

**TESTIMONY OF GREGORY CLARK
MIAMI PRELIMINARY HEARING**

THE COURT: Let's proceed now with Mr. Gregory Clark and his cross-examination.

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DIRECT EXAMINATION

09:12:24 BY THE COURT:

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Q. All right. Mr. Clark, yesterday I believe you were sworn, were you not?

A. Yes, Your Honor.

09:12:28 25 Q. And you attested that these two declarations, original and

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09:12:34 1 supplemental, were true and correct?

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A. That's correct.

MR. MARTINEZ: Thank you, Your Honor.

CROSS EXAMINATION

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[Beginning at 9:12 a.m., 4/2/09.]

BY MR. MARTINEZ:

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Q. Good morning, Mr. Clark.

A. Good morning. May I just move these documents away so I am not distracted?

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Q. Certainly.

A. Thank you. Thank you.

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Q. Thank you, sir. Mr. Clark, you state in Paragraph 9 of your supplemental declaration that you were CFO of the Elliott Group of companies from June 2005 until July 2008, correct?

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A. Correct.

Q. Isn't it true, sir, that during that time, none of the

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Elliott companies maintained offices in Florida?

A. That is correct.

Q. Okay. And neither did Derrick or Fred Elliott?

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A. That is correct.

Q. And isn't that also true today Mr. Clark?

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A. I'm sorry?

Q. Isn't that still the case today?

A. I don't know. I left the company in November 2008.

09:13:34 25 Q. Okay. So you don't know whether anything has changed, but

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09:13:36 1 as of the time you left, no offices here in Florida?

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A. That's correct.

Q. You don't have an office here in Florida, do you?

A. No, I don't.

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Q. And while you were at, you know, working with the Elliott companies, you didn't really maintain, yourself, an office here

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in Florida?

A. No, I did not.

Q. Okay. You state in your declaration that in June or July

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2008, you requested to become head of real estate client and investor services for the Elliott companies, correct?

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A. That was -- I believe that was amended in a subsequent affidavit. I did not request. I was requested to become.

Q. I see. Okay. You were, in fact, demoted from your

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position of CFO, correct?

A. No, I don't believe I was demoted.

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Q. You weren't demoted. Wasn't your salary, in fact, reduced from \$15,000 to 6,000 a month, sir?

A. That was an arrangement that the chairman had with a number

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of employees of the company.

Q. Okay. While you were CFO, your salary was \$15,000 a month,

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correct?

A. Correct.

Q. After the change, your salary became \$6,000 a month,

09:14:35 25 correct?

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09:14:35 1 A. Correct.

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Q. Okay. And, in fact, after the change, you were forced to report to Miguel Coder, general manager of the Cofresi Resort at the time; isn't that true?

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A. He was given the title of de facto president.

Q. He's the person you were reporting to, correct?

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A. That's correct.

Q. Okay. And, in fact, you had a confrontation with Mr. Coder that led to your eventual resignation from the Elliott Group of

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Companies in November 2008; isn't that true, sir?

A. There were a number of instances where Mr. Coder and I

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interchanged feelings and views on a lot of events.

Q. Okay. And there was one particular confrontation in

November -- excuse me, let me finish my question -- that led to

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your resignation from the company, correct, sir?

A. No, sir, that is not correct.

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Q. Okay. It was an accumulation of things.

A. If you'd let me. May I explain?

THE COURT: Go ahead.

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THE WITNESS: Thank you. The last week of my employment with the Elliott Group, there were three decisions

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that were made by the chairman and/or Mr. Coder, or in conjunction with one another, that put the icing on the cake with me that involved three transactions of less than \$2,800.

09:16:00 25 I had been -- I had received emails from Mr. Coder and

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09:16:03 1 the senior controller that were unprofessional, that went to my

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character. I called the chairman, Mr. Frederick Elliott, on those three occasions.

The first occasion regarding I needed 1,000 pesos or

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the company needed 1,000 pesos to give to an employee to travel to Santiago -- sorry, Santo Domingo to deliver documents. The

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hotel operations would not release the 1,000 pesos. I called the chairman. The chairman said he would get back to me, that he would make sure that we received that 1,000 pesos, which

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equates out to about \$30 U.S.

The chairman never replied to my telephone call. We

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proceeded to have those documents delivered to Santo Domingo, and the employee was sent to and from Santo Domingo, which on a return trip was about eight hours, and we did not have

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sufficient funds for this man to even have lunch or get a bottle of water.

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The second instance was a real estate transaction had closed. The president was to be paid a quarter of one percent under his compensation arrangement. I had asked to have that

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commission booked as an account payable to the de facto president.

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The senior controller refused to have that booked as a payable and wanted it paid to the president. I phoned the chairman. The chairman said it would be paid to Mr. Coder.

09:17:54 25 The third transaction involved myself, a payroll

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09:17:57 1 matter for \$2,500, which was declined, as well as the remaining

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people on the teams not getting paid their salaries.

Q. Anything else, sir?

A. Those were the three events of that week.

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Q. Okay. And as a result of those three events, what week was that, by the way?

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A. That was by resignation, and if I may, for the clarity of the Court, under Dominican law, in order to protect my rights, it's considered, in layman's terms, as firing the company, and

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that occurred on November 20th.

Those documents were delivered --

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THE COURT: All right, sir. Now, please listen to the questions asked of you and answer those questions. I gave you a brief opportunity to explain. Go ahead.

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BY MR. MARTINEZ:

Q. November 20, 2008, that was the date of your resignation,

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correct? Okay. And when you left the company, you took with you many documents, isn't that true, sir?

A. I left with my personal documents and my laptop.

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Q. Okay. Isn't it true, sir, that from September 2008 until November 2008, you were downloading documents relating to the

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Elliott company's business in order to take those documents with you? Isn't that true, sir?

A. No, sir, it's not true.

09:19:17 25 Q. All righty. And isn't it also true that since you left the

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09:19:20 1 Elliott companies -- well, let's back up for a second. You

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said you left with just your own personal documents. Describe what those documents were.

A. My -- my personal emails, letters, my own -- I kept my own

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accounting records for myself and my family.

Q. How about company financial documents?

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A. They were in the computer, yes.

Q. They were in the computer. I see. So you had all this stuff in the computer?

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A. Yes, sir.

Q. I see. Okay. You didn't download anything before you

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left? You didn't copy anything before you left? They just happened to be on your computer. Is that your testimony?

A. That is my testimony.

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Q. Okay. That's fine.

Since you left the Elliott company, sir, you have

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engaged in communications with the Díaz Reus firm and the Arnstein & Lehr firm; isn't that true?

A. No, just the Díaz firm, sir.

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Q. Just the Díaz firm. Okay. In fact, based on those communications, the Díaz firm prepared the very declarations

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that have been filed with this Court; isn't that true?

A. Yes.

Q. Okay. And also, based on those communications, the Díaz

09:20:18 25 firm created another affidavit for your signature filed against

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09:20:25 1 the Elliotts in the Turks and Caicos; isn't that true, sir?

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A. I believe that my affidavit has been filed wherever the lawyers deemed it necessary to file.

Q. You have been working with the lawyers with respect to

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those two cases. You gave them an affidavit in this case, two affidavits in this case and another affidavit in the Turks and

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Caicos case, correct?

A. If it was filed, yes.

Q. Okay. And those documents that you turned over to the Díaz

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firm included emails to attorney Will Lambert; isn't that true?

A. I don't believe so.

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Q. You don't believe so. Who is Mr. Lambert, sir?

A. Mr. Lambert is the lawyer for the Elliot Group of Companies.

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Q. Okay. And so, therefore if -- before you turned any of your documents over to the Díaz firm, sir, did you advise them

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that Mr. Lambert was the attorney for the Elliott Group of companies?

A. No.

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Q. Okay. Before you turned any documents over to the Díaz firm, sir, did you advise them that -- did you obtain

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permission from the Elliotts to turn any of those documents over?

A. No, I did not.

09:21:29 25 Q. Okay. And did you ask the Elliotts whether they were

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09:21:32 1 prepared to waive attorney-client privilege on behalf of

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themselves and on behalf of the companies?

MR. DIAZ: Objection. Foundation.

THE COURT: Overruled.

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BY MR. MARTINEZ:

Q. Did you --

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A. I'm sorry. Repeat the question.

Q. Sure. Before you turned those documents over, did you ask the Elliotts whether they were prepared to waive

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attorney-client privilege on behalf of themselves and on behalf of their companies?

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A. No.

Q. Okay. You simply turned the documents over, correct?

A. If -- if --

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Q. Yes or no, sir? You simply turned the documents --

A. I'd like to explain if I may.

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THE COURT: Answer the question, sir.

THE WITNESS: I'm trying to, sir.

THE COURT: Answer the question as asked of you.

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BY MR. MARTINEZ:

Q. You simply turned the documents over; isn't that true, sir?

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A. I turned the documents over, yes, to have my affidavit prepared.

Q. And the Díaz firm simply -- well, let me ask you this: Did

09:22:23 25 the Díaz firm ever ask you whether you had obtained consent of

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09:22:26 1 the Elliotts to turn over any of these documents?

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A. No.

Q. Okay. Did the Díaz firm ever ask you whether the Elliotts had waived -- or the Elliott companies had waived

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attorney-client privilege with respect to any of the documents that you were turning over, sir?

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A. No.

Q. Okay. They just simply accepted the documents when you gave it to them; isn't that true, sir?

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A. I made a comment to the law firm Díaz that my lawyer in the Dominican Republic had contacted the lawyer in the Dominican

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Republic for the Elliotts regarding a confidentiality agreement, whether there was one on file or not, and they said there was not one on file.

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Q. Okay. But the confidentiality is one thing. Attorney-client privilege is something else all together.

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Sir, didn't you feel an obligation to the firm for which you were chief financial officer to protect privileges, attorney-client privileges, that had been established while you

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were with the company?

A. I did protect the company when I was --

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BY MR. MARTINEZ:

Q. You did. And yet you never --

THE COURT: Just a moment, please. There has to be
25 question -- Mr. Millikan has to have a chance write the

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1 question down before there's an answer.

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MR. MARTINEZ: My apologies, Judge. Go ahead.

THE COURT: Repeat the question.

BY MR. MARTINEZ:

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Q. When did you first tell Mr. Díaz that Will Lambert was the attorney for the Elliott companies in Canada?

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A. I believe that would have been this week.

Q. This week. Let me ask you this: Since last Saturday, have you spoken with the Díaz firm about documents that were turned

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over to them to which the Elliots have asserted attorney-client privilege?

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MR. DIAZ: Objection, foundation.

THE COURT: Overruled.

BY MR. MARTINEZ:

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Q. Have you?

A. The only -- the only sign that I saw that was in the

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deposition of Mr. Derrick Elliott.

Q. And did you take a look at that document?

A. No, sir.

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Q. You did not?

A. No.

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Q. Did you talk to the Díaz firm about that?

A. No, sir.

Q. Did the Díaz firm talk to you about that?

09:24:35 25 A. No, sir.

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09:24:35 1 Q. And that was a document that you turned over to the Díaz

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firm, correct, sir?

A. I don't know. I didn't see the document.

Q. But it's your testimony that after that deposition took

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place last Saturday, at which time the Díaz firm was alerted to the fact that there was at least one document, if not many

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others in their files which were protected by attorney-client privilege, it's your testimony that they never came to you to discuss those documents?

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MR. DIAZ: Objection. Foundation.

THE COURT: Sustained.

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Okay. Let me go back, please --

MR. MARTINEZ: Sure.

THE COURT: -- because I'm catching up on this --

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MR. MARTINEZ: That's fine, Judge.

THE COURT: -- as he's raising this issue.

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BY THE COURT:

Q. You were the Chief Financial Officer working with the Elliotts?

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A. Yes, sir.

Q. So, you had access to all financial documents?

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A. That is correct.

Q. What other category of documents did you have access to that were on your personal laptop?

09:25:33 25 A. Would have been corporate documents for forming

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09:25:39 1 corporations, contracts that were developed for the real estate

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and/or time share products. I probably had every kind of document on my laptop that it would take to run a company, Your Honor.

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Q. I didn't hear the last thing.

A. To run a company.

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Q. So, just so I understand what you're saying, did you have on your laptop when you left the Elliott Group just about every document that they had relative to finance and management of

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the company?

A. Yes, sir.

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Q. Okay. And questions were asked of you about other documents, including communication by the Elliott Group to its lawyers in Canada?

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A. No, sir. I only turned over the documents to the Díaz firm that completed my affidavit.

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Q. My question is this: Did you have on your laptop communications, letters that the Elliotts sent to their lawyers in Canada about matters?

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A. About this matter?

Q. About any --

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A. Yes, because most of the communications I was either directly sent an email or copied on an email with the lawyer.

Q. So, is the answer yes, you had on your laptop emails or other communications by the Elliotts to their lawyers?

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09:27:18 1 A. Yes.

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Q. And documents that were sent by the Elliotts to their lawyers?

A. Yes.

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Q. In terms of the number of those documents, how would you quantify them? If you had a hundred percent of documents on

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your laptop, were they, these lawyer-related documents, ten percent, 20, more? How would you estimate?

A. Probably greater than 20 percent since most of the -- most

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of the dealings under my role when I was the CFO was dealing with lawyers.

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MR. MARTINEZ: Thank you, Your Honor.

BY MR. MARTINEZ:

Q. Sir, how many communications between the Díaz -- excuse me,

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between the Elliott companies and their attorneys did you turn over to the Díaz firm?

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A. I don't know that number. I just only turned over the documents to assist in the preparation of my affidavit.

Q. I see. Okay. And the Díaz firm has never come to you to

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discuss any of those documents, correct?

A. No.

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Q. Okay. Sir, while you were Chief Financial Officer for the Elliott Group of companies, you had access to a lot of the company's financial information; isn't that true?

09:28:43 25 A. Yes, it is.

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09:28:44 1 Q. And you had access to documents that contained the

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company's financial information; isn't that true?

A. Yes, it is.

Q. And would you say that such information -- did you feel an

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obligation while you were Chief Financial Officer of the
company to treat such information as confidential?

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A. Yes, I did.

Q. And that obligation ceased the moment you walked out the
door, sir?

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A. Yes, it did.

Q. I see. Okay. So, you felt no compunction then when you

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left the Elliott Group of companies to take what you had
obtained while you were chief financial officer, which was by
your own administration confidential financial information and

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release it to the world; is that true?

A. No, sir. I didn't believe I was releasing it to the world.

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I believed I was releasing it to this Court to support my affidavit.

Q. You believed you were releasing it to this Court to release

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your affidavit. Sir, how many press conferences have been called by the ECC in connection with the present lawsuit? Do

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you know, sir?

A. No, sir, I don't.

Q. Okay. How many press releases have been issued by the ECC

09:29:54 25 in connection with the present lawsuit? Do you know, sir?

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09:29:56 1 A. No, sir, I don't.

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Q. Sir, how many times have newspaper stories appeared, to your knowledge, about this lawsuit reflecting information which you yourself released? Do you know, sir?

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A. I'm not aware of any press releases --

Q. Okay.

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A. -- out there of information that I have released. Quite to the contrary, last Friday when I found out that all of the

documents were public, and I found this out because there was

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an affidavit sent to me from Joaquin Duennas. I was of the understanding, and I apologize for the ignorance of the law,

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but I had thought all documents submitted to this Court were sealed.

Q. Okay. You apologize for --

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THE COURT: May I ask one thing?

MR. MARTINEZ: Sure.

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BY THE COURT:

Q. Did you have a written employment agreement with the Elliotts?

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A. No, sir.

Q. Never had anything in writing?

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A. No.

Q. Did you ever sign any type of agreements with the Elliotts relative to confidentiality while you were employed?

09:31:09 25 A. I thought I had, but as I had mentioned before, we checked

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with their lawyer, and they said I had not.

Q. Well, when you say you thought you had, what do you recollect about that?

A. When I first joined the company in January 2000 and then moved to the Dominican Republic, I was working for one of the Elliott companies and may have signed a confidentiality agreement. I even searched my own records, Your Honor, to see if I had.

MR. MARTINEZ: Thank you, Judge.

BY MR. MARTINEZ:

Q. Sir, you say you spoke with the Díaz firm. Did you speak with anyone at the ECC with respect to your affidavit?

A. No, sir.

Q. Okay. You never spoke with Mr. Catledge with respect to your affidavit?

A. No, sir.

Q. You never spoke with Mr. Thompson with respect to your affidavit?

A. No, sir.

Q. You only spoke with their lawyers, correct?

A. Correct.

Q. Okay. Who prepared your affidavit?

A. Díaz assisted me in preparing it.

Q. Who at the Díaz firm assisted you, sir?

A. I don't know. Their staff.

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Q. Who did you deal with?

A. Pardon?

Q. Who did you deal with?

A. Albert.

Q. Albert what?

A. May I check my records for his last name, sir?

THE COURT: Well, I think they can acknowledge who --

MR. DIAZ: He's a paralegal with our law firm, Your Honor.

THE COURT: Name is?

MR. DIAZ: Albert Xiques.

THE COURT: Thank you.

BY MR. MARTINEZ:

Q. Did you deal with any attorneys?

A. Mr. Díaz.

Q. Mr. Díaz himself. Okay.

Sir, isn't it true that back in September, 2008 while you were still employed by the Elliott companies, you were, in fact, turning documents over to James Catledge?

A. No, sir, that is not true.

Q. So, that didn't happen while you were still getting a paycheck from the Elliott Company, sir?

A. I wasn't getting a paycheck, and I didn't turn over any documents.

Q. You were getting a paycheck back in September?

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09:33:14 1 MR. DIAZ: Objection. Asked and answered. He said he

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had not gotten the documents, Your Honor.

THE COURT: I will allow some latitude to explore this. Go ahead.

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BY MR. MARTINEZ:

Q. You were getting a paycheck back in 2008; were you not,

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sir?

A. It was being accrued.

Q. It was being accrued?

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A. Yes.

Q. Okay. But money was due to you, correct, sir?

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A. Yes, money was due to me. Yes.

Q. Okay. 6,000 a month at that point, correct, sir?

A. That's still being debated because there was an agreement

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that was made and understood, and the de facto president, Miguel Coder, reneged on that agreement.

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Q. At a minimum 6,000 a month, correct, sir?

A. Yes.

Q. And, sir, isn't it true that after you resigned from the

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Elliott Group of companies, you filed a lawsuit against the Elliott Group in the Dominican Republic for wrongful dismissal?

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A. I filed a lawsuit in the Dominican Republic on November 20th, the day that I left, not for wrongful dismissal, but under Dominican law, as I had said before, to protect my rights 25 as a resignation. I was not fired.

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Q. Okay. To protect your rights, you were asking for a million dollars, though, weren't you, sir?

A. The lawyer had done all of the calculations and had put

everything that he felt was legal in that country into that document.

Q. You were asking for a million dollars, weren't you, sir?

A. That's what the calculation came out to.

Q. A million dollars?

A. I believe it was in excess of a million dollars.

Q. Okay. You testified previously that the declarations prepared by the Díaz firm were based on documents you provided to the Díaz firm, correct, sir?

A. Yes.

Q. And these were documents that you took with you when you left the Elliott companies, correct, sir?

A. Yes.

Q. And documents that you turned over to the Díaz firm, correct, sir?

A. Yes.

Q. Okay.

BY THE COURT:

Q. Well, let me ask about that. You had your lawyer in the Dominican Republic file a lawsuit the same day you left or so, almost the same day, right?

A. It was the same day, Your Honor. As I understand it, in

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09:35:32 1 order --

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Q. Listen to my question. Did you take these documents for your own lawsuit as well?

A. No, sir, I didn't.

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BY MR. MARTINEZ:

Q. Sir, you mentioned in Paragraph 6 that you joined the

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Elliott companies in January 2000; is that correct?

A. That's correct.

Q. And then you say in Paragraph 7 that from that time until

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June 2005, you managed the company that "provided special client services," correct?

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A. Correct.

Q. That's not exactly accurate, though, is it?

A. When international.

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Q. In fact, before you became CFO in June 2005, you actually set up and ran WWIN International Limited, okay, the very

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company that you refer to in Paragraph 70 to 72 of your declaration; isn't that true?

A. I set that up on behalf of the Elliott Group, and I was in

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charge of that, yes.

Q. Okay. So when you state in Paragraph 70 that Frederick and

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Derrick formed WWIN, that's not true is it, sir?

A. Yes, it is. WWIN is a corporation that originally was formed in Gibraltar before I joined the company in 2000.

09:36:47 25 Q. Oh, so, you didn't form it then. You just took it over.

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09:36:49 1 Is that what you're saying?

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A. I didn't take it over. I was asked to manage and run it.

Q. You assumed control of it, didn't you, sir?

A. I was an employee of that company.

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Q. You were the chief financial officer of that company, weren't you, sir?

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A. No, I wasn't.

Q. Not at that time?

A. No, sir.

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Q. Okay. But, sir, isn't it true that it was you, as CFO, and not the Elliotts, who was running that company while you were

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CFO?

A. No, I don't agree with that statement.

Q. You don't agree with that statement. Okay. And isn't it

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also true, sir, that it was you and not the Elliotts who was actually using that company as a piggy bank, as you refer to in

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your declaration. Isn't that true, sir, it was you?

A. No, sir, it's not true.

Q. Okay. Sir, isn't it true that as CFO you were asked by the

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Elliotts to set up checking -- to set up bank accounts for every single one of the Elliott companies? Isn't that true?

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A. Yes, it was.

Q. And isn't it true, sir, that you never did that?

A. We never got it finished because it was very difficult to

09:37:57 25 establish bank accounts for all of the companies.

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09:37:59 1 Q. You say "we." You never got it finished; isn't that true,

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sir?

A. No.

Q. That was your responsibility?

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A. It was my responsibility.

Q. Okay.

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A. It was my responsibility.

Q. That is fine, sir.

MR. DIAZ: Your Honor, if he can finish his answer,

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please.

THE COURT: Yes, please. I need you to follow the

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procedure.

BY MR. MARTINEZ:

Q. Go ahead.

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A. Thank you. It was asked of the vice president of finance that we had hired, Ed Currie, to travel to the Turks and Caicos

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Islands to assist with opening those bank accounts.

Q. Okay. The bank accounts were never all opened, correct, sir?

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A. They never finished getting open, no.

Q. And because of that, you continued to use the account for

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WWIN as sort of a catch-all account for all the companies; isn't that true, sir?

A. Yes, as instructed by the Elliott Group.

09:38:46 25 Q. As instructed by the Elliott Group, not based on your own

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responsibilities as chief financial officer, correct, sir?

A. That's correct.

Q. Okay. Sir, as CFO of the Elliott companies, was it your duty to oversee the finances of the company?

A. Yes, sir, it was.

Q. Okay. And that included making sure that the Elliott companies worked regularly with outside accountants; is that correct?

A. Yes, it is.

Q. And the Elliott companies maintained outside accountants, correct?

A. Yes.

Q. Okay. And wasn't it also one of your duties to make sure that each of the Elliott companies was properly and regularly audited?

A. Yes.

Q. Okay. And the Elliott companies were audited, correct?

A. I'm sorry?

Q. The Elliott companies were, in fact, audited, correct?

A. Yes.

Q. Okay. By independent external auditors, correct?

A. Correct.

Q. Okay. Now, you state in Paragraph 11 of your declaration that no significant decision or expenditure could be made at the Elliott companies without the approval of Derrick or Fred

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Elliott. Do you remember making that statement?

A. Yes, sir, I do.

Q. Okay. Derrick Elliott was the chief operating officer of the Elliott companies, correct?

A. Chief executive -- president and CEO.

Q. Okay. And Fred Elliott was the chairman, correct?

A. Correct.

Q. So, sir, it's not unusual for individuals who hold such high office within companies to be involved in significant

decisions, is it, sir?

A. No.

Q. Okay. But that certainly didn't take away from your responsibilities as CFO, did it? You still had responsibilities as a CFO, correct?

A. I did, yes.

Q. Okay. Indeed, your duties as CFO were such that you required a Dominican controller to work with you who was hired at \$9,000 per month, correct?

A. He was given raises that took him to \$8,000 a month.

Q. But you had a controller help you, correct?

A. Yes.

Q. Okay. And also your duties required the assistance of Ed Currie, a vice president of Finance, who was fired in 2007 at \$10,000 per month, correct?

A. Correct.

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09:40:55 1 Q. Okay. So, you had these two individuals assisting you in

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your duties as CFO; isn't that correct?

A. Yes.

Q. Okay. And despite that, the Elliotts were not happy with

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your work as CFO; isn't that correct, sir?

A. Yes.

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Q. Okay. Sir, isn't it true that while you were CFO the company lost \$200,000 as a result of leaving too large a balance with a noncredit worthy bank, Horizon Bank in Bermuda?

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A. I'm familiar with Horizon Bank, yes.

Q. Okay. And isn't it true the company lost \$200,000 as a

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result of leaving too large a balance with that particular bank, noncredit-worthy bank?

A. That money has yet to be determined whether it's lost or

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not. It is the hands of a trustee.

Q. But it's out there, correct? There was an issue with that,

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correct?

A. Yes.

Q. And the Elliots weren't happy about that, were they?

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A. Of course not. Neither was I.

Q. Okay. Sir, isn't it also true that while you were CFO, the

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company lost another \$200,000 for WWIN with FCIB bank in Curaçao?

A. It has yet -- it's not lost. Again, it's in receivership

09:42:15 25 or under some type of control.

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Q. Same situation -- I apologize. Same situation, though, correct? The problem developed while you were CFO, correct?

A. Yes.

Q. And the Elliotts weren't happy about that, were they?

A. No, sir, they weren't. Neither was I.

Q. Okay. Okay. And, sir, isn't it true that while you were

CFO, you were never able to formulate a system to properly account for fractional sales? Wasn't that an issue you constantly had?

A. No, sir, it wasn't.

Q. It was not. Okay. And, sir, isn't it true that the Elliotts weren't happy with that, with the problems with the fractional sales?

A. The Elliotts, we tried numerous different ways to present the information as best we could to the Elliotts for their understanding.

Q. Okay. But they weren't happy with what you provided, correct, sir?

A. No, they just wanted more and more and more and more and more.

Q. And you couldn't give that to them, could you?

A. Well, there comes a point in time where the information is there. They would not take the time to sit down and properly understand the reporting.

Q. They wanted more and more, and you could not give that to

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them, could you, sir?

A. No, sir.

Q. Okay. Sir, isn't it true that while you were CFO, you failed to set up proper books of accounts for all of the Elliott companies?

A. No, sir, that is not true.

Q. That's not true. That wasn't an issue that you had with the Elliotts?

A. No, sir.

Q. Okay. Sir, and isn't it true that while you were CFO, you failed to obtain any sort of financing whatsoever for any of the Elliott companies; isn't that true?

A. We were unable to obtain any financing.

Q. That happened while you were CFO, correct?

A. Yes.

Q. And the Elliotts weren't happy with that, were they, sir?

A. No, they were also trying to find financing that they weren't able to get.

Q. Okay. Sir, isn't it true that while you were CFO, you failed to keep the Elliott companies in good standing so that they were constantly being charged for nonpayment of annual fees?

A. No, sir.

Q. That's not true?

A. No.

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09:44:09 1 Q. So, if I brought some of those receipts to you

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indicating --

A. There were -- if your question is -- is covering a whole group of companies, there were companies that Misick and

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Stanbrook, the law firm in the Turks and Caicos, and those companies were brought current when it was brought to my

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attention that they were in arrears.

Q. It was brought to your attention that they were in arrears, but it was brought to your attention after the fact, correct,

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sir?

A. Yes, after the fact.

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Q. Okay. You didn't know that. As CFO, you had no idea what was going on with the status of those companies; is that correct, sir?

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A. No, not in terms of the renewals of those corporations.

Q. Sir --

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A. I had very limited access to Misick and Stanbrook. That was typically managed by Derrick and/or Fred Elliott.

Q. Sir, isn't it true that as CFO you personally had very poor

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relationships with Dominican banks?

A. I'm sorry?

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Q. Poor relationships with --

A. No, I had a great relationship with the Dominican banks.

Q. You did. Okay.

09:45:09

09:45:13 25 A. The Elliot Group of Companies had a poor relationship with

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1 the banks.

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Q. But you had a great relationship with them. If someone came up and testified that they didn't want to deal with you because they thought you were incompetent, that would be false?

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A. Yes.

Q. Okay.

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THE COURT: Let me interrupt because you're a little bit over your time, but I'll give you a for more minutes.

MR. MARTINEZ: Okay.

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BY THE COURT:

Q. I want to address an issue that I'm concerned about that

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appeared in your supplemental affidavit among other issues. Paragraph 66 of your supplemental affidavit, do you have a copy in front of you? Let me read it to you.

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It says, among other things, that the Elliotts would direct payments to themselves of management fees they believed

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they were owed, but would otherwise not have been paid at the time of the current cash position of the company and utilized those payoffs -- excuse me, and utilized those monies to pay

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off Derrick Elliotts just under one million dollars in gambling debts at the Rio Hotel and Casino in Las Vegas. And then you

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said, I prepared a report detailing Derrick's gambling expenditures in June '08.

When do you claim those monies were used by the

09:46:36 25 Elliotts to pay off the million dollars in debts, which year?

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A. That was debts that were paid over a period of time. That was just not one instance. Those were accumulated numbers.

Q. So, what year did this start and when did it end while you were there?

A. I believe it was 2003 and right through until 2008.

Q. Okay. Now, how were these monies accounted for on any of the accounting records if at all?

A. They were accounted for, Your Honor.

Q. I can't hear you. Speak up.

A. I'm sorry. They were accounted for. They were in the management company, EMI Resorts (S.V.G.), Inc. or EMI Resorts, Inc., the management companies of Fred and Derrick Elliott.

Q. Were these audited financial statements, including those you're referring to?

A. There would have been an audited financial statement for 2006. That was the last audited financial statement. They would have shown as drawings to the shareholder.

Q. Well, what I'm trying to get at here is what you're trying to say in your Paragraph 66. Are you saying that the Elliotts improperly took money out of the company as management fees, which they then used for --

A. I'm not saying that they removed those funds improperly.

The funds were removed inconveniently.

Q. Well, I don't know what that means, so let me ask you some more questions.

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Clark - Cross

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09:48:29 1 A. Okay.

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Q. Are you claiming, as part of your affidavit, that the Elliotts did something, as you understand, contrary to accounting or other financial requirements by taking these

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management fees?

A. No, sir, I'm not.

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Q. So, in your opinion as their chief financial officer, were they entitled to those fees?

A. Yes, they were.

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09:49:04

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Q. What they did with those fees, is that a concern of yours?

A. No, sir, it's not.

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Q. So, if they used the money for charity or to pay off debts, what is the point of bringing that up in your affidavit?

A. The funds -- the Elliotts would lend into the companies

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monies, management fees. They would not take their management fees unless they required those funds, and then when those

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funds were required, we had always created a cash flow challenge to get those funds out to the Elliotts on behalf of the company.

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Q. But I'm trying to get at the wrong that you're alluding to here and understand it. Are you saying that -- that they

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mismanaged those cash funds and the money should have been used to pay for capital expenditures on the property? Is that what you're saying?

09:49:57 25 A. I'm saying that, I guess, without the gambling losses --

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Clark - Cross

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09:50:02 1 Q. No, listen to me.

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A. Okay.

Q. Are you saying that monies were taken as management fees contrary to the best interest of the project and its

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construction obligations?

A. No, sir, I wasn't trying to say that. They were funds that

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were owed to the Elliotts for management fees or real estate fees.

Q. Okay. So when I looked at that paragraph, and I read it,

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what I thought I was led to believe was that the Elliotts improperly took monies that should have been used to meet

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obligations for construction of their projects down there and used it in some illegal manner to pay off their gambling debts.

Is that what you were trying to say?

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A. What I was trying to say --

Q. Is that what you were trying to say?

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A. Not illegally, no, sir.

Q. So, your testimony here is that operating as chief financial officer with regard to what you're alluding to in

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your affidavit, the Elliotts did nothing wrong as far as you were concerned with respect to the matters stated in Paragraph

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A. The challenge that I found --

Q. Is that what you were saying?

09:51:46 25 A. I'm saying that they did nothing illegal, but they did not

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09:51:49 1 put the best interests of the EMI Sun Village, Inc. or Sun

09:51:57

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Village Juan Dolio, Inc.

Q. If they were doing something illegal, as you understood it, or contrary to rules and regulations, whatever they were, that

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governed financial statements and the like, it would have been your duty to report it, wouldn't it?

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A. Yes, sir.

Q. You did not do that, right?

A. No, I didn't.

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Q. Because you concluded that they weren't doing anything illegal?

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A. No, sir. That's correct.

THE COURT: All right. I'm going to give you until ten o'clock to finish up, and then we're going to take a

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recess.

MR. MARTINEZ: Okay.

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THE COURT: If you want to inquire about any of these areas, now is your time because this witness is raising major questions about what your clients have done with those monies.

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The secondary aspects that you have crossed on really don't address the heart of it.

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MR. MARTINEZ: Okay.

BY MR. MARTINEZ:

09:53:00 Q. Well, let me show you, sir, a document -- if I may

09:53:03 25 approach, Your Honor.

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THE COURT: Yes, sir. But please remember to use the microphone. Go ahead.

BY MR. MARTINEZ:

Q. Sir, take a look at the document that has been marked Defendant's Exhibit 10 and please tell me: Have you ever seen this document before?

A. No, sir.

Q. You have not.

A. No, sir.

Q. Sir, isn't it true that the report that --

THE COURT: You have to lay more foundation, please.

MR. MARTINEZ: Okay.

THE COURT: You can ask him if he prepared this document or the like.

MR. MARTINEZ: The question that I was phrasing, Your Honor, was -- he objected before I had a chance to ask it.

THE COURT: Go ahead and see if you can lay a foundation.

MR. MARTINEZ: Thank you, sir.

BY MR. MARTINEZ:

Q. Sir, one of the documents that you attached to your declaration purports to be a detail of Derrick Elliott's gambling losses over a period of time; is that correct?

A. Yes.

Q. Okay. Isn't it true, sir, that after you prepared that

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09:54:30 1 report, the report was found to be inaccurate; isn't that true?

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A. No, sir.

Q. Isn't it, in fact, true, sir, that the actual gambling losses that Mr. Derrick Elliott incurred over a three-year

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period was not a million dollars, but was, in fact, about a \$120,000?

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A. No, sir.

Q. It's not true?

A. That is not true.

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Q. And it's your testimony that this document that you're looking at right now that says "players summary" is not a

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document you've ever seen before reflecting the actual gambling losses?

A. I have never seen this document before.

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THE COURT: All right. I'm not going to allow it to be admitted under this witness.

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MR. MARTINEZ: That's fine, Judge.

THE COURT: Anything else before we break?

MR. MARTINEZ: Sure. A couple of things, Your Honor.

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BY MR. MARTINEZ:

Q. Sir, one of the things that you say in your declaration is

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that despite getting all this money coming into the Elliott companies, they never finished the Cofresi Resort; is that correct?

09:55:37 25 A. Yes, it is.

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Q. How much money did they spend on the Cofresi Resort over the course of the year, sir? In your tenure -- let's just use your tenure as chief financial officer -- how much money went into that resort?

A. I would have to refresh my memory with looking at the financial.

Q. Tens of millions of dollars, correct, sir?

A. Yes, there was.

Q. Okay. And isn't it also true that all that remains to be done, all that remains to be paid in order to complete that resort is about \$400,000 worth of materials, sir?

A. \$400,000 plus \$2 million in accounts payable.

Q. \$400,000 to open the resort, sir; isn't that true, sir?

MR. DIAZ: Plus what? I'm sorry.

BY MR. MARTINEZ:

Q. To open the resort, sir. Isn't it true, sir?

MR. DIAZ: Your Honor, I'm sorry. I'm having difficulty hearing both --

MR. MARTINEZ: Your Honor, this --

THE COURT: Please --

THE WITNESS: Yes.

THE COURT: Just a moment. Your voice just dropped.

BY THE COURT:

Q. The question was: Didn't it require only \$400,000 to complete the project in terms of construction?

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09:56:44 1 A. The \$400,000, the construction was complete. The \$400,000,

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Your Honor, was for the interior of the two buildings.

Q. Interior completion?

A. Yes.

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BY MR. MARTINEZ:

Q. Basically plasma TVs that were going to be added to all the

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rooms; isn't that true, sir?

A. I don't know what the breakdown of that \$400,000 is.

Q. But you are familiar with plasma TVs, correct?

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A. Yes.

Q. And you are familiar with the fact that the price of plasma

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TVs keeps decreasing over the course of the past couple of years; isn't that true, sir?

A. Yes.

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Q. Okay. So, if a year ago they needed \$400,000 to complete because a big chunk of what they needed to do was purchase

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these plasma TVs, that amount is probably lower today.

THE COURT: Please. Just a little too fast. Let me go back, because I want to break in a few minutes. We've been

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doing this since 8:30.

BY THE COURT:

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Q. Do you know what the \$400,000 was needed to complete in terms of interiors? Was it --

A. In terms of specific details, sir, no.

09:57:49 25 Q. Do you know if it related to completing anything within the

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09:57:53 1 interior construction? In other words, walls, drywalls or

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floors or something, put down the tiles or what?

A. No, I believe it was furnishings, fixtures.

Q. Okay. So, it was in the category of furnishing and

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fixtures?

A. Yes.

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Q. The question was: Was it for plasma TVs to the best of your knowledge?

A. It could have been. I don't know.

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THE COURT: All right.

THE COURT: A couple last questions.

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MR. MARTINEZ: Your Honor, I have one more document if I could introduce it. [Handing].

THE WITNESS: Thank you.

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BY MR. MARTINEZ:

Q. Sir, take a look at the document that has been marked as

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Exhibit 11 for identification, Defendant's Exhibit 11, and please tell me -- it's a string of emails. Please tell me:

Have you ever seen this before?

09:59:04

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A. Yes, sir.

Q. Okay. And please tell me what these are.

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A. These are communications between Fred Elliott and myself.

Q. Okay. Looking at the second page, which would be the earlier of the emails --

09:59:18 25 THE COURT: Well, is there objection to Defendant's

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09:59:22 1 11?

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MR. DIAZ: No, sir.

THE COURT: It's entered. Go ahead. You may inquire.

MR. MARTINEZ: Thank you, Judge.

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[Defendant's Exhibit 11 received in evidence at

09:59:25 9:59 a.m.]

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BY MR. MARTINEZ:

Q. Looking at the third page, excuse me, which is the earliest of the emails, dated March 15, 2009, you say: "Good morning,

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Fred and Derrick. It has been some time since we have spoken to one another. I trust this email finds you both well. I am

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writing to see if you are prepared to make a repayment recommendation to me. If you are, please let me know what it is. If not, please let me know as well."

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Do you recall writing that email, sir?

A. Yes, sir.

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Q. Okay. And that email referred to the lawsuit that you had filed against the Elliott Companies for a million dollars in the Dominican Republic; did it not, sir?

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A. It referred to just starting to open up negotiations to be repaid.

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Q. In connection with the lawsuit that you filed against the Elliott Companies for a million dollars in the Dominican Republic; isn't that true, sir?

10:00:12 25 A. Yes.

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10:00:12 1 Q. Okay. So this takes place. You send this email on March

10:00:16

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15th, 2009, and from the looks of it, there's some back and forth, but that issue wasn't resolved; is that correct, sir?

A. I'm sorry?

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Q. From the looks of it, there's a string of emails that shows that there are communications that go on back and forth, but

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the issue was not resolved; isn't that true, sir?

A. Yes.

Q. You never got paid, sir?

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A. That's correct.

Q. And so a week after or a few days after you sent this March

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15, 2008 email, in which you go to the Elliots and you ask them to give you money, you sign your declaration in this case; isn't that true, sir?

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A. No, sir, it's not.

Q. That's not true. When did you sign your first declaration

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in this case, sir?

A. I believe it was a Friday, maybe two weeks ago.

Q. Friday two weeks ago. Sir, isn't it true that you've

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signed your first email on March 20th?

A. If that's when it's dated, yes. That's a Friday.

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Q. That's five days after you spent this first email; isn't

it, sir?

A. Uh-huh.

10:01:09 25 MR. MARTINEZ: Okay. No further questions, Your

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10:01:10 1 Honor.

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THE COURT: Before we break, just a few more questions from the Court.

BY THE COURT:

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Q. As CFO, were you required to sign documents that were filed with any regulatory agencies in the Dominican Republic or the

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United States?

A. Only corporate documents, what I have signed if we were opening up corporations.

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Q. Did you understand, as part of your responsibilities, that there had to be filed with some regulatory agency in the United

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States, either at a federal or state level, any reporting requirements relative to this project?

A. In regards to the project, I was advised that there were no

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reporting requirements.

Q. What about in the Dominican Republic?

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A. Reporting requirements based on the structure that was established by lawyers and accountants, the structure did not call for reporting.

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Q. What about Turks and Caicos, anything like that, did you have to file reports there?

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A. No, sir.

Q. So, essentially, there were no documents prepared for filing with any regulatory agency?

10:02:24 25 A. The only documents that would need to be filed were the tax

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10:02:27 1 returns for the Dominican Republic.

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Q. So --

A. Sorry.

Q. -- were there certified financial statements prepared --

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A. Yes.

Q. -- by outside accountants?

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A. Audited financial statements, yes, sir.

Q. Let me finish my question, sir. By outside accountants, CPAs?

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A. Yes.

Q. Were they CPAs from the Dominican Republic or the United

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States?

A. The Dominican Republic, Ernst & Young.

Q. Ernst & Young?

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A. Yes.

Q. And was that done for each year that you were chief

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financial officer?

A. The financial statements were not done for 2007, and 2008 had not completed itself. And I had left before the end of the

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year.

Q. Okay. Well, when did you start?

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A. I'm sorry?

Q. When was the beginning of your role as chief financial officer?

10:03:23 25 A. June 27, 2005.

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10:03:27 1 Q. So, after that date, were financial statements prepared by

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Ernst & Young?

A. The first year I was CFO, it was Salas Pieteny. That would have been for 2005. For 2006, it was Ernst & Young.

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Q. Okay. So were they prepared for '06, '07?

A. '07 had not been completed whenever I left. Ernst & Young

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had resigned.

Q. What was your role in assisting Ernst & Young preparing financial statements for at least '06?

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A. To provide them the information and make the information available to them to complete the audits.

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Q. What did you understand Ernst & Young -- excuse me. What did you understand to be the purpose of preparing these financial statements?

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A. Preparing the financial statements was a requirement under Turks and Caicos law for the annual shareholders meeting.

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Q. Was that the only purpose?

A. And for management information.

Q. I can't hear you.

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A. For management information.

Q. Did you understand that any of this information might be

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relied on by customers who would be purchasing product?

A. No, sir.

Q. Were any of these financial statements given to customers?

10:04:46 25 A. I only know that financial statements were given to

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10:04:49 1 shareholders.

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Q. Only shareholders?

A. Yes, sir.

Q. Do you know, from your knowledge, whether any customers or

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clients requested financial statements?

A. No, sir.

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Q. You reviewed them, the ones that were prepared under your auspices as chief financial officer?

A. Refute them? I'm sorry, sir?

10:05:13

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Q. Excuse me. Did you review those statements?

A. Yes, sir, I did.

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Q. Do you feel that they accurately reported the events of the time?

A. Yes, sir.

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Q. So, they were prepared for '06?

A. '05. Prior to '05, but I was not the CFO then.

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Q. I understand.

A. But they were prepared for '05 and '06.

Q. And what happened in '07?

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A. '07, we had not been able to get a chartered accounting firm that would do our financial statements.

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Q. Ernst & Young quit?

A. Yes, sir.

Q. Do you know why?

10:05:46 25 A. Partly because they weren't paid.

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10:05:51 1 Q. Okay. So you don't know if any financial statements were

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prepared for '07 or '08?

A. Only in-house statements, Your Honor.

THE COURT: We stand in recess. Let's come back at 25

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after.

THE COURT SECURITY OFFICER: All rise.

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[There was a short recess taken at 10:06 a.m.]

AFTER RECESS

10:22:08 [Proceedings in this cause resume at 10:22 a.m.]

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THE COURT: Do you want to identify this?

MR. DIAZ: Plaintiffs' Exhibit Number 7, Your Honor.

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THE COURT: Proceed.

BY MR. DIAZ:

Q. Mr. Clark, you have seen this document before, Plaintiffs'

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Exhibit Number 7?

A. Yes, I have.

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Q. Do you recognize the author of the letter?

A. Yes, sir, I do.

Q. Do you recognize that signature?

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A. Yes, sir, I do.

Q. Is that a duplicate copy of the original?

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A. Yes, sir, it is.

MR. DIAZ: Offered into evidence, Your Honor.

THE COURT: Any objection?

10:23:06 25 MR. MARTINEZ: Actually yes, Your Honor. First of

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10:23:07 1 all, this goes beyond the scope of recross -- redirect, excuse

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me. None of these issues that are addressed in this particular letter were brought up on cross-examination, and as such, he is getting a second bite of the apple with respect to putting up

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evidence.

10:23:20 THE COURT: Well, didn't you ask him whether the banks

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in the Dominican Republic wouldn't deal with him because he was incompetent?

MR. MARTINEZ: I did.

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THE COURT: Overruled. I'll let this be directed to that issue. It's admitted.

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[Plaintiffs' Exhibit 7 received in evidence at

10:23 a.m.]

BY MR. DIAZ:

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Q. Mr. Clark --

A. Yes, sir.

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Q. -- we spent -- opposing counsel spent significant time on cross-examination on your level of incompetence. Sir?

A. I'm sorry. Please ask the question again.

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Q. During cross-examination by opposing counsel, Mr. Martínez, he spent significant time trying to demonstrate your

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incompetence?

THE COURT: Yes, but what's your question?

BY MR. DIAZ:

10:24:00 25 Q. My question is: Sir, does this letter refute?

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A. Yes, sir, it does.

Q. Who's the letter from?

MR. MARTINEZ: Objection, Your Honor.

THE COURT: That's not a proper question. Sustained.

MR. DIAZ: Understood, Your Honor.

BY MR. DIAZ:

Q. Who's the letter from?

A. The letter's from Joaquin Duennas, chief operating officer of the Elliott Group.

Q. And what is it regarding?

A. It's regarding a letter of reference for employment when I returned to Canada.

Q. Does it also indicate that you're welcome to return?

A. Yes, sir, it does.

MR. MARTINEZ: Your Honor, nothing in this letter -- we do object to the letter -- nothing in this letter reflects that actually it was either sent --

THE COURT: You may argue that. That goes to the weight, not to the attempt to remove the bias.

MR. MARTINEZ: Well, I'm arguing with respect to the --

THE COURT: I've already ruled on this now. Have you not heard?

MR. MARTINEZ: Thank you, Judge. Thank you, Judge.

THE COURT: Proceed, please.

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BY MR. DIAZ:

Q. Mr. Clark, during cross-examination and inquiry from the Court, you were directed to Paragraph 66 of your affidavit.

A. Yes, sir.

Q. Where there was the reference to the gambling debts of Derrick Elliott.

A. Yes, sir.

Q. And there was also an issue with respect to how they were compensated through management fees?

A. Correct.

Q. Okay. Directing you to that particular area and those particular series of questions, sir, how were -- how did the Elliotts compensate themselves?

A. Under contracts with Sun Village Cofresi, they received a management fee from the operation of the hotel on gross revenues, and they received real estate fees for the sale of real estate.

Q. Real estate commissions?

A. Yes, sir.

Q. And that's in conjunction with the sales of real estate products with the Impact Group?

A. Yes, sir.

Q. Do you know what that percentage was, by the way?

A. I believe it was seven-and-a-half percent.

Q. At the time that the Elliotts paid themselves the

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10:25:56 1 management fees, were the projects at the Dominican Republic

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Juan Dolio, Sun Village, Cofresi Beach, were those projects completed?

A. No, sir.

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Q. Were the nonuse fees being paid?

A. No, sir.

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Q. And yet they paid themselves?

A. Yes, sir.

Q. And where did the source of the funds come from to pay

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themselves?

A. It would come from revenues generated, gross revenues

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generated from the hotel operation and/or revenues generated from real estate sales.

Q. Real estate sales to whom?

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A. The purchasers of fractional ownership --

Q. To new --

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A. -- at both Cofresi and Juan Dolio.

Q. My apologies. To new investors, sales to new investors?

A. Yes.

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Q. Did the new investors' funds go towards the completion of the project, of the Elliott projects in the Dominican Republic?

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A. Not totally. They went to -- they went to operating losses at the Cofresi project, management fees, commission payments to the sales force.

10:27:18 25 Q. At the same time that the Elliotts were compensating

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10:27:22 1 themselves and receiving new investor monies, did they also,

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with respect to the purchasers, call in promissory notes?

A. Yes, they did. They were in the process of doing that at the time I was leaving. I'm sorry. That related to the Juan

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Dolio property, for clarity.

Q. What was the cause of the cash flow problem?

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A. The cause of the cash flow problem was that the Cofresi property was losing money. It had an extremely low occupancy. It required funding from both the Cofresi sales, as well as the

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Juan Dolio sales. There was an advance made out of the Juan Dolio property to the management company to purchase a third

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property known as --

Q. For how much?

A. The Regis property, is this what you're referring to?

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Q. Yes, sir.

A. The purchase price was approximately 22-and-a-half million

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dollars over three years. It was in tranches of seven-and-a-half million dollars per annum.

Q. And those seven-and-a-half million dollars were coming from

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which source of funds?

A. Would have come from revenues, real estate revenues either

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from Cofresi or Juan Dolio, particularly Juan Dolio.

Q. When you say "real estate revenue," you're referencing?

A. Fractional ownership sales.

10:28:47 25 Q. To new investors?

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A. Yes.

Q. Did eventually sales slow down?

A. Yes.

Q. Is that in conjunction with the failure to be able to pay the nonuse fee?

A. Yes.

Q. Meanwhile, were the Elliotts compensating themselves?

A. Yes.

Q. Meanwhile, were the Elliotts --

MR. MARTINEZ: Objection, Judge. Leading.

THE COURT: Rephrase, please.

BY MR. DIAZ:

Q. What were the Elliotts doing with the funds other than paying for the nonuse fees?

A. They would have been used for payment of management fees, would have been used for payment of expenses in other properties.

Q. Did they also include payment of gambling expenses?

A. I'm sorry?

Q. Were they also used to pay gambling expenses?

A. Yes, sir.

Q. While the projects still remained undone?

A. Yes, sir.

Q. While they continued to acquire additional products?

MR. MARTINEZ: Objection, leading, Judge.

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THE COURT: Again, I direct you to ask questions that are not leading.

MR. DIAZ: Yes, sir.

BY MR. DIAZ:

Q. Mr. Clark, you began working with the Elliotts in the year 2000?

A. Yes, sir.

Q. You were an incompetent employee for eight years?

MR. MARTINEZ: Objection, leading, Judge.

THE COURT: Well, rephrase please.

MR. DIAZ: Yes.

BY MR. DIAZ:

Q. From 2000 to 2008, were you an incompetent employee?

A. No, sir.

Q. Would you have known over an eight-year period whether you were competent or not?

A. Yes, sir. May I expand on my answer?

Q. Yes, sir.

A. Thank you. I knew that taking on the role of CFO, that likely my tenure with the Elliott Group would be limited. I was hoping that it would be for, you know, the rest of my career. However, I am a financial person in a long list of financial people that were terminated prior to me because the Elliotts were never satisfied with anyone that was in their financial department ever since I joined the company.

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10:31:14 1 Q. Thank you, Mr. Clark.

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When did Mr. Catledge and his group, the Impact Group, come upon the scene?

A. 2004.

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Q. Prior to that 2004, were the Elliotts marketing and selling

their real estate products to investors in the United States?

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A. Prior to 2004, it was share sales, and it was also timeshare.

Q. Those are real estate products?

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A. The shares would be an equity product. The timeshare would be a real estate product or relating to that industry.

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Q. And they were being directed to purchasers in the United States?

A. Yes.

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Q. And other parts of the world?

A. Yes.

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MR. MARTINEZ: Objection, leading.

THE COURT: Yes, sir. Please rephrase.

BY MR. DIAZ:

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Q. Who agreed to pay the commissions that were negotiated with Impact?

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A. The Elliott Group.

Q. How were the Elliotts able to finance the payment of the nonuse fees from 2004 through 2008?

10:32:24 25 A. Came from generation of residence product sales as well as

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10:32:29 1 fractional ownership product sales.

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Q. How could they do that when their products were not completed?

A. It was an obligation under the contract to pay the nonuse

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fees.

Q. At some point, did they have to terminate the nonuse fees?

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A. Yes, they did.

Q. And how did they go about doing that?

A. They advised the residence owners that given the economic

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conditions and the cash flow of the corporation that they would be unable to pay nonuse fees and there may or may not a future

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point in time where they would be able to resume nonuse fees.

Q. What other methods did the Elliotts use to increase

revenues from the investors?

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A. There were webinars that were done over the computer.

Q. What about the fractional ownership investors?

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A. The fractional ownership investors as it related to Juan Dolio were asked to call in -- their notes were being called in.

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Q. Meaning they had to pay up?

A. Correct.

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Q. Even though they had previously signed a document to the contrary?

MR. MARTINEZ: Objection, leading.

10:33:52 25 THE COURT: Mr. Díaz --

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MR. DIAZ: Yes, sir.

THE COURT: -- rephrase.

MR. DIAZ: I'll refrain, Your Honor.

BY MR. DIAZ:

Q. On cross-examination, you also discussed WINN?

A. Yes, sir.

Q. What is WINN, and where is it incorporated?

A. WINN International Limited is incorporated in St. Vincent and the Grenadines, and its offices were located in the

Dominican Republic in Cofresi.

Q. What is the business of WINN?

A. The business of WWIN was to attract clients, both Elliott and nonElliott clients. We provided what would be considered private banking services where they would have an account within WWIN, and they would give us instructions to have those funds transferred on to a product that we offered as a debit card or they could wire funds to any destination of their choice.

Q. Where does WWIN bank?

A. WWIN banks in the Dominican Republic. It banks in Las Vegas or did bank in Las Vegas, and it banks in California under -- I'm sorry -- WWIN had corporations known as CCW Limited or Continental Corporate Worldwide Limited and/or MPS Limited or MPS Limited, S.A.

Q. When investors purchased Elliott real estate products,

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10:35:26 1 where were their funds deposited?

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A. Primarily in Las Vegas.

Q. In the WWIN account?

A. It would be into an account that WWIN controlled, yes.

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Q. And then what happened to that money? How did it get to the Elliotts?

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A. The funds would have been wired into a bank in the Dominican Republic, Banco Popular and/or Banco Leon.

Q. Did the investors or purchasers of the real estate products

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that the Elliotts sold all have to deposit their monies through the WWIN accounts in Las Vegas?

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MR. MARTINEZ: Objection, leading.

THE COURT: Sustained. Rephrase the question,

Mr. Díaz.

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BY MR. DIAZ:

Q. What's your understanding as to where the investors and

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purchasers of the Elliotts' real estate products, where were their deposits?

A. If they were done by check, which most of them were, they

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were deposited into the bank in Nevada.

Q. Which bank is that, by the way?

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A. Chase, I believe. I'm sorry. I'm drawing a blank.

Q. Understood. If it was not by check?

A. If it was by wire, they would regularly come into Banco

10:36:50 25 Popular in the Dominican Republic, and if it was by credit

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10:36:53 1 card, it was through a company called Resort Calm in

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California.

Q. Are you familiar with the bank account at Wells Fargo?

A. Thank you very much. It was Wells Fargo that was in

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Nevada.

10:37:05 Q. That was where?

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A. In Nevada.

Q. And what was deposited in the Wells Fargo bank account in Nevada?

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A. Checks from real estate sales, fractional real estate sales for both Juan Dolio and Cofresi.

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Q. And those were checks received from U.S. investors and purchasers?

A. Yes.

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Q. Who is Mr. De Marchena?

A. Mr. De Marchena is the legal counsel for the Elliott Group

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in the Dominican Republic.

Q. Does Mr. De -- what does he do for the Elliots in the Dominican Republic?

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A. He's their legal counsel. He is --

MR. MARTINEZ: Objection with respect to

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attorney-client privilege, Your Honor.

MR. DIAZ: I'm not asking for any communication, Your Honor.

10:37:48 25 THE COURT: You can state what he does.

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10:37:50 1 BY MR. DIAZ:

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Q. What does he do for the Elliotts?

A. He sat on the board of directors. He was a director of EMI Sun Village, Inc, and he provided legal advice and services to

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the Elliotts as required. He also participated in the registration of the condominium regime in the Dominican

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Republic, and he was in the process, or his office was in the process of doing the same thing for Cofresi.

Q. Who holds the deeds to the property that the investors and

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purchasers, the fractional owners purchased in the Dominican Republic?

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MR. MARTINEZ: Objection, Your Honor. Leading.

THE COURT: Overruled.

BY MR. DIAZ:

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Q. Who owns the deeds?

THE COURT: Oh, owns.

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MR. DIAZ: Owns.

BY THE COURT:

Q. Do you have an understanding about that?

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A. Yes, sir, I do.

Q. What is your understanding?

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A. For the Juan Dolio property, the deeds to that property are in the company name of Promotora Xara, S.A. That company is owned by Sun Village Juan Dolio Inc. -- if I may, Promotora

10:38:55 25 Xara, S.A. is a Dominican corporation.

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10:38:59 1 Sun Village Juan Dolio Inc. is the owner of Promotora,

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and it is a Turks and Caicos corporation. And Sun Village Juan Dolio Inc. is owned by Cellwave Networks, Limited, which is a Gibraltar corporation. And the Gibraltar corporation is owned

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by four shareholders.

BY MR. DIAZ:

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Q. Do you have any knowledge as to who possesses the deeds for the dirt in the Dominican Republic where the Elliotts have built their projects?

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A. I'm sorry. Please ask again.

Q. Okay. The actual real estate, the land --

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A. Yes.

Q. -- is there a deed to these properties?

A. Yes.

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Q. Who possesses those?

A. The bank. The two banks.

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BY THE COURT:

Q. Which bank?

A. It was Banco De Reserva and Banco del Progreso.

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Q. And where are they located again?

A. Santo Domingo.

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Q. So, let me go back, and this is not on your time.

So, you're are saying that as you understand it, when

someone comes down to buy an interval interest, fractional or

10:40:18 25 otherwise, and is entitled to a deed, the deed is actually held

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10:40:24 1 in the name of these companies you mentioned that are located

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either in the Dominican Republic, Turks and Caicos or
Gibraltar.

A. Yes, the deeds themselves, Your Honor, would be held or be

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owned by Promotora Xara. That's the Dominican corporation, and
that's where the land is.

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Q. Okay. Somebody like -- take Mr. Hoffmann --

A. Uh-huh.

10:40:48 Q. -- the plaintiff in this case, to buy a certain interest --

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A. Yes.

Q. -- does he ever get a deed?

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A. No, sir, he doesn't.

Q. What happens to the deed?

A. The deed stays in trust with the trustee, and that's

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Berkshire Trust in the Turks and Caicos, and the purchaser gets a certificate of ownership.

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Q. Is the deed recorded of record?

A. In the Dominican Republic, yes.

Q. So it's actually recorded?

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A. Yes, sir.

Q. Is there a trust document?

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A. Yes, sir.

Q. Well, how does the trust document relate to the contract to purchase?

10:41:30 25 A. In the contract to purchase, it states the complete

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10:41:33 1 structure. There are a number of companies that are in this

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structure. The shares, I believe, of Sun Village Juan Dolio,

Inc. are pledged to the trust, which owns Promotora Xara, S.A, which would be the deed holders and owners.

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Under the condominium regime, there would have been be a minimum. I think there was a minimum of 241 times 13 deeds.

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Q. So, if Mr. Hoffmann, for example, wanted to sell his interest to someone else --

A. Yes.

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Q. -- and someone else decides to buy it, what would then happen in terms of the deed?

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A. There was never a -- the deed would never change. There would never be a deed in the name of Mr. Hoffmann, so it would be an exchange or a change of ownership through the ownership

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certificates from Mr. Hoffmann to the new purchaser.

Q. Were these certificates recorded somewhere?

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A. The trustee would have the specifics of that as well as the real estate office for the Elliott Group.

Q. And the trustee was located where?

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A. He was in the Dominican Republic -- or I'm sorry, the Turks and Caicos.

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Q. So, is the trustee of all deeds in the Turks and Caicos?

A. Yes, sir.

THE COURT: Go ahead, sir.

10:43:07 25 MR. DIAZ: May I proceed, Your Honor? Thank you.

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10:43:09 1 BY MR. DIAZ:

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Q. I think the last question was we were discussing Mr. De Marchena

A. Yes.

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Q. With respect to De Marchena, do you know if he has a bank account here in the State of Florida?

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A. I don't believe that -- I don't know that he does personally.

Q. With respect to the Elliotts' operations and sales of their

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real estate products in the United States?

A. I'm not aware of that in Florida.

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Q. Have you ever seen a document reflecting an address for Mr. De Marchena in Doral, Miami?

A. No, I have not.

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Q. How about a Citibank account in Tamarac?

A. No.

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MR. DIAZ: May I approach?

THE COURT: Yes.

BY MR. DIAZ:

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Q. Showing you what has been previously marked as Plaintiffs' Exhibit 8. You have seen that document before, Mr. Clark? I

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will give you a chance to put on your glasses.

A. Thank you. Just a moment, please. I am sure I've seen this document before.

10:45:04 25 Q. Is it a duplicate copy of the original?

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10:45:07 1 A. Yes, sir.

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MR. DIAZ: Offered into evidence, Your Honor.

THE COURT: Any objection to 8?

THE WITNESS: I'm sorry?

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THE COURT: I'm directing the question to the lawyers.

MR. MARTINEZ: We do object, Your Honor. I don't

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think authorship has been established. All he has testified is that he's seen it before.

MR. DIAZ: I'll tie it up, Your Honor.

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THE COURT: Go ahead.

BY MR. DIAZ:

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Q. Mr. Clark, who prepared this document?

A. It would have been prepared by Elliott and may have had the influence from the sales team.

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MR. DIAZ: Offered into evidence, Your Honor.

MR. MARTINEZ: I still don't think he's established a

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sufficient foundation, Judge.

BY THE COURT:

Q. Well, are you familiar with the nonuse fee schedule which

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is referred to in the document that seemed to be effective on October 1, 2005?

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A. Your Honor, I would have to go to my records to confirm these amounts.

Q. I mean, is this something that you, as the financial

10:46:08 25 officer, would normally be familiar with?

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A. Yes, sir.

Q. Is this the form of letterhead and the like where by there would be announcements from EMI?

A. Yes, sir.

THE COURT: I'm going to admit Plaintiffs' 8.

[Plaintiffs' Exhibit 8 received in evidence at 10:46 a.m.]

BY MR. DIAZ:

Q. To whom are these announcements sent to, Mr. Clark?

A. This announcement would have been sent to the residence owners.

Q. Including U.S. investors?

A. Yes.

Q. When you were discussing Ernst & Young, we were discussing the audited financial statements --

A. Yes, sir.

Q. -- how are the nonuse fees posted or entered on those audited financial statements?

A. They're capitalized under ongoing construction.

Q. Meaning what?

A. It means that they appear on the balance sheet. They do not appear in the income statement.

Q. Help me out here. I'm not an accountant. What does that mean?

A. Okay. I'm not a professional accountant either, for the

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record, but whenever you're in the middle of a product or a project in construction, all expenses are capitalized, or the majority of those expenses are capitalized, and then when that project is completed, then those items are changed over to the income statement as sales commence.

Q. They're capitalized because they're not contingent liabilities?

MR. MARTINEZ: Objection, leading.

THE COURT: Sustained.

BY MR. DIAZ:

Q. Who has access to the WWIN account?

A. Myself, the Elliotts and the people that are employees of WWIN.

Q. Do you recall Mr. Martínez accusing you of using the Elliott bank accounts as a personal piggy bank?

MR. MARTINEZ: Objection.

BY MR. DIAZ:

Q. Do you recall the question on cross-examination by Mr. Martínez when he suggested that you used the Elliotts' accounts as your personal piggy bank? Do you recall that question?

A. Yes, sir, I do.

Q. Have you ever taken money from the Elliotts that was not authorized by the Elliotts?

A. No, sir.

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10:48:32 1 Q. How were the Elliotts financial obligations met?

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A. They were met from revenues generated from the various projects, from management fees for the Cofresi property, from the hotel operations and from real estate sales and resident

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sales, fractional ownership sales at Cofresi as well as Juan Dolio.

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THE COURT: A few more questions.

MR. DIAZ: The last question, Your Honor.

BY MR. DIAZ:

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Q. Do you recall when the Court inquired whether you had to file any regulatory reports?

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A. Yes.

Q. In preparing the financial statements that you prepared on behalf of the Elliotts, were any of them ever used for purposes

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of Frederick Elliott's reporting to the Canadian tax authorities?

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A. No, not that I'm aware of.

Q. Why not?

MR. MARTINEZ: Objection, speculation.

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THE COURT: Sustained.

MR. DIAZ: No further questions, Your Honor.

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THE COURT: All right. Any questions on recross?

MR. MARTINEZ: Yes, Your Honor.

REXCROSS EXAMINATION

10:49:33 25 [Beginning at 10:49 a.m., 4/2/09.]

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10:49:33 1 BY MR. MARTINEZ:

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Q. Mr. Clark, isn't it true that during your tenure as CFO, the Elliott companies filed annual securities filings with Ontario, Alberta and the Turks and Caicos?

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A. You're correct with Ontario. I'm not aware of any filings being done in the Turks and Caicos.

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Q. How about Alberta?

A. I don't recall Alberta being filed.

Q. Okay. Do you have any reason to believe that the Elliott

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companies were not fully compliant with respect to securities filings in those three places?

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A. I know that there were -- we were working towards, when I was with the corporation, to try and get the filings in place.

However, they were in arrears.

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Q. Okay. Do you know whether Ernst & Young's offices in the Dominican Republic are still open today?

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A. As far as I know, they are in Santo Domingo.

Q. Okay. Are you aware, sir, that those offices have closed?

A. Today? I don't know whether they are open or not.

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Q. Are you familiar with a company called Nexia?

A. Nexia. I do not recall that.

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Q. Okay. Sir, you mentioned previously in your redirect that the resort at Cofresi low occupancy over the course of the last couple of years; is that true?

10:51:06 25 A. It had low occupancy in 2008, yes.

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Q. Isn't that true of basically all resorts in the Dominican Republic?

A. Based on the reports that came to me on a daily basis, we had the lowest occupancy of all of the hotels on the north shore.

Q. But isn't it true that as a result of the economy, all resorts were suffering from low occupancy in the Dominican Republic in 2008?

A. Yes.

Q. Are you familiar, sir, with the amounts of management fees and commissions that are normally paid in conjunction with projects such as the Elliott project?

A. Yes, I am.

Q. And, sir, is it your testimony that the -- back up -- sir, with respect to the commissions that you indicated were being paid to the Elliotts in connection with their projects, are those -- were those commissions within the normal range of commissions paid in connection with those types of projects?

A. The commissions paid to the Elliotts for Cofresi were approved by the shareholders. In terms of Juan Dolio, it was arrangements made in terms of the industry standard, sir. I don't know.

Q. You don't know the industry standard? Okay. What about management fees? Are you familiar with the industry standard with respect to management fees?

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10:52:28 1 A. No, sir, I'm not.

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Q. Okay. You mentioned that the Elliotts were being paid commissions, you know, with respect to the Juan Dolio project. Isn't it true that Impact was also being paid commissions with

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respect to that project and all sales that they were making?

A. That's correct.

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Q. Okay. And with respect to the Juan Dolio project, isn't it true that the way it worked, a purchaser would pay 50 percent cash and then provide a note for the other 50 percent?

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A. That's correct.

Q. Okay. And isn't it true that with respect to Impact, its

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commission was based on the entire 100 percent?

A. That's correct.

Q. Okay. And isn't it true that the promissory notes were

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effectively turned over to the Elliotts, and that was the brunt of what they received?

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A. I'm sorry. Please ask the question again.

Q. Okay. With respect to the Juan Dolio project, isn't it true that after commissions were paid, particularly commissions

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to Impact, all that the Elliott companies had left was the promissory notes and then some cash on top of that?

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A. Under that scenario, there was ten percent of the sales proceeds, the cash proceeds left for the project. That would have been after the payment of all commissions.

10:53:40 25 Q. Ten percent of the entire 100 percent, and then 50 percent?

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10:53:45 1 A. That's correct.

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Q. With the 50 percent being promissory notes?

A. Can I create an illustration so that everyone is clear?

Q. Actually let's move on.

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Sir, you mentioned the bank account at Wells Fargo in Nevada.

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A. Yes.

Q. That came up during the conversation. Who controlled that account?

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A. That was controlled and managed by WWIN.

Q. Okay. And who were the signatories on that account?

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A. I was the signatory on the account. María Stevanavic was a signatory on the account. Jerry Gerber was a signatory on the account before he left the Impact Group. And then Brent

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Goodrich became a signatory on those bank accounts.

Q. Okay. And isn't it true that the way that the monies

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through that account were funneled is the money went into that account, Impact took its commission from that account, and then monies afterwards were turned over to the Elliott companies?

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A. That is correct.

Q. Okay. So, before the Elliott Companies ever saw a penny of

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any of the monies that was being paid, in connection with sales made by Impact, Impact was getting its commission, correct?

A. Correct.

10:55:02 25 Q. Okay. Sir --

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10:55:03 1 THE COURT: A few more questions.

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MR. MARTINEZ: Yeah, that's fine, Judge.

BY MR. MARTINEZ:

Q. You don't live in Florida, do you, sir?

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A. No, sir, I don't.

Q. Okay. Are you being compensated, sir, for your testimony

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or for any of the work that you are doing in connection with this lawsuit?

A. The only -- the only thing that I have been compensated for

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is my wife and I's flights and our accommodations and our food while we're here.

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Q. Okay. Sir, are you familiar with -- while you were chief executive officer -- excuse me, chief financial officer of the Elliott Companies, was one of your duties to make sure that the

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company had sufficient insurance to cover its obligations?

A. Yes, sir.

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Q. Okay. Sir, isn't it true that while you were chief financial officer, an employee of the company died, and the Elliott companies incurred losses of \$600,000 because they had

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insufficient insurance?

A. Those decisions for me to pay the insurance were

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overwritten by the executive vice president and the president of the corporation. Did you hear my answer, sir?

Q. No, please repeat your answer.

10:56:15 25 A. My answer was: Is that my decision to pay the insurance

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10:56:19 1 was overturned by the executive vice president and the

10:56:22 2 president of the corporation.

10:56:23 3 Q. Oh, I see. So, it wasn't your decision. It was somebody

10:56:25 4 else's decision, correct?

10:56:27 5 A. There were cash flow meetings every day. The decisions

10:56:30 6 were made on what got paid and what did not.

10:56:34 7 Q. Isn't it true, sir, that at one point you actually told

10:56:37 8 Mr. Fred Elliott that you felt that you had blood on your hands

10:56:41 9 because of what happened in connection with that?

10:56:43 10 A. Yes, sir, I did.

10:56:43 11 Q. Okay. Sir, you also testified a second ago that you were

10:56:46 12 being compensated for your flight down here, your stay down

10:56:49 13 here, your meals down here. Who is compensating you, sir?

10:56:52 14 A. Díaz, the law firm of Díaz.

10:56:55 15 MR. MARTINEZ: Okay. No further questions, Judge.

10:56:57 16 THE COURT: All right. Thank you, Mr. Clark, for your

10:56:59 17 testimony.