> <p>referred [1] - 18:19</p> <p>referring [1] - 20:15</p> <p>refinance [1] - 82:21</p> <p>reflects [1] - 19:20</p> <p>refused [1] - 40:6</p> <p>regard [2] - 46:20, 73:3</p> <p>regarding [6] - 13:13, 27:21, 53:20, 78:19, 96:22, 97:8</p> <p>regardless [2] - 15:12</p> <p>regards [1] - 87:4</p> <p>registration [1] - 14:10</p> <p>regulatory [1] - 14:9</p> <p>rehash [1] - 69:8</p> <p>Reinhart [3] - 10:6, 43:9, 72:19</p> <p>Reinhart's [1] - 66:13</p> <p>reiterate [1] - 105:14</p> <p>rejected [2] - 40:5, 43:7</p> <p>related [5] - 14:24, 19:15, 30:8, 85:5, 87:20</p> <p>release [1] - 13:7</p> <p>released [1] - 42:15</p> <p>releasing [1] - 75:24</p> <p>relevant [1] - 90:1</p> <p>relief [10] - 11:16, 12:17, 13:1, 13:4, 50:19, 67:19, 77:6, 83:10, 84:17</p> <p>reload [1] - 29:20</p> <p>relying [3] - 23:16, 23:17, 28:9</p> <p>remember [9] - 14:20, 28:25, 39:7, 50:15, 55:11, 74:9, 84:5, 91:7, 93:18</p> <p>remind [2] - 99:1, 106:7</p> <p>remote [2] - 73:9, 74:1</p> <p>remotely [3] - 63:24, 108:5</p> <p>render [3] - 9:25, 46:22, 50:13</p> <p>rent [1] - 104:16</p> <p>repaid [2] - 17:9, 20:19</p> <p>repeated [1] - 49:19</p> <p>repeatedly [4] - 18:13, 18:16, 30:25, 37:12</p> <p>reply [7] - 79:9, 79:12, 87:18, 88:2, 88:4, 88:5, 88:6, 13:19, 13:20, 13:22, 14:15, 14:25, 15:25, 18:1, 18:2, 23:11, 25:5, 32:4, 37:10, 37:13, 57:13, 57:25, 58:3,</p>	<p>65:13, 70:8, 70:9, 88:13, 88:17, 94:21, 95:1</p> <p>REPORTED [1] - 4:9</p> <p>reported [1] - 11:25</p> <p>reportedly [1] - 65:9</p> <p>Reporter [1] - 4:10</p> <p>reporting [1] - 108:5</p> <p>reports [6] - 9:6, 14:22, 38:15, 69:25, 70:3, 106:2</p> <p>represent [2] - 29:12, 39:4</p> <p>representation [3] - 14:15, 36:11, 59:25</p> <p>representations [2] - 17:14, 65:18</p> <p>represented [5] - 11:12, 23:14, 27:21, 27:24, 30:24</p> <p>representing [5] - 8:3, 20:8, 60:23, 62:24, 68:16</p> <p>reputable [1] - 58:9</p> <p>request [12] - 10:10, 46:19, 49:12, 50:4, 63:21, 65:10, 78:3, 78:7, 99:16, 101:8, 101:11, 102:21</p> <p>Request [2] - 59:7, 106:12</p> <p>requested [6] - 10:8, 27:19, 48:8, 78:16, 87:18, 106:1</p> <p>requesting [4] - 57:10, 58:2, 77:6, 79:15</p> <p>requests [1] - 103:10</p> <p>require [8] - 52:11, 52:14, 55:5, 60:11, 72:9, 76:23, 85:8, 88:16</p> <p>required [2] - 88:14, 104:5</p> <p>requirements [2] - 66:25, 77:11</p> <p>requiring [3] - 47:18, 50:2, 70:7</p> <p>RESNICK [1] - 2:2</p> <p>resolution [3] - 52:3, 66:6, 86:11</p> <p>resolutions [1] - 13:6</p> <p>resolve [6] - 11:13, 48:1, 66:12, 78:9, 82:9, 82:21</p> <p>resolved [5] - 69:10, 74:12, 86:22, 96:11</p> <p>resolving [1] - 66:13</p> <p>resources [1] - 65:5</p> <p>respect [8] - 11:16, 20:8, 43:20, 61:22, 70:3, 82:10, 85:15, 97:18</p> <p>respond [11] - 24:5, 47:16, 50:7, 95:8, 98:1, 98:6, 100:8, 103:19, 105:11, 105:12, 106:20</p> <p>responds [1] - 29:4</p> <p>response [16] - 45:21, 46:21, 47:1, 48:10, 51:16, 51:25, 52:4, 60:9, 61:13, 70:16, 70:22, 71:17, 72:1, 87:21, 88:24, 103:11</p>	<p>responses [1] - 70:22</p> <p>responsibility [2] - 31:17, 31:18</p> <p>responsible [1] - 58:15</p> <p>rest [2] - 68:11, 107:17</p> <p>restate [1] - 106:17</p> <p>restrictive [3] - 98:3, 98:16, 98:25</p> <p>result [3] - 25:6, 29:23, 34:9</p> <p>RETIREMENT [2] - 1:22, 1:22</p> <p>return [13] - 35:20, 43:18, 44:1, 46:3, 48:14, 49:20, 52:11, 66:14, 66:21, 67:1, 75:7, 75:25, 77:1</p> <p>Return [1] - 74:24</p> <p>returned [6] - 48:6, 49:7, 49:13, 56:21, 67:22, 75:19</p> <p>returning [1] - 56:18</p> <p>returns [1] - 17:15</p> <p>revenue [2] - 20:16</p> <p>review [12] - 45:14, 47:1, 49:25, 65:22, 66:18, 70:5, 70:10, 71:16, 100:3, 100:7, 101:14, 101:16</p> <p>reviewed [2] - 58:2, 65:12</p> <p>reviews [1] - 25:16</p> <p>revised [2] - 61:17, 61:18</p> <p>RICHARD [1] - 2:1</p> <p>rid [1] - 68:25</p> <p>Riggle [1] - 42:13</p> <p>RIGGLE [1] - 1:13</p> <p>ripe [4] - 10:10, 87:17, 89:5</p> <p>ripping [1] - 62:12</p> <p>risk [1] - 81:8</p> <p>RMR [1] - 22:1</p> <p>Road [1] - 2:17</p> <p>road [3] - 62:12, 91:19, 92:23</p> <p>roadblock [3] - 68:14, 68:25, 87:12</p> <p>roadblocks [2] - 59:13, 77:22</p> <p>Robert [4] - 24:13, 25:9, 25:14, 25:20</p> <p>Robinson [1] - 2:6</p> <p>robinson.com [1] - 2:8</p> <p>RODOLFO [1] - 1:10</p> <p>roll [2] - 72:6, 92:13</p> <p>room [5] - 5:5, 37:9, 37:23, 71:1, 72:2</p> <p>rooted [3] - 36:10, 37:5, 37:13</p> <p>roped [1] - 89:22</p> <p>ROSENBLUM [1] - 3:20</p> <p>Ross [1] - 3:25</p> <p>Rothschild [2] - 62:25, 63:4</p> <p>ROTHSCHILD [1] - 4:4</p> <p>round [3] - 20:19, 45:9,</p>
---	---	---	--

<p>72:18 routine [2] - 12:2, 29:18 routinely [2] - 8:22, 19:3 RPR [2] - 4:9, 108:11 rubber [2] - 62:11, 92:22 RUIZ [1] - 1:10 Ruiz [1] - 6:8 rule [15] - 47:3, 47:17, 68:20, 78:6, 86:3, 86:14, 86:15, 86:19, 86:22, 88:10, 89:6, 99:16, 101:20, 101:24, 102:23 ruled [1] - 86:24 rules [3] - 88:16, 100:19 ruling [5] - 78:7, 86:16, 90:5, 96:19, 101:25 run [4] - 34:13, 91:3, 93:13, 95:19 running [1] - 93:16 runs [1] - 104:10 rushing [1] - 32:25 Ryan [2] - 7:17, 91:21 RYAN [1] - 3:20</p>	<p>scott [1] - 4:14 Scott [1] - 8:4 SE [1] - 2:6 sea [1] - 15:4 seasoned [1] - 59:3 SEC [30] - 5:17, 5:19, 14:13, 53:25, 58:5, 59:4, 61:6, 61:20, 76:25, 89:20, 90:25, 91:1, 91:2, 91:3, 91:6, 91:24, 92:3, 92:16, 93:3, 93:7, 93:12, 94:3, 94:15, 94:17, 94:20, 97:20, 99:17, 99:22, 99:24 SEC's [8] - 15:13, 21:6, 26:3, 27:25, 28:13, 55:12, 55:14, 91:10 second [22] - 18:10, 19:18, 35:13, 36:21, 36:25, 43:11, 45:20, 49:23, 56:15, 57:23, 59:17, 62:18, 62:19, 67:25, 71:8, 75:12, 87:13, 95:16, 98:3, 98:18, 101:24, 102:24 section [4] - 24:7, 25:25, 27:16, 49:23 secure [1] - 82:8 SECURITIES [2] - 1:4, 1:14 Securities [3] - 1:14, 5:9, 5:13 security [1] - 104:13 see [47] - 1:18, 5:25, 9:15, 16:7, 19:2, 19:13, 19:15, 19:21, 19:25, 22:8, 25:20, 26:17, 27:24, 29:17, 29:25, 30:13, 30:14, 31:4, 35:10, 36:18, 36:20, 37:1, 37:11, 37:17, 46:10, 52:2, 53:11, 54:25, 55:23, 56:24, 59:25, 60:11, 61:24, 66:6, 67:8, 72:18, 72:19, 73:9, 76:6, 79:9, 79:16, 87:8, 88:21, 89:7, 90:12, 96:12, 103:4 seeing [1] - 87:9 seeking [2] - 13:4, 51:21 seem [1] - 66:4 sees [1] - 71:17 seized [1] - 64:11 seizure [1] - 85:6 selected [1] - 11:17 self [4] - 15:11, 15:13, 15:14, 33:18 self-funding [3] - 15:11, 15:14, 33:18 sell [1] - 81:21 send [7] - 43:13, 61:3, 62:15, 63:16, 106:13, 106:14 sense [19] - 10:1, 10:9, 10:18, 12:24, 22:17, 45:12, 47:14, 48:14, 49:17, 50:4, 50:5, 54:4, 54:16, 60:7, 60:14, 66:20, 71:20, 78:18,</p>	<p>91:21 sent [10] - 19:23, 23:17, 23:18, 50:2, 57:14, 57:25, 61:12, 61:17, 63:19 sentences [1] - 24:18 separate [4] - 35:20, 52:1, 63:10, 82:6 September [2] - 57:19, 57:22 seriously [2] - 33:6, 105:15 seriousness [1] - 65:25 served [2] - 60:16, 65:10 server [1] - 75:13 services [1] - 25:15 set [19] - 34:25, 43:25, 45:22, 51:25, 60:17, 63:11, 64:6, 67:22, 71:9, 73:4, 74:17, 89:9, 89:22, 91:18, 94:7, 101:17, 102:2, 105:18, 107:10 sets [1] - 75:18 setting [3] - 71:12, 88:25, 105:25 settlement [1] - 13:5 Seventh [1] - 3:11 several [5] - 30:13, 48:18, 48:24, 71:8, 73:20 Shafer [1] - 88:17 shame [1] - 51:16 shape [1] - 77:12 share [3] - 32:3, 32:16, 32:18 shared [1] - 37:22 sharing [1] - 96:5 sharp [4] - 16:24, 17:18, 32:9, 35:8 Sharp [18] - 36:18, 37:5, 37:9, 37:22, 44:11, 53:3, 53:6, 53:21, 54:10, 54:15, 56:1, 59:19, 60:12, 67:3, 71:3, 72:2, 92:21, 94:17 sharp's [5] - 22:8, 24:2, 28:23, 30:13, 33:17 Sharp's [6] - 21:20, 60:10, 68:3, 94:14, 94:21, 94:25 sheet [1] - 30:2 shield [1] - 52:22 shift [1] - 78:18 shock [1] - 92:12 shoes [1] - 90:11 short [2] - 102:13, 107:11 shortcut [2] - 52:21, 59:6 shortcuts [1] - 38:4 shortfall [1] - 84:3 shortly [1] - 69:25 show [16] - 18:5, 21:19, 26:19, 26:20, 28:16, 30:19, 35:22, 38:25, 39:22, 48:4, 48:5, 51:25, 56:9, 88:24, 91:19</p>	<p>showed [4] - 25:3, 41:12, 41:16 showing [2] - 18:7, 85:25 shown [1] - 30:25 shows [7] - 18:10, 18:21, 19:7, 19:18, 20:2, 91:25 shut [1] - 36:1 Shutts [1] - 4:5 sic [1] - 26:15 side [17] - 7:11, 15:24, 37:23, 45:13, 45:15, 52:10, 53:20, 54:14, 61:7, 69:19, 90:2, 90:23, 91:22, 92:5, 102:4, 102:12 side's [1] - 69:13 sides [2] - 44:23, 102:20 signals [1] - 75:6 signed [3] - 24:1, 24:2, 68:12 significant [4] - 21:8, 78:15, 85:14, 105:6 significantly [1] - 84:4 silence [1] - 83:6 silos [1] - 77:4 similar [3] - 8:8, 53:2, 85:6 similarly [1] - 32:15 SIMON [1] - 8:4 Simon [2] - 4:14, 8:4 simple [3] - 61:6, 61:20, 76:21 simpler [1] - 77:15 simply [13] - 17:8, 25:12, 28:16, 43:22, 46:3, 46:5, 48:20, 50:1, 61:3, 65:19, 66:2, 75:24, 86:18 Singerman [1] - 8:13 single [11] - 17:1, 36:11, 38:17, 57:18, 83:8, 95:19, 96:3, 98:22, 99:13 sit [8] - 35:7, 36:2, 37:8, 53:16, 65:24, 92:24, 93:1 site [3] - 64:19, 73:23, 73:24 sitting [2] - 84:9, 84:15 situation [1] - 92:9 six [3] - 20:22, 44:25, 57:24 size [2] - 32:11, 106:13 skin [1] - 96:14 skip [1] - 53:13 sky [2] - 89:8, 89:9 sleeves [2] - 72:7, 92:13 slice [1] - 38:16 Sloman [1] - 3:25 small [2] - 10:22, 78:24 SMALL [1] - 1:21 snapshot [2] - 14:17, 60:1 software [1] - 46:11 sold [1] - 99:13 solution [2] - 38:10, 68:13</p>
S			
<p>safeguards [3] - 54:20, 54:22, 96:17 SALLAH [1] - 3:15 Sallah [1] - 3:16 sample [1] - 32:11 sanctions [4] - 35:22, 51:22, 56:19, 56:23 sand [1] - 85:5 satisfaction [1] - 66:25 satisfy [1] - 85:22 save [2] - 79:7, 105:2 savvy [1] - 26:23 saw [5] - 8:16, 26:9, 35:13, 45:3, 91:9 scan [4] - 27:1, 27:8, 27:11, 27:23 schedule [3] - 55:8, 67:2, 99:19 scheduling [1] - 88:17 Schein [15] - 6:8, 42:23, 43:12, 43:19, 49:1, 63:8, 63:9, 63:23, 63:25, 64:18, 68:9, 72:14, 74:20, 75:16, 76:5 SCHEIN [3] - 2:13, 6:8, 72:24 schein's [1] - 62:21 scheme [12] - 14:11, 14:13, 16:16, 17:1, 17:3, 17:7, 94:21, 94:23, 95:11, 95:13, 99:23, 106:22 SCHIFF [1] - 5:18 Schiff [2] - 5:18, 5:24 scope [2] - 25:17, 78:18</p>			

<p>SOLUTIONS [1] - 1:6 Solutions [2] - 1:19, 5:10 someone [11] - 8:8, 36:18, 39:6, 40:19, 40:22, 41:1, 41:3, 41:12, 41:15, 41:19, 83:6 sometimes [5] - 18:19, 33:8, 44:12, 82:6, 90:12 somewhat [1] - 8:16 somewhere [1] - 26:16 soon [4] - 44:5, 44:6, 44:7, 86:4 sophisticated [1] - 67:14 sorribly [1] - 107:6 sorry [6] - 11:20, 12:3, 42:12, 69:4, 93:9 sort [10] - 34:5, 42:1, 53:3, 53:19, 69:24, 89:21, 89:22, 90:9, 97:2, 106:17 SOTO [9] - 4:4, 6:22, 69:2, 69:5, 70:17, 72:13, 97:13, 101:6, 105:4 soto [1] - 97:10 Soto [13] - 2:9, 2:23, 6:22, 60:23, 69:2, 69:4, 70:15, 78:8, 102:6, 102:24, 104:25, 106:2, 106:20 sought [1] - 49:18 sounded [1] - 26:18 sounds [4] - 45:5, 48:9, 48:11, 86:11 source [4] - 18:22, 24:18, 24:19, 96:24 Source [1] - 8:13 sources [1] - 75:10 South [1] - 3:2 Southeast [1] - 3:11 SOUTHERN [1] - 1:1 speaks [2] - 68:9, 106:21 specific [4] - 17:20, 26:14, 49:12, 52:14 specifically [8] - 46:1, 46:15, 46:20, 46:24, 58:2, 74:21, 77:6, 79:5 specify [2] - 47:7, 49:24 Spectrum [2] - 1:19, 80:24 speculation [1] - 22:13 spell [2] - 52:11, 52:12 spend [3] - 50:24, 67:17, 96:13 spending [2] - 101:22, 104:20 spent [3] - 21:14, 50:22, 103:9 spin [4] - 31:14, 32:16, 34:8, 35:3 spinning [2] - 34:15, 67:18 spiral [1] - 104:25 spoken [1] - 93:10 sponte [1] - 65:15</p>	<p>spreadsheet [1] - 66:14 square [1] - 32:20 St [1] - 3:11 staff [2] - 23:18, 93:12 stage [1] - 107:10 stake [2] - 23:9 stamps [1] - 52:15 stand [2] - 67:16, 69:22 standard [3] - 32:1, 85:22, 101:10 standby [1] - 58:10 standing [3] - 46:18, 52:24, 96:18 start [6] - 5:5, 18:2, 55:8, 72:21, 73:16, 89:3 started [3] - 5:7, 11:23, 69:16 starting [3] - 12:1, 19:25, 33:15 state [7] - 5:23, 8:1, 8:11, 13:17, 15:10, 25:23, 57:9 statement [15] - 14:4, 15:16, 22:14, 24:10, 24:16, 25:24, 30:2, 34:21, 35:11, 36:7, 36:9, 53:2, 85:11, 92:15, 94:20 statements [7] - 22:23, 25:3, 31:10, 34:3, 34:5, 77:19, 87:20 STATES [2] - 1:1, 1:11 States [2] - 1:14, 4:10 static [15] - 38:16, 43:24, 48:14, 48:23, 63:19, 63:20, 63:22, 64:12, 73:4, 73:6, 73:8, 73:15, 73:19, 74:2, 75:21 stating [1] - 20:7 STATUS [1] - 1:9 status [19] - 9:6, 10:5, 12:1, 42:16, 42:20, 65:23, 69:16, 69:23, 70:1, 70:9, 70:11, 71:12, 71:14, 71:18, 71:23, 92:4, 98:5, 106:1, 107:13 Ste [1] - 4:6 step [5] - 59:16, 59:17, 79:22, 90:11, 105:23 Steven [2] - 4:13, 5:15 stick [1] - 19:1 sticker [1] - 92:12 still [8] - 5:20, 12:3, 16:8, 38:9, 45:17, 48:19, 51:13, 52:8 stock [1] - 8:18 stole [3] - 27:4, 39:21, 51:17 stop [3] - 34:1, 34:23, 89:8 stopped [2] - 20:3 stopping [1] - 102:12 store [1] - 38:25 story [1] - 33:12</p>	<p>straight [1] - 32:8 strategy [1] - 72:16 streamline [8] - 44:22, 45:2, 47:10, 60:8, 64:25, 72:20, 77:9, 91:21 streamlined [1] - 77:15 Street [2] - 3:21, 80:22 strength [1] - 34:3 strike [1] - 26:9 strip [2] - 62:7, 62:8 strong [1] - 20:4 strongly [1] - 53:6 struggle [1] - 84:14 stubborn [1] - 32:7 study [3] - 59:15, 59:22, 89:10 stuff [3] - 51:15, 55:9, 56:22 STUMPHAUZER [11] - 3:20, 16:9, 16:15, 26:22, 38:12, 40:24, 44:9, 44:11, 50:7, 104:4, 104:21 Stumphauzer [19] - 3:25, 7:17, 9:2, 10:18, 14:2, 16:2, 16:5, 16:7, 36:19, 37:16, 40:17, 42:24, 55:6, 70:20, 78:25, 79:22, 94:12, 94:22, 104:16 Stumphauzer's [1] - 77:18 sua [1] - 65:15 subject [11] - 35:18, 49:9, 61:10, 75:23, 80:14, 80:21, 81:2, 81:6, 101:5, 102:16, 108:4 submit [4] - 25:22, 43:8, 45:13, 71:13 submitted [2] - 13:15, 27:2 submitting [1] - 71:15 subpoena [3] - 57:14, 57:15, 57:18 subsequently [1] - 8:6 substance [1] - 13:11 substantive [1] - 34:10 successful [1] - 78:10 successfully [2] - 41:21, 68:4 suffer [1] - 53:25 sufficient [5] - 79:7, 80:12, 85:25, 96:17, 102:8 suggest [1] - 35:3 suggesting [2] - 65:20, 99:24 suggestion [1] - 37:16 suggestions [2] - 36:14, 80:14 Suite [21] - 1:15, 1:22, 2:6, 2:10, 2:17, 2:20, 2:24, 3:2, 3:6, 3:16, 3:21, 3:25, 35:21, 48:25, 63:10, 63:19, 64:10, 66:15, 74:19, 77:2 summarizes [1] - 27:9</p>	<p>summary [1] - 14:3 Summit [7] - 46:4, 65:3, 65:6, 73:16, 73:21, 73:24, 75:12 Sunday [2] - 57:25, 69:21 sunshine [1] - 9:11 supervision [1] - 36:16 supervisor [1] - 33:5 support [2] - 55:19, 93:15 supported [1] - 54:11 supports [1] - 94:14 surmise [1] - 81:10 sustainable [2] - 17:17, 33:23 swifter [1] - 50:1 sword [1] - 52:22 sworn [5] - 34:21, 35:11, 36:9, 53:2, 55:24</p> <p style="text-align: center;">T</p> <p>table [2] - 48:1, 67:9 tacks [1] - 107:8 tainted [1] - 79:18 take-aways [2] - 15:18, 15:20 tangential [1] - 75:1 tax [2] - 57:15, 57:16 tea [1] - 86:7 team [5] - 17:18, 26:2, 34:20, 38:22, 68:11 tech [1] - 26:23 tech-savvy [1] - 26:23 technological [1] - 108:4 technologically [2] - 47:2, 56:17 teeth [1] - 35:25 teleconference [1] - 5:3 ten [6] - 10:23, 11:11, 17:21, 29:4, 30:7, 30:9 tend [1] - 10:13 tens [4] - 49:4, 83:23, 104:13 term [1] - 14:16 terms [11] - 10:3, 12:17, 12:21, 13:5, 14:8, 14:22, 48:2, 52:13, 57:12, 64:17, 74:11 test [2] - 69:20, 70:11 tethered [1] - 77:17 THE [86] - 1:1, 1:10, 1:13, 1:18, 1:21, 2:1, 2:5, 2:13, 2:20, 3:1, 3:9, 3:15, 3:20, 5:4, 5:16, 5:22, 6:4, 6:6, 6:10, 6:15, 6:18, 6:21, 6:24, 7:2, 7:8, 7:15, 7:18, 8:7, 8:14, 11:20, 12:3, 12:8, 12:17, 13:9, 16:4, 16:11, 26:21, 32:2, 36:25, 40:12, 42:9, 42:18, 44:10, 44:14,</p>
--	---	---	--

<p>44:16, 46:17, 47:25, 49:11, 51:20, 52:20, 58:24, 62:3, 62:18, 65:17, 69:4, 70:12, 70:18, 72:14, 74:6, 76:4, 81:9, 83:5, 83:24, 85:17, 86:23, 88:2, 88:6, 88:10, 90:20, 91:16, 93:18, 93:24, 94:2, 94:11, 95:5, 95:9, 96:13, 100:24, 101:7, 103:13, 103:17, 103:22, 104:15, 104:24, 105:15, 107:2</p> <p>themselves [6] - 18:20, 31:6, 54:22, 85:2, 97:17, 100:3</p> <p>theories [1] - 37:12</p> <p>therefore [3] - 8:21, 46:9, 108:4</p> <p>thereof [1] - 32:13</p> <p>Thereupon [1] - 107:19</p> <p>third [10] - 7:24, 8:10, 39:24, 48:2, 56:15, 58:1, 63:5, 67:25, 74:17, 107:9</p> <p>Third [1] - 80:22</p> <p>thorough [2] - 101:19, 101:23</p> <p>thousand [1] - 65:16</p> <p>thousands [3] - 49:5, 51:5</p> <p>three [26] - 14:7, 24:11, 31:10, 38:18, 39:20, 43:2, 43:18, 47:10, 48:10, 53:14, 56:25, 57:20, 58:8, 58:9, 59:12, 60:24, 60:25, 62:11, 64:21, 65:9, 66:1, 67:18, 72:3, 72:4, 74:9, 77:4</p> <p>three-and-a-half [1] - 58:8</p> <p>thrived [1] - 15:14</p> <p>throughout [2] - 18:13, 19:2</p> <p>throwing [1] - 34:4</p> <p>thrown [2] - 23:2, 33:9</p> <p>thrust [2] - 49:17, 80:2</p> <p>Thursday [1] - 66:8</p> <p>tie [1] - 17:14</p> <p>tied [4] - 16:20, 93:2, 103:11</p> <p>Tim [1] - 91:21</p> <p>timeline [3] - 51:24, 66:17, 66:20</p> <p>timing [1] - 71:10</p> <p>Timothy [2] - 7:16, 42:10</p> <p>TIMOTHY [1] - 3:24</p> <p>tiny [1] - 25:18</p> <p>title [1] - 41:20</p> <p>titled [2] - 25:25, 27:16</p> <p>Tkolaya@sflaw.com [1] - 4:2</p> <p>to-do [2] - 89:4, 89:15</p> <p>today [29] - 5:14, 5:16, 6:3, 6:7, 7:14, 8:17, 9:3, 9:25,</p>	<p>23:9, 31:23, 34:17, 35:14, 43:1, 44:22, 45:14, 47:23, 52:2, 52:18, 57:22, 61:1, 76:18, 83:13, 87:21, 88:2, 89:3, 97:11, 103:6, 105:22, 106:17</p> <p>today's [3] - 32:4, 65:23, 107:4</p> <p>together [9] - 22:4, 30:9, 38:8, 51:4, 66:17, 76:21, 90:23, 93:13, 105:19</p> <p>token [2] - 33:2, 38:4</p> <p>tomorrow [4] - 43:1, 47:23, 52:19, 88:21</p> <p>ton [1] - 50:22</p> <p>tonight [1] - 64:25</p> <p>took [9] - 27:12, 44:1, 46:5, 50:16, 50:23, 51:6, 64:10, 64:13, 73:7</p> <p>top [9] - 10:23, 11:11, 17:21, 20:16, 27:1, 29:24, 30:7, 39:7, 39:14</p> <p>topic [1] - 28:19</p> <p>totally [1] - 44:19</p> <p>touch [9] - 9:19, 20:6, 61:11, 76:17, 81:5, 83:17, 88:25, 104:11, 107:16</p> <p>touched [2] - 99:21, 106:4</p> <p>touching [1] - 97:14</p> <p>towards [2] - 63:4, 92:1</p> <p>Tower [3] - 3:2, 3:6, 3:25</p> <p>track [4] - 45:23, 46:25, 49:12, 54:24</p> <p>tracked [1] - 67:21</p> <p>Trail [1] - 3:16</p> <p>train [1] - 101:21</p> <p>trained [1] - 17:19</p> <p>transaction [1] - 38:17</p> <p>transactions [4] - 22:20, 22:24, 82:6, 82:12</p> <p>transcript [1] - 106:21</p> <p>transcription [1] - 108:7</p> <p>transfer [3] - 43:25, 76:3, 90:17</p> <p>tremendous [1] - 93:17</p> <p>trend [1] - 19:24</p> <p>trial [2] - 34:10, 59:23</p> <p>trigger [1] - 86:10</p> <p>tripled [1] - 29:24</p> <p>trod [1] - 37:7</p> <p>trouble [1] - 10:25</p> <p>true [11] - 15:4, 25:13, 32:13, 33:7, 33:25, 37:7, 40:11, 53:5, 53:18, 71:1, 102:7</p> <p>truly [1] - 15:13</p> <p>Trust [1] - 6:21</p> <p>TRUST [1] - 2:6</p> <p>trust [7] - 6:23, 97:18, 97:23, 98:9, 98:11, 99:14,</p>	<p>100:16</p> <p>truth [1] - 23:5</p> <p>truthfully [1] - 23:8</p> <p>try [22] - 6:1, 8:18, 11:13, 12:22, 33:24, 47:10, 49:25, 50:11, 53:1, 54:4, 68:13, 72:16, 76:12, 89:9, 91:19, 92:4, 93:14, 93:21, 96:23, 102:23, 103:4, 107:5</p> <p>trying [20] - 36:14, 37:6, 45:6, 45:11, 51:15, 54:1, 55:12, 56:25, 60:5, 67:8, 67:10, 70:14, 70:20, 75:2, 77:22, 83:9, 93:11, 96:15, 96:22, 101:21</p> <p>Turn [1] - 92:14</p> <p>turn [16] - 5:6, 10:13, 10:17, 11:5, 14:1, 15:17, 15:22, 16:4, 16:11, 40:14, 42:5, 57:2, 73:1, 94:14, 95:19, 100:24</p> <p>turned [2] - 60:12, 96:3</p> <p>turning [2] - 7:13, 92:10</p> <p>turnover [1] - 47:8</p> <p>two [35] - 9:19, 10:4, 10:7, 13:1, 18:17, 19:16, 35:22, 41:5, 41:7, 49:22, 50:8, 54:11, 57:20, 61:2, 63:7, 63:12, 64:25, 65:2, 66:4, 66:15, 66:24, 66:25, 68:20, 74:10, 75:10, 75:18, 77:2, 77:16, 79:23, 83:3, 89:14, 96:6, 97:22</p> <p>two-and-a-half [2] - 63:7, 63:12</p> <p>typed [1] - 24:18</p> <p>types [1] - 102:19</p> <p>typically [1] - 70:2</p>	<p>unearth [1] - 97:24</p> <p>unfortunately [1] - 51:22</p> <p>uniformly [1] - 19:3</p> <p>Union [1] - 21:24</p> <p>UNITED [2] - 1:1, 1:11</p> <p>United [2] - 1:14, 4:10</p> <p>universe [2] - 76:7, 92:21</p> <p>unless [2] - 87:17, 90:24</p> <p>unlock [1] - 59:14</p> <p>unmanageable [1] - 105:1</p> <p>unmistakable [1] - 67:10</p> <p>unnecessary [2] - 45:10, 62:6</p> <p>unpaid [1] - 81:3</p> <p>unquote [1] - 50:17</p> <p>unredacted [1] - 87:19</p> <p>unsworn [1] - 53:18</p> <p>unwieldy [1] - 80:1</p> <p>up [51] - 5:8, 8:10, 11:10, 11:24, 12:4, 17:22, 19:11, 20:18, 21:1, 26:23, 27:1, 27:14, 29:2, 29:25, 32:2, 32:20, 35:8, 36:11, 36:14, 38:25, 39:6, 41:12, 41:16, 42:20, 47:14, 51:14, 53:25, 54:14, 57:23, 60:17, 62:25, 63:1, 63:11, 65:14, 72:6, 72:18, 73:4, 74:7, 75:3, 76:9, 76:18, 78:4, 79:2, 83:17, 84:3, 87:4, 89:7, 92:13, 94:13, 103:1, 103:11</p> <p>update [6] - 8:20, 9:5, 32:3, 66:7, 66:9, 107:2</p> <p>updates [3] - 9:6, 11:2, 12:2</p> <p>upload [1] - 44:3</p> <p>uploaded [3] - 43:25, 48:25, 75:13</p> <p>useful [2] - 47:13, 104:24</p> <p>user [2] - 46:6, 46:15</p> <p>utilized [3] - 34:25, 67:3, 82:1</p> <p>utilizing [1] - 95:16</p>
		<p>U</p>	<p>V</p>
		<p>ultimate [1] - 34:9</p> <p>ultimately [2] - 84:1, 101:24</p> <p>un-mute [2] - 56:5, 56:7</p> <p>unable [1] - 82:9</p> <p>unauthorized [3] - 48:6, 73:4, 79:11</p> <p>uncertain [2] - 14:8, 14:14</p> <p>unclear [1] - 50:19</p> <p>under [10] - 14:18, 32:9, 34:2, 36:16, 37:11, 75:19, 85:1, 98:11, 105:16, 105:24</p> <p>underlying [4] - 13:19, 17:13, 17:14, 58:14</p> <p>understood [4] - 38:13, 69:17, 79:6, 100:24</p> <p>underwriting [3] - 31:1, 31:3, 31:7</p> <p>undoubtedly [4] - 17:23, 20:20, 28:22, 104:6</p>	<p>VAGNOZZI [1] - 3:10</p> <p>Vagnozzi [2] - 6:18, 6:20</p> <p>valued [1] - 34:22</p> <p>Vanderventer [1] - 2:20</p> <p>various [4] - 38:15, 50:21, 64:11, 90:7</p> <p>vendor [2] - 41:19, 43:13</p> <p>venture [2] - 83:18, 83:24</p> <p>veracity [1] - 93:5</p> <p>verifiable [7] - 32:11, 33:10, 34:21, 37:6, 70:23, 77:20, 85:7</p> <p>verified [3] - 34:3, 35:9, 37:11</p> <p>verify [3] - 35:17, 45:4, 68:3</p>

<p>versa [2] - 18:9, 22:23 version [8] - 55:11, 55:12, 61:13, 61:18, 61:19, 61:20, 61:22 versions [2] - 61:2, 77:16 versus [8] - 5:9, 18:12, 30:18, 33:21, 53:21, 79:18, 94:4 via [1] - 5:3 vice [2] - 18:9, 22:23 vice-versa [2] - 18:9, 22:23 video [1] - 5:6 VIDEOCONFERENCE [1] - 1:9 view [6] - 13:17, 37:1, 45:25, 68:24, 70:25, 102:6 viewed [1] - 50:18 viewing [1] - 41:14 views [1] - 53:20 violated [2] - 50:18, 51:9 violation [3] - 27:5, 40:7, 98:10 virtual [1] - 5:5 virtually [1] - 29:5 vs [1] - 1:5</p>	<p>whereby [1] - 37:21 white [1] - 77:21 whole [2] - 21:14, 48:25 wholeheartedly [2] - 57:5, 57:6 willing [4] - 10:12, 25:23, 26:18, 42:25 wired [2] - 26:15, 27:17 wise [1] - 76:12 wisely [1] - 47:5 withdrew [1] - 8:6 witness [1] - 95:17 woefully [1] - 26:7 wonderfully [1] - 95:21 wondering [1] - 56:20 word [4] - 16:16, 61:18, 61:19, 76:19 words [3] - 14:5, 20:16, 30:4 works [1] - 67:15 worried [6] - 9:15, 48:2, 75:5, 90:21, 92:11, 92:16 worries [1] - 55:3 worry [4] - 46:9, 72:8, 104:16, 104:17 worth [2] - 83:23, 105:10 worthless [2] - 70:18 wow [1] - 26:7 wrap [2] - 76:18, 103:1 write [2] - 29:10, 84:21 writing [4] - 40:5, 40:8, 60:22, 63:9 written [1] - 52:4 wrongfully [1] - 39:25 wrote [1] - 63:12</p>
W	
<p>waged [1] - 92:2 wait [3] - 8:23, 64:22, 64:23 waiting [1] - 88:21 walk [1] - 16:12 walked [2] - 29:15, 29:16 wall [2] - 9:10, 33:9 wants [9] - 10:9, 15:23, 47:16, 62:13, 64:21, 73:19, 98:4, 100:25, 106:9 washed [1] - 91:5 Washington [1] - 2:21 waste [6] - 44:24, 45:18, 50:12, 65:5, 88:7, 92:6 wasted [1] - 51:23 ways [2] - 54:11, 90:19 weeds [1] - 59:5 week [9] - 39:6, 46:24, 60:18, 61:23, 63:5, 72:21, 86:24, 90:6, 105:9 weeks [5] - 48:18, 57:18, 57:24, 103:9, 103:15 weigh [4] - 36:23, 40:9, 68:8, 99:18 weight [1] - 55:19 Weinkranz [2] - 4:13, 5:15 WEINKRANZ [1] - 5:15 welcome [3] - 8:25, 12:10, 38:21 well-rooted [1] - 37:5 WEST [1] - 1:2 whatsoever [1] - 93:16 whereas [1] - 84:14</p>	<p style="text-align: center;">Y</p> <p>Yamato [1] - 2:17 year [4] - 19:9, 32:13, 105:25 year-to-year [1] - 32:13 years [2] - 20:22, 71:8 yesterday [6] - 8:16, 11:8, 35:6, 41:13, 61:12, 88:15 yesterday's [1] - 68:12 York [2] - 2:3, 2:14</p>
Z	
	<p>Zoom [3] - 5:3, 42:14, 59:2</p>

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

2015 WL 1486647
Only the Westlaw citation is currently available.
United States District Court,
W.D. Wisconsin.

ABS GLOBAL, INC., Plaintiff,

v.

INGURAN, LLC, Defendant,

v.

Genus PLC, Counterclaim Defendant.¹

No. 14-cv-503-wmc.

Signed March 31, 2015.

Attorneys and Law Firms

David Timothy Pritikin, Kevin Michael Fee, Jr., Russell E. Cass, Steven Joseph Horowitz, William H. Baumgartner, Jr., Sidley Austin LLP, Chicago, IL, Matthew S. Jorgenson, Sidley Austin LLP, Los Angeles, CA, for Plaintiffs.

Sarah Anne Zylstra, Boardman & Clark LLP, Madison, WI, Catherine Fairley Spillman, Akin Gump Strauss Hauer & Feld LLP, Washington, DC, Clayton Nicholas Matheson, Daniel L. Moffett, George Andrew Rosbrook, Kirt Stephen O'Neill, Akin Gump Strauss Hauer & Feld LLP, San Antonio, TX, James L. Duncan, III, Akin Gump Strauss Hauer & Feld LLP, Houston, TX, for Defendant.

Andrew J. Clarkowski, Michael J. Modl, Axley Brynelson, LLP, Madison, WI, for Plaintiffs/Counterclaim Defendant.

OPINION & ORDER

WILLIAM M. CONLEY, District Judge.

*1 In this civil action, defendant Inguran, LLC, is alleged to have used its monopoly power to engage in anticompetitive conduct, keeping others, including plaintiff ABS Global, Inc., out of the market for processing “sexed bovine semen” in violation of U.S. and Wisconsin antitrust laws. One of its allegedly

anticompetitive practices is acquisition of exclusive rights in dozens of third-party patents related to the sexed semen-processing market in order to prevent competitors from using those technologies to enter the market. ABS Global seeks various forms of relief, including a permanent injunction that would require Inguran to license patents owned by Inguran’s subsidiary, XY, LLC, to ABS Global on reasonable terms and conditions. Unsurprisingly, XY has filed a motion to intervene to defend its interest in those patents. (Dkt. # 65.) Also pending is Inguran’s motion to join ABS Global’s parent company, Genus plc (dkt.# 86), as well as two motions to dismiss Inguran’s counterclaims (dkt.79, 81). The court will address each of these motions in this opinion.

I. XY’s Motion to Intervene

XY moves to intervene as of right, and alternatively by permission, as a party defendant and counterclaim plaintiff. Under Rule 24(a)(2), a court *must* permit intervention when: “(1) the application is timely; (2) the applicant has an ‘interest’ in the property or transaction which is the subject of the action; (3) disposition of the action as a practical matter may impede or impair the applicant’s ability to protect that interest; and (4) no existing party adequately represents the applicant’s interest.” *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1380 (7th Cir.1995). Alternatively, a court may in its discretion permit an applicant to intervene under Rule 24(b) when the motion is timely and the applicant “has a claim or defense that shares with the main action a common question of law or fact.” Fed.R.Civ.P. 24(b)(1)(B).²

A. Facts

XY, LLC (“XY”) is a Delaware limited liability company with its principal place of business in Navasota, Texas. Since the mid-1990s, XY has researched, developed and commercialized technologies for sex selection of non-human mammals, including specialized machines that can produce sex-selected sperm samples and methods for handling sperm cells and freezing them for later use to create in vitro or in vivo fertilized embryos.

Throughout its history, XY has licensed its intellectual property to a number of other companies. Those licensees use XY’s intellectual property to create and

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

commercialize sperm cell samples with a high likelihood of producing offspring of the chosen sex. For over a decade, Inguran has also held a non-exclusive license to XY's intellectual property under which it sells sex-selection services and sex-selected semen to companies like ABS Global.

In 2007, Inguran, a long-standing minority shareholder in XY, acquired all of XY's shares. According to XY, however, the acquisition did not change the "fundamentally distinct nature of XY's and Inguran's businesses[:] XY owns and licenses out its intellectual property, while Inguran uses that intellectual property to offer sex-selected goods and services." (Mot. Intervene (dkt.# 65) 2–3.) ABS Global vehemently disputes this characterization of Inguran and XY's business arrangement, stating throughout its brief that Inguran wholly controls XY and can direct it to take any action Inguran wishes with respect to its various patents. The parties also dispute whether Inguran is currently the sole licensee of XY's patents. *See* discussion *infra* note 3.

B. Intervention as of Right

i. Timeliness

*2 "The purpose of the [timeliness] requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1018 (7th Cir.2002) (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir.2000)). In determining whether a motion to intervene is timely, courts consider "(1) the length of time the intervenor knew or should have known of her interest in the case, (2) the prejudice caused to the original parties by the delay, (3) the prejudice to the intervenor if the motion is denied, and (4) any other unusual circumstances." *Id.* (citing *Ragsdale v. Turnock*, 941 F.2d 501, 504 (7th Cir.1991)). Given the fact that XY is Inguran's wholly-owned subsidiary, XY has almost certainly known of its interest in this litigation since the case was filed in July of 2014. This would mean XY delayed about four months before seeking to intervene. Whether or not this would be timely under other circumstances, XY's proposed intervention would not appear to prejudice ABS Global in any way. Indeed, ABS Global does not even attempt to argue that it *would* be prejudiced. Given that this case is still in its relatively early stages, with dispositive motions months away and discovery ongoing until November 20, 2015, and given the likelihood that

XY's discovery and motion practice will run largely parallel to Inguran's, the court concludes XY's motion to intervene is timely.

ii. Interest in the Property or Transaction

Intervention as of right "requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir.2013) (quoting *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir.1985) (alteration in original)). The interest must be "based on a right that belongs to the proposed intervenor rather than to an existing party in the suit" and "must be so direct that the applicant would have 'a right to maintain a claim for the relief sought.'" *Keith*, 764 F.2d at 1268 (quoting *Heyman v. Exch. Nat'l Bank of Chi.*, 615 F.2d 1190, 1193 (7th Cir.1980)). The interest must also be "unique to the proposed intervenor." *Wis. Educ. Ass'n Council*, 705 F.3d at 658.

ABS Global contends that XY lacks the kind of interest contemplated by [Rule 24](#), characterizing this case as involving only one issue: whether Inguran violated antitrust laws by engaging in unlawful monopolization. The court agrees with XY, however, that this is a considerable oversimplification. A not-insignificant portion of the unlawful conduct ABS Global challenges involves the patents that XY now owns. (*See* Am. Compl. (dkt.# 58) ¶¶ 73–81.) Thus, contrary to ABS Global's arguments, it *has* alleged that XY "engaged in ... conduct that violates the antitrust laws" by acquiring and refusing to license patents relating to the sexed semen processing market to Inguran's competitors, thus preventing or dissuading others from entering that market. (Pl.'s Br. Opp'n Mot. Intervene (dkt.# 72) 3.) XY, therefore, appears to have its own "defense to assert against" ABS Global's claims of exclusionary conduct, *Kammerman v. Steinberg*, 681 F.Supp. 206, 211 (S.D.N.Y.1988), at least as regards the alleged "scheme of repeatedly acquiring, exclusively licensing, or otherwise controlling third parties' patents relating to its monopoly." (Am.Compl.(dkt.# 58) ¶ 99.)

*3 In response, ABS Global double downs on its position that XY is wholly under the control of Inguran. That is, in ABS Global's view, *Inguran* is not only the moving force behind XY's allegedly unlawful conduct, but the only entity that could be held liable for the allegedly illegal patent-acquisition "scheme." (Pl.'s Br. Opp'n Mot. Intervene (dkt.# 72) 4 ("After buying XY, [Inguran] directed XY to cancel the existing licenses to other U.S. licensees, and [Inguran] will not permit XY to license a

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

new potential competitor now.”); *see also id.* at 6–7 (arguing that XY is “wholly-owned *and controlled*” by Inguran (emphasis added).) But there is no evidence in the record presently before the court to support a finding that Inguran controls XY to such an extent that it can be held liable for its subsidiary’s conduct, and so the court declines to disregard the separateness of XY’s corporate form, at least for the purpose of determining whether XY has a sufficient interest in this litigation to intervene as of right.

Even more persuasive, XY rightly points out that as relief, ABS Global expressly requests that “[t]he Court grant permanent injunctive relief requiring [Inguran] to license to ABS, on reasonable terms and conditions, any and all U.S. patents relating to Sexed Bovine Semen.” (Am.Compl.(dkt.# 58) 30, ¶ J.) XY undoubtedly has an intellectual property interest in its own patents, and the parties appear to agree that this interest belongs solely to XY, not to its parent company. Indeed, one of ABS Global’s arguments *against* allowing XY to intervene is that XY should not be permitted to “transform” this litigation by asserting patent infringement counterclaims, presumably meaning that in ABS Global’s view, Inguran cannot assert these claims itself.³ (*See* Pl.’s Br. Opp’n Mot. Intervene (dkt.# 72) 5.)

Assuming that the parties are correct that *only* XY has a protectable property interest in the patents, XY *also* has a “unique” interest in defending them from the injunctive relief that ABS Global seeks, or at a minimum, in asserting its own position as to what constitutes “reasonable terms and conditions” for any court-ordered compulsory licenses. Accordingly, the court concludes that XY also has a direct, significant and legally protectable interest in this litigation.

iii. Interests May Be Impaired

The third question is whether XY’s ability to protect its interests may be impaired by the disposition of this action. “Impairment exists when the decision of a legal question ... would, as a practical matter, foreclose the rights of the proposed intervenor in a subsequent proceeding.” *Shea v. Angulo*, 19 F.3d 343, 347 (7th Cir.1994) (alteration in original). ABS Global does not raise a separate challenge to this factor, and the court agrees that XY’s interests could be impaired in this proceeding. Specifically, XY may be found liable for antitrust violations based on its business operations without ever having a chance to defend those operations. Alternatively, XY may find itself ordered to license its intellectual property to ABS Global

without having the chance to argue, at least directly, against that course of action or provide evidence as to what would constitute reasonable terms and conditions for such licenses. *See United States v. Glaxo Grp. Ltd.*, 410 U.S. 52, 64, 93 S.Ct. 861, 35 L.Ed.2d 104 (1973) (“Mandatory selling on specified terms and compulsory patent licensing at reasonable charges are recognized antitrust remedies.”). Accordingly, XY has established the third factor for intervention as of right.

iv. No Existing Party Adequately Protecting Those Interests

*4 XY’s main obstacle to establish intervention as of right is the fourth step of the inquiry: whether an existing party adequately protects its interests. While intervention “requires only a ‘minimal’ showing of inadequate representation,” *Wis. Educ. Ass’n Council*, 705 F.3d at 659 (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972)), “[w]here a prospective intervenor has the same goal as the party to a suit, there is a presumption that the representation in the suit is adequate.” *Shea*, 19 F.3d at 347. “The prospective intervenor then must rebut that presumption and show that some conflict exists.” *Wis. Educ. Ass’n Council*, 705 F.3d at 659.

Here, XY and Inguran share essentially the same goal—defending their business arrangement against ABS Global’s antitrust claims, including the challenged acquisition and non-licensing of patents related to sorted semen. Indeed, should Inguran prevail, XY’s interests are also vindicated, and its patents remain unaffected. This conclusion is further strengthened by the fact that Inguran and XY are represented by the same counsel, strongly suggesting that there is no real (or even foreseeable) conflict of interests between Inguran and its wholly-owned subsidiary XY. *See, e.g., Southmark Corp. v. Cagan*, 950 F.2d 416, 419 (7th Cir.1991) (“Here petitioner’s interests in defeating foreclosure are adequately represented by the receiver, who has the same interests and who is represented by petitioner’s own counsel.”); *Clorox Co. v. S.C. Johnson & Son, Inc.*, 627 F.Supp.2d 954, 962 (E.D.Wis.2009) (noting that the parties “share[] the same counsel” in denying motion to intervene); *Carroll v. Am. Fed. of Musicians of U.S. & Can.*, 33 F.R.D. 353, 353 (S.D.N.Y.1963) (“Inadequate representation can hardly be claimed as the same attorney represents both the original plaintiffs and the proposed intervenors.”).

XY posits a few weak examples of possible conflict, but

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

none is persuasive. For instance, XY contends that as a corporate entity separate from its parent Inguran, XY has license-related information to which Inguran lacks access. This strikes the court as disingenuous, given that XY does not explain why, as a wholly-owned subsidiary, it could not simply provide that information to its parent company.⁴ XY also argues that a conflict of interest could arise if Inguran, as XY's licensee, must litigate the question of which patents should be licensed to ABS Global as part of its requested relief and under what terms. This vague prediction of a potential conflict, however, is not enough to overcome the presumption of adequate representation. Indeed, XY offers *no* reason why its parent company's wishes might diverge from its own in terms of negotiating a favorable licensing arrangement. Accordingly, the court cannot conclude on this record that XY's interests will not be adequately represented by its parent company. XY's failure to meet its burden on this point requires that court deny its request to intervene as of right. *See Vollmer v. Publishers Clearing House*, 248 F.3d 698, 705 (7th Cir.2001) (noting that "the lack of one element requires that the motion to intervene be denied").

C. Permissive Intervention

*5 XY has better luck with its motion for permissive intervention, however. "[P]ermissive intervention may be allowed 'when an applicant's claim or defense and the main action have a question of law or fact in common.'" *Schipporeit*, 69 F.3d at 1381 (quoting Fed.R.Civ.P. 24(b)(2)). Before a court may grant intervention under Rule 24(b)(2), the proposed intervenor must demonstrate only that "there is (1) a common question of law or fact, and (2) independent jurisdiction." *Id.* Beyond those two requirements, permissive intervention is entrusted to the discretion of the district court, although in exercising that discretion courts are instructed to consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* (quoting Fed.R.Civ.P. 24(b)(2)).

There is no question that this court has independent jurisdiction over XY's proposed patent infringement counterclaims. *See* 28 U.S.C. § 1338(a) ("The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents[.]"). Additionally, XY's defense to the antitrust claims against it shares common questions with Inguran's defense overall. As XY points out, ABS Global claims that Inguran has unlawfully stifled competition in part *through* XY, which has carried out the accused patent acquisition and U.S. licensing practices.

Furthermore, Inguran has already brought a patent infringement counterclaim of its own. (*See* Counterclaims (dkt.# 63) ¶¶ 231–240.) As such, this lawsuit now necessarily involves inquiry into the details of ABS Global's laser-based sorting technology, as will XY's proposed patent infringement counterclaims, which are premised on that same technology. Additionally, both sides' claims in this lawsuit will require at least *some* inquiry into the details of XY's patents, given the factual development required in crafting a patent-related antitrust remedy. *See generally* Lawrence Schlam, *Compulsory Royalty-Free Licensing as an Antitrust Remedy for Patent Fraud: Law, Policy and the Patent-Antitrust Interface Revisited*, 7 Cornell J.L. Pub. Pol'y 467, 487–92 (1998). There will, therefore, be common questions of fact and law that arise between the antitrust action as currently pled and XY's proposed defenses and counterclaims.

ABS Global argues that allowing XY to intervene will serve only to complicate and delay this case. But again, ABS Global itself has put XY's patents at issue by challenging its acquisition and management of those patents and seeking compulsory licenses in order to clear the way for ABS Global to commercialize its own technology. While this lawsuit will admittedly become somewhat more complex by virtue of including additional patents and patent claims, it would be inefficient to require the parties to litigate patent infringement claims that are all premised on ABS Global's allegedly infringing laser-based sorting technology in two separate lawsuits. There is also the potential for inconsistent results between cases should the court refuse to permit intervention. For example, the questions of validity and infringement of XY's patents could arise in this lawsuit (in the context of the compulsory license inquiry), as well as in any separate lawsuit XY brings. Accordingly, the court will grant XY's motion for permissive intervention, subject to XY causing no delay in the prosecution of this case.

II. Joinder of Genus plc

*6 Inguran initially sought to add Genus as a third-party defendant under Federal Rule of Civil Procedure 14, submitting a third-party complaint concurrently with its answer and counterclaims against ABS Global. (*See* dkt. # 63.) Against Genus specifically, Inguran asserted claims for fraudulent inducement, breach of contract, promissory estoppel, and induced patent infringement. (*Id.*) Soon after, Genus moved to dismiss the third-party complaint.

(Dkt.# 79.)

As an initial matter, Genus argues that the claims should be dismissed in their entirety as improper under [Fed.R.Civ.P. 14](#), since that rule only allows for derivative claims. Additionally, Genus asserted separate bases for dismissal of Counts I (fraudulent inducement) and VI (induced patent infringement), arguing that: (1) Inguran failed to plead fraudulent inducement with particularity as required by [Fed.R.Civ.P. 9\(b\)](#); and (2) Inguran failed to plead sufficient facts to support a plausible claim of induced infringement.

Inguran has since conceded that its invocation of [Rule 14](#) was improper. (*See* Def.'s Br. Opp'n (dkt.# 92) 1–2 (“Inguran acknowledges that [Rule 14](#) does not apply (since Inguran does not seek to hold Genus derivatively liable for Plaintiff ABS Global, Inc.’s ... claims).”).) This proved a small concession indeed, as Inguran proceeded to file a new motion to join Genus as a counterclaim defendant under Rules 19 and 20, governing required and permissive joinder respectively.⁵ (Dkt.# 86.)

Genus and ABS Global concede that Genus can be properly joined under [Rule 20](#), which permits joinder of multiple defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

[Fed.R.Civ.P. 20\(a\)\(2\)](#). The court agrees.

Inguran’s counterclaims center on the joint conduct of Genus and ABS Global in negotiating and performing the contract, as well as pursuing development and commercialization of the laser-based semen sorting method. Inguran not only seeks to hold Genus jointly liable, common questions of law and fact exist. Indeed, according to Inguran, the evidence and testimony offered will be essentially the same against the two counterclaim defendants. Since Genus is a proper counterclaim defendant under [Rule 20](#), the court need not address Inguran’s arguments that Genus *must* be joined under [Rule 19](#). Accordingly, Genus’s motion to dismiss the original, improper third-party complaint is granted, as is Inguran’s subsequent motion to join Genus properly as a counterclaim defendant.

III. Motion to Dismiss Counts I, II and VI of Counterclaims

Because the revised counterclaims against Genus are essentially the same as those in the defunct third-party complaint, the court still must address the alternative arguments raised in Genus’s motion to dismiss. Accordingly, the court now turns to whether Inguran has adequately pled Counts I and VI of its counterclaims. Because the analysis overlaps with ABS Global’s other remaining motion, which seeks to dismiss Counts I and II of the counterclaims, the court considers them in tandem.

A. Count I: Fraudulent Inducement

*7 First, ABS Global moves to dismiss the claim of fraudulent inducement for failure to plead fraud with particularity. [Fed.R.Civ.P. 9\(b\)](#). The parties agree that Texas law governs the contract. (*See* Pl.’s Br. Supp. Mot. Dismiss (dkt.# 82) 2; Def.’s Br. Resp. (dkt.# 91) 1.) A claim of fraudulent inducement under Texas law requires a plaintiff to establish “the elements of ‘a simple fraud claim.’ “ *Fletcher v. Edwards*, 26 S.W.3d 66, 77 (Tex.App.2000) (quoting *Balogh v. Ramos*, 978 S.W.2d 696, 701 (Tex.App.1998)). Those elements are: “a material misrepresentation; which was false; which was known to be false when made or was made recklessly as a positive assertion without knowledge of its truth; which was intended to be acted upon; which was relied upon; and which caused injury.” *Id.* (citing *Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex.1998)). Here, ABS Global argues that Inguran has failed to allege with particularity that: (1) ABS made any material misrepresentation; (2) Inguran relied on the misrepresentation; and (3) Inguran suffered an injury.

i. Material Misrepresentations

Inguran’s counterclaim for fraudulent inducement relies primarily on ABS Global and Genus’s alleged misrepresentations that they “wanted a long-term deal, as well as a significant increase in the volume of Inguran’s sex-sorting services.” (Counterclaims (dkt.# 63) ¶ 196.) Specifically, Inguran alleges that John Worby, a senior executive of both ABS Global and Genus, wrote to Inguran expressing interest in a longer-term extension or renewal of the contract and an increased purchase quantity. (*Id.* at ¶ 190.) Worby also allegedly explained that ABS Global viewed the contract as “fair” and was “fine” with a five-year term, a liquidated damages clause

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

and a \$1.5 million early termination penalty. (*Id.* at ¶ 191.) According to Inguran, however, ABS Global and Genus “never intended to perform the 2012 Agreement’s full period, and knew as much when they falsely represented to Inguran that they would.” (*Id.* at ¶ 200.)

“A promise of future performance constitutes an actionable misrepresentation if the promise was made with no intention of performing at the time it was made.” *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768, 774 (Tex.2009) (quoting *Formosa Plastics Corp. v. Presidio Eng’rs & Contractors, Inc.*, 960 S.W.2d 41, 48 (Tex.1998)). Nevertheless, ABS Global and Genus argue that these statements cannot support a claim for fraudulent inducement because they have turned out to be true: that is, the parties *have* a long-term renewal in place, with the 2012 Agreement continuing in force until August 31, 2017. (*See id.* at ¶ 196.)

As Inguran points out, however, this view of the claim fails to account for the fact that ABS Global has sued Inguran to *avoid* performing some of the provisions of the 2012 Agreement. In its complaint, ABS Global asks this court to find unenforceable a number of the 2012 Agreement’s provisions, including the liquidated damages provisions; any and all research restrictions; all restrictions on ABS Global’s use, marketing and sale of sexed semen that it develops via its own technology; all evergreen provisions that make the 2012 Agreement of perpetual duration unless terminated; and the take-or-pay provision requiring ABS Global to pay for a prescribed minimum quantity of processed semen regardless of whether it can make use of that quantity. (*See* Am. Compl. (dkt.# 58) 29 (Prayer for Relief).) Inguran’s counterclaims also allege that ABS Global has attempted to invalidate portions of the 2012 Agreement. (*See* Counterclaims (dkt.# 63) ¶ 194.) Assuming for purposes of ABS Global and Genus’s motion to dismiss only that, as alleged, both companies made false statements during negotiations that they planned to perform for the 2012 Agreement’s full period and that they found its terms acceptable and fair, and that the present lawsuit is part of ABS Global’s and Genus’s execution of their pre-existing, fraudulent scheme to renege on that agreement, then Inguran may have pled just enough facts to get over [Rule 9\(b\)](#), albeit with a tale of Machiavellian proportions that may or may not pass [Rule 56](#) review.

*8 Inguran also points to an allegedly material *omission* that purportedly supports its fraud in the inducement claim: plaintiffs’ failure to inform Inguran of their research and development program and laser-based technology. In response, Genus points out that under Texas law, a duty to disclose arises in four distinct

situations:

The existence of a confidential relationship is but one of the bases for imposing a duty to disclose information. A duty to speak may arise in at least three other situations: First, when one voluntarily discloses information, he has a duty to disclose the whole truth. Second, when one makes a representation, he has a duty to disclose new information when he is aware the new information makes the earlier representation misleading or untrue. Finally, when one makes a partial disclosure and conveys a false impression, he has a duty to speak.

Anderson, Greenwood & Co. v. Martin, 44 S.W.3d 200, 212–13 (Tex.App.2001) (internal citations omitted).

In this case, plaintiffs argue that no confidential relationship was pled, nor does Inguran allege facts suggesting that plaintiffs made a misleading partial disclosure. To this argument, Inguran has no response, thereby waiving any opposition. *See Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir.2010) (“Failure to respond to an argument—as the Bontes have done here—results in waiver.”). Accordingly, the court will dismiss Inguran’s fraud in the inducement claims to the extent they are premised on material *omissions*.

ii. Reliance

Plaintiffs next argue that Inguran has failed to plead reliance plausibly, as required by *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Under Texas law, demonstrating reliance requires “evidence that the claimant would not have entered into the contract but for the alleged misrepresentation or fraudulent nondisclosure.” *Williams v. Dardenne*, 345 S.W.3d 118, 126 (Tex.App.2011). There is no dispute that Inguran has *facially* pled reliance, alleging that “Inguran would not have entered into the 2012 Agreement, or provided the preferential pricing, but for Genus’s and ABS’s false representations regarding the term of the agreement.” (Counterclaims (dkt.# 63) ¶ 201.) Rather, plaintiffs contend that the allegation is simply not plausible in light of the parties’ longstanding contractual relationship. (*See* Pls.’ Br. Support (dkt.# 82) 4.)

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*, 556 U.S. at 678. Importantly, “[t]he plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

sheer possibility that a defendant has acted unlawfully.” *Id.*; see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (“[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.”) (internal quotation marks and citation omitted). Thus, the court cannot dismiss the fraud in the inducement claim simply because Inguran’s allegation of but-for reliance seems *unlikely*.

*9 What plaintiffs are really arguing is that by alleging that the parties have been in an amicable contractual relationship for over a decade (Counterclaims (dkt.# 63) ¶¶ 172–73), and that ABS Global is one of the largest bull stud companies in the country (*id.* at ¶ 188), Inguran has pled itself out of an allegation of but-for reliance. While a closer question than it might be, given the somewhat dubious inferences that must be made as to ABS Global’s and Genus’s unstated motives, the court disagrees. A party certainly *can* plead itself out of a claim, but it must do so “by pleading facts that establish an impenetrable defense to its claims.” *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir.2008). Said another way, a party “pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits.” *Id.* (quoting *Kolupa v. Roselle Park Dist.*, 438 F.3d 713, 715 (7th Cir.2006)). That is not the case here.

The parties’ longstanding relationship and the profitability of having ABS Global as a customer may well make it more *difficult* for Inguran to prove it would not have entered into the 2012 Agreement but for ABS Global’s misrepresentations as to its true intent, but those factors do not establish an impenetrable defense to that element. Accordingly, the court leaves the question of reliance for summary judgment or trial. See *Celanese Corp. v. Coastal Water Auth.*, 475 F.Supp.2d 623, 638 (S.D.Tex.2007) (“Reliance is ordinarily a question for the fact-finder.”)

iii. Injury

Finally, plaintiffs argue that Inguran fails to allege facts showing how it was injured by entering into the 2012 Agreement. Looking to Inguran’s counterclaims, it has alleged the following with respect to damages:

Genus’s and ABS’s false representations and omissions directly and proximately caused Inguran injury. These injuries include, but are not limited to, that Inguran is now locked into an agreement with ABS whereby ABS receives all the benefits but refuses to accept many of

its burdens, including the fact that Inguran provided ABS preferential pricing and other beneficial terms in view of the volume and purported length of the 2012 Agreement; providing ABS an increase in volume of Inguran’s sex-sorting services which wastes and strains Inguran’s limited resources and production capacity, and limits Inguran’s ability to provide these services to other potential and actual customers; and the loss of the protection and misuse of Inguran’s confidential information, which ABS has improperly appropriated and used to develop and implement its own technology. (Counterclaims (dkt.# 63) ¶ 204.)

Plaintiffs argue that these allegations are insufficient to demonstrate the “concrete, pecuniary harm” necessary to support a claim for fraud. *Arisma Grp., LLC v. Trout & Zimmer, Inc.*, No. 3:08–CV–1268–L, 2009 WL 3573418, at *6 (N.D.Tex. Oct. 30, 2009). The court again disagrees. Inguran alleges that due to the 2012 Agreement, it has had to forego other opportunities to sell its services that would have been more profitable than its sales to ABS Global. Inguran also alleges that it provided ABS Global with “preferential pricing and other beneficial terms” in reliance on ABS Global’s commitment to perform for the contract’s full term. Supported with evidence, this could give rise to the kind of concrete pecuniary harm required to state a claim for fraudulent inducement under Texas law.

*10 Plaintiffs similarly argue that Inguran has not identified a *specific* business opportunity it has missed or customer that it has been unable to serve as a result of the 2012 Agreement. That level of detail is simply not necessary at the motion to dismiss stage, even in light of the heightened pleading standard of Rule 9(b). Numerous courts have held that Rule 9(b)’s heightened standard does not extend to allegations regarding damages based on fraud, because those allegations do not bear on the “*circumstances* constituting fraud.” Fed.R.Civ.P. 9(b) (emphasis added); see, e.g., *Bear Ranch, LLC v. HeartBrand Beef, Inc.*, No. 6:12–CV–00014, 2013 WL 6190253, at *2 (S.D.Tex. Nov.26, 2013) (Rule 9(b) does not extend heightened pleading requirements to damages allegations in fraud case); *Andrews Farms v. Calcot, Ltd.*, 527 F.Supp.2d 1239, 1252 (E.D.Cal.2007) (“While Rule 9(b) requires pleading the circumstances of fraud with particularity, defendants cite no case law, and the Court finds none, requiring that fraud damages be pled with more specificity than required under normal notice pleading.”); *Williams v. Sabin*, 884 F.Supp. 294, 297 (N.D.Ill.1995) (“Rule 9(b) does not require any greater detail in pleading damages unless the information is necessary to give the defendant notice of the claims against him.”).

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

Here, plaintiffs are on notice of the financial injury that Inguran has allegedly suffered and can obtain through discovery the specific facts related to those injuries. If Inguran is unable to provide any factual support for its allegations at that time, then plaintiffs will be able to obtain summary judgment on that basis. For now, however, Inguran has stated a plausible claim of fraud, including damages, and so the motion to dismiss Count I of its counterclaims will be denied.

B. Count II: Anticipatory Breach/Repudiation

Next, Inguran purports to plead a claim for anticipatory breach of contract solely against ABS Global. Inguran bases this counterclaim entirely on a letter that ABS Global sent on August 25, 2014. According to Inguran, the 2012 Agreement provides in Section 4(b) that ABS Global must pay Inguran \$1.5 million in liquidated damages upon exercising its contractual right to terminate the contract after the end of its current term. (Counterclaims (dkt. # 63) ¶ 209.) Allegedly, ABS Global's August 25 letter triggered that provision by indicating that it had decided "not to extend the Term of the Agreement" (*id.* at ¶ 210), and (2) went on to say that ABS Global refused to pay the liquidated damages on the grounds that the provision in Section 4(b) is "unenforceable" (*id.* at ¶ 211).

Without more, ABS Global argues that these facts do not state a claim for anticipatory breach. Under Texas law, "[t]o constitute repudiation, a party to a contract must absolutely and unconditionally refuse to perform the contract without just excuse." *Bans Props., L.L.C. v. Hous. Auth. of City of Odessa*, 327 S.W.3d 310, 315 (Tex.App.2010). To support its argument that Inguran failed to plead a plausible repudiation claim, ABS Global provides the letter itself, which reads in relevant part:

*11 For reasons stated in the Federal Court Complaint filed by ABS on July 14, 2014, ABS maintains that the liquidated damages provision of Section 4(b) of the Agreement is unenforceable. Accordingly, ABS intends to seek judicial relief requiring ST to reimburse the uncredited portion of the \$1,500,000 Advance for liquidated damages that was paid under the fourth sentence of Section 4(b) and, in the meantime, expects ST to continue to credit the Advance against invoices for Sorted Semen in accordance with Section 4(b).

(Steven J. Horowitz Decl. Ex. A (dkt.# 83-1).) According to ABS Global, its stated position by no means constitutes the unconditional refusal to perform required to state a

claim for repudiation under Texas law. On the contrary, ABS Global contends that the letter confirms its intent to continue to perform under Section 4(b), even as it sought judicial relief from what it contends is an illegal contract provision.

Inguran objects that the court cannot consider the full text of the letter because it is outside the pleadings, but "[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [its] claim." *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir.1993). Since the letter forms the *sole* basis for Inguran's repudiation claim here, the court may consider it in resolving the motion to dismiss without converting it into a motion for summary judgment.

Read in its proper context, the letter alone does *not* support a claim for repudiation, which under Texas law must be "absolute, positive, unretracted, un retractable, and unconditional." *Dudley v. Born*, 710 S.W.2d 638, 644 (Tex.App.1986). Here, the letter is by no means unequivocal. On the contrary, it simply memorializes ABS Global's belief that the liquidated damages provision is unenforceable, as well as its intent to seek judicial relief from that provision. At best, the court can infer a *conditional* refusal to perform on ABS Global's part—that is, ABS Global will refuse to pay the liquidated damages if the provision requiring it is invalidated by the court—but that is not an unequivocal repudiation. *See* David R. Dow & Craig Smyster, 49 Tex. Practice Series, Contract Law § 9.11 ("A party's refusal to perform that is based in good faith on a mistake or misunderstanding relating to the party's obligations under the contract does not constitute an anticipatory repudiation."); *cf. Cont'l Cas. Co. v. Boerger*, 389 S.W.2d 566, 568 (Tex.Civ.App.1965) (in insurance cases, "doctrine of anticipatory breach is not applicable where insurer 'merely denies liability or claims defenses under the terms of the policy' ") (quoting *Univ. Life & Accident Ins. Co. v. Sanders*, 129 Tex. 344, 102 S.W.2d 405, 407 (Tex. Comm'n App.1937)). Indeed, if it *were* enough, a defendant could conceivably bring a counterclaim for anticipatory breach every time it is sued or threatened with suit to invalidate an allegedly unlawful contract provision, which is not only at odds with the Texas requirement that the refusal be "clear and unequivocal," but also with the requirement that the refusal "apply to the entire contract." Dow & Smyster, *supra*, at § 9.11.

*12 Inguran's only other argument is that ABS Global's letter "inherently" demonstrates an unconditional *intent* to repudiate by stating that Inguran was required to continue

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

to apply the advance on liquidated damages to ABS Global's own unpaid invoices. (Def.'s Br. Opp'n (dkt.# 91) 8.) This is not a reasonable inference, however, given that ABS Global's request is actually consistent with the terms of the 2012 Agreement itself. (See dkt. # 88-1.) Essentially, reading the letter in full, ABS Global does no more than: (1) indicate it believes the liquidated damages provision in Section 4(b) is unenforceable; (2) state its intent to request judicial relief from that provision; and (3) request that Inguran continue to comply with the 2012 Agreement's terms in the meantime. It would hardly be reasonable to infer unconditional refusal to pay the liquidated damages from ABS Global's commitment to continue to comply with the terms of the agreement pending judicial review.

At first glance, this conclusion may seem inconsistent with the court's earlier finding that Inguran has adequately pled its fraudulent inducement claim, since that result depends in part on the finding that it is plausible to infer that plaintiffs falsely represented they intended to perform the 2012 Agreement. In contrast, the court is dismissing Inguran's repudiation claim for failing to adequately plead that ABS Global refused to perform. The distinction is both legal and factual. First, the legal requirement of an absolute, *unconditional refusal* to perform is the basis for the court's dismissal of the repudiation claim. Second, on the face of the pleading and based on the precise language of the letter, which expressly forms the sole basis for the repudiation claim, there is *no* factual dispute as to the nature of ABS Global's actions.

In contrast, seeking judicial relief from a contract *may* be consistent with a party having actually intended from the outset not to perform under the contract (though corroborating evidence will likely be necessary to prove such a claim), even though it does not make plausible an absolute *refusal* to perform regardless of the outcome. Without any factual allegations that rise to this level, Inguran has not pled a plausible repudiation claim, and so ABS Global's motion to dismiss Count II of the counterclaims will be granted.

C. Count VI: Induced Patent Infringement

Finally, Inguran pleads a claim solely against Genus, which alleges that it induced ABS Global to infringe U.S. Patent No. 8,206,987 ("the '987 patent"), entitled "Photo-Damage Method for Sorting Particles."⁶ According to plaintiffs, Inguran's claim does nothing more than repeat the legal elements of an induced

infringement claim, without providing the supporting facts required to pass the plausibility test articulated by the Supreme Court's decisions in *Twombly* and *Iqbal*. See *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1336-37 (Fed.Cir.2012) (Supreme Court precedent controls pleading requirements for claims of indirect infringement). Of course, bare legal conclusions "contribute nothing to the plausibility analysis," *McCauley v. City of Chi.*, 671 F.3d 611, 618 (7th Cir.2011), and plaintiffs contend that once the court disregards those conclusions, Inguran cannot meet the plausibility test.

*13 To survive the motion to dismiss, Inguran's counterclaims must "contain facts plausibly showing that [Genus] specifically intended [ABS Global] to infringe the ... patent and knew that the ... acts constituted infringement." *In re Bill of Lading*, 681 F.3d at 1339. For the most part, Inguran's allegations *are* mere recitations of the black-letter law of induced infringement. For instance, Inguran alleges that Genus induced infringement by "actively and knowingly aiding, abetting and encouraging the laser based sorting of gender-selected sperm by others, including ABS, with the specific intent to induce others to, among other things, directly make, use, sell, offer to sell, or import into the U.S., without authority or license from Inguran, laser-based methods for the sorting of gender-selected sperm." (Counterclaims (dkt.# 63) ¶ 245.) This allegation parrots the legal standard for induced infringement articulated in cases like *Water Technologies Corporation v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed.Cir.1988), and the statutory description of *direct* infringement articulated in 35 U.S.C. § 271(a).

Disregarding Inguran's legal conclusions and conclusory statements, the counterclaims allege only that Genus "instructed" ABS Global in the commercialization of its semen-sorting technology (although it is still somewhat unclear as to what exactly Genus has directed ABS Global to do with respect to commercialization) and that Genus directed ABS Global to sort semen into gender-selected sperm. (Counterclaims (dkt.# 63) ¶ 245.) Assuming that this is enough to place Genus on notice of its alleged role in encouraging ABS Global to infringe the '987 patent, the court agrees with plaintiffs that Inguran has not adequately alleged the corresponding intent to cause infringement.

The "mere knowledge of possible infringement by others does not amount to inducement; specific intent and action to induce infringement must be proven." *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1305 (Fed.Cir.2006) (quoting *Warner-Lambert Co. v. Apotex Corp.*, 316 F.3d 1348, 1364 (Fed.Cir.2003)). "[I]nduced infringement under §

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

271(b) requires knowledge that the induced acts constitute patent infringement.” *Global-Tech Appliances, Inc. v. SEB S.A.*, — U.S. —, —, 131 S.Ct. 2060, 2068, 179 L.Ed.2d 1167 (2011). Furthermore, it is not enough to intend to “cause the acts that produce direct infringement.” *DSU Med. Corp.*, 471 F.3d at 1306. Rather, Genus must have affirmatively intended to cause the *infringement itself. Id.*

Inguran’s current counterclaims do not meet this standard. The only facts it pleads that bear on Genus’s intent are: (1) Genus had actual knowledge of the ‘987 patent’s existence; and (2) ABS Global submitted a petition for *inter partes* review of the ‘987 patent on October 1, 2014 (a few months after this lawsuit was filed on July 14, 2014).⁷ (Counterclaims (dkt.# 63) ¶ 246.) Taking these allegations as true, Inguran has pled only facts that are *consistent* with knowledge that ABS Global’s activities were infringing and specific intent to cause that infringement. At most, Genus knew that the ‘987 patent existed, so the court can infer that it also knew ABS Global’s laser-sorting method *could potentially* infringe that patent. This does not meet the standard for induced infringement. Facts like these, which are merely consistent with liability, do not “nudge[] ... claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. Without alleging something more with respect to Genus’s knowledge and intent, Inguran has not pled a plausible claim of induced infringement. Accordingly, Genus’s motion to dismiss Count VI of the counterclaims will be granted.⁸

D. Leave to Amend

*14 Inguran has requested that the court grant it leave to amend its counterclaims to add additional facts in the event that the court grants plaintiffs’ motion to dismiss in whole or in part. ABS Global indicates in its reply that it “does not object to letting [Inguran] have one last try” at pleading plausible counterclaims, arguing at the same time that Inguran cannot actually add enough facts to render its claims legally sufficient. (Pl.’s Br. Reply (dkt.# 98) 6.) Inguran has not filed proposed amended counterclaims with the court, however, and so it is premature at best to assess their sufficiency.

In light of ABS Global’s willingness to give Inguran another chance, *and* because the defects identified in this opinion as requiring dismissal do not appear to be incurable, the court will dismiss defendant’s anticipatory breach and induced infringement counterclaims without prejudice at this time. See *Fed.R.Civ.P. 15(a)(2)* (party

may amend its pleading “with the opposing party’s written consent” or the court’s leave, which should be freely given “when justice so requires”). Should Inguran wish to amend its counterclaims, it will need to file a motion for leave to amend with its proposed pleading, so that ABS Global has the chance to oppose the amendment should it believe that the proposed counterclaims fail to cure the deficiencies of the original pleading or are “futile.” *Perkins v. Silverstein*, 939 F.2d 463, 472 (7th Cir.1991) (leave to amend should be denied if the proposed pleading “could not survive a second motion to dismiss”) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)). In order to keep this case moving and avoid delay, Inguran shall have 21 days to file any proposed amended counterclaims.

ORDER

IT IS ORDERED that:

- 1) XY, LLC’s motion to intervene (dkt.# 65) is GRANTED. The clerk of court is directed to update the caption of this case accordingly.
- 2) XY, LLC’s motion for leave to file a reply brief on the motion to intervene (dkt.# 75) is GRANTED.
- 3) Counterclaim defendant Genus plc’s motion to dismiss the third-party complaint (dkt.# 79) is GRANTED.
- 4) Plaintiff ABS Global’s motion to dismiss Counts I and II of Inguran’s counterclaims (dkt.# 81) is GRANTED IN PART and DENIED IN PART. The claim for anticipatory breach/repudiation and the claims for fraud in the inducement premised on material omissions are DISMISSED without prejudice.
- 5) Defendant Inguran, LLC’s motion to join Genus plc (dkt.# 86) is GRANTED. Inguran may not, however, proceed with its induced patent infringement claim against Genus as currently pled; although that claim is DISMISSED without prejudice consistent with the opinion above.
- 6) Inguran has until April 21, 2015, to file a motion for leave to amend its counterclaims along with a proposed pleading.

All Citations

ABS Global, Inc. v. Inguran, LLC, Not Reported in F.Supp.3d (2015)

Not Reported in F.Supp.3d, 2015 WL 1486647

Footnotes

- 1 Based on the outcome of the motions pending before the court, the caption should reflect Genus plc as a counterclaim defendant, not a third-party defendant. The clerk is directed to update the caption accordingly.
- 2 After receiving ABS Global's response, XY filed a motion to file a short reply brief on its motion to intervene (dkt.# 75). That motion will be granted, and the court will consider its reply.
- 3 It is not clear if ABS Global's position is correct. Both a patent's owner *and* an "exclusive licensee can have constitutional standing to bring an infringement suit[.]" *Spine Solutions, Inc. v. Medtronic Sofamor Danek USA, Inc.*, 620 F.3d 1305, 1317 (Fed.Cir.2010) (quoting *Mars, Inc. v. Coin Acceptors, Inc.*, 527 F.3d 1359, 1367 (Fed.Cir.2008)). At least according to ABS Global, Inguran is the only licensee of XY's U.S. patents, having forced XY to terminate previously-granted licenses to other companies sometime after May of 2007. (Am.Compl.(dkt.# 58) ¶¶ 74–75.) Admittedly, it is not enough to be the sole licensee; Inguran must also have the "right to exclude others" from practicing the patents. *Spine Solutions*, 620 F.3d at 1317 (quoting *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1553 (Fed.Cir.1995) (en banc)). Crediting ABS Global's allegations, this would appear to be the case. On the other hand, XY argues in its reply that Inguran is actually a *non*-exclusive licensee. (XY's Reply (dkt.# 75–1) 4.) Since neither party has raised the possibility of Inguran bringing the infringement claims on its own behalf, however, the court will not address that possibility further at this time.
- 4 Perhaps XY has entered into a confidentiality agreement with a third party that prevents such disclosure, but XY offers *no* evidence of that.
- 5 Pursuant to Fed.R.Civ.P. 13(h), "Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim."
- 6 Count V, which plaintiffs do not challenge in their motion to dismiss, is a corresponding direct infringement claim of the '987 patent against ABS Global.
- 7 The date is relevant because "[t]he weight of authority addressing the knowledge required for indirect infringement, especially following the Supreme Court's decision in *Global-Tech*, requires a plaintiff to allege that defendant had pre-suit knowledge of the patents-in-suit." *Brandywine Commc'ns Techs., LLC v. Casio Computer Co.*, 912 F.Supp.2d 1338, 1345 (M.D.Fla.2012) (collecting cases). The allegedly "detailed interpretation of the claim language and scope of the '987 patent" contained in the petition for *inter partes* review, therefore, is of limited value in assessing whether Inguran has adequately pled knowledge and intent with respect to Genus's pre-suit activity.
- 8 Inguran also points to its allegation that Genus sought the safe harbor provision in Section 18(b) of the 2012 Agreement based on its knowledge that the laser-based sorting method infringed the '987 patent. Section 18(b) does not, however, appear to provide a "safe harbor" from potential liability for *patent infringement*. Rather, it merely allows ABS Global and its affiliates to continue its R & D program without marketing or selling the results, notwithstanding provisions of the 2012 Agreement that preclude ABS Global from "creat[ing], develop[ing], sell[ing] or market[ing]" any technology that competes with Inguran's own technology. (See 2012 Agreement (dkt.# 88–1) §§ 18(a), (b).) Thus, as best the court can discern, the safe harbor provision has no impact on what plaintiffs knew or did not know regarding the '987 patent.